



# **Opening and closing maintained schools**

**Statutory guidance for proposers and  
decision makers**

**January 2023**

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# Summary

## About this guidance

This is statutory guidance from the Department for Education. Proposers and decision makers must have regard to it when establishing (opening) a new maintained school and/or discontinuing (closing) an existing maintained school.

The purpose of this guidance is to ensure that good quality school places are provided where they are needed, and that surplus capacity is removed where necessary. It should be read in conjunction with [part 2](#)<sup>1</sup> of and [schedule 2](#)<sup>2</sup> to the Education and Inspections Act 2006 (EIA 2006) as amended by the Education Act (EA) 2011 and [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#)<sup>3</sup> (the Establishment and Discontinuance Regulations).

This guidance only relates to schools in England.

## Expiry or review date

This guidance supersedes all previous versions. It will be kept under review and updated versions will be published if necessary.

## What legislation does this guidance refer to?

- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013 \(legislation.gov.uk\)](#)
- [Education and Inspections Act 2006 \(legislation.gov.uk\)](#)
- See also: [Annex D](#)

## Who is this guidance for?

This guidance is relevant to all categories of maintained school<sup>4</sup>, unless explicitly stated otherwise, and is for those proposing to open and/or close such a school (e.g. local authorities, governing bodies, diocese or other relevant religious authority), decision

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2006/40/part/2>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2006/40/schedule/2>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2013/3109/contents/made>

<sup>4</sup> Community, foundation, voluntary aided, voluntary controlled, community special and foundation special

makers (local authorities and the [Schools Adjudicator](#)<sup>5</sup>), and for those affected by a proposal (e.g. dioceses, trustees, parents etc.).

Separate advice is available on making prescribed alterations to [maintained schools](#)<sup>6</sup>, [making significant changes to academies](#)<sup>7</sup>, and [academy closure by mutual agreement](#)<sup>8</sup>.

It is the responsibility of local authorities, proposers and school governing bodies to ensure that they act in accordance with the relevant legislation and have regard to statutory guidance when seeking to open or close a maintained school and they are advised to seek independent legal advice where appropriate. Similarly, local authorities and Schools Adjudicators when making decisions on such proposals, must act in accordance with the law and must have regard to statutory guidance.

## Main points

- Where a local authority identifies the need for a new school, section 6A of EIA 2006 places the local authority under a duty to seek proposals to establish an academy (free school) via the '[free school presumption](#)'<sup>9</sup> process. The local authority is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening revenue costs. The final decision on all new free school presumption proposals lies with the Department for Education's [Regional Directors](#)<sup>10</sup> (RDs) on behalf of the Secretary of State.
- Proposers wishing to establish a new school may also wish to consider [opening a free school](#)<sup>11</sup> via the Department for Education's centrally delivered route<sup>12</sup>.
- It is possible for local authorities or other proposers, in certain circumstances, to publish a proposal for a new maintained school outside of the competitions processes. This is done under section 11 of EIA 2006. It is also possible to apply to the Secretary of State for consent to publish proposals to establish a new maintained school under section 10 of EIA 2006. The differences between these 2 processes are explained in table 1 and in the section on [proposing a new school](#).
- In this guidance we use 'other proposers' to indicate proposers that do not include the local authority (e.g. a governing body, diocese or other relevant religious

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<sup>5</sup> <https://www.gov.uk/government/organisations/office-of-the-schools-adjudicator>

<sup>6</sup> <https://www.gov.uk/government/publications/school-organisation-maintained-schools>

<sup>7</sup> <https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>

<sup>8</sup> <https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>

<sup>9</sup> <https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption>

<sup>10</sup> <https://www.gov.uk/government/organisations/regional-department-for-education-dfe-directors>

<sup>11</sup> <https://www.gov.uk/government/collections/opening-a-free-school>

<sup>12</sup> Information on the latest central free school application waves can be found on GOV.UK at:

<https://www.gov.uk/government/publications/free-school-application-guide>

authority). References in this guidance to 'proposers' includes both local authorities and other proposers<sup>13</sup>.

- All decisions on proposals to open or close a maintained school must be made with regard to the factors outlined in this guidance and follow the relevant statutory process.
- Both the consultation period and the representation period should be largely carried out in term time to allow the maximum numbers of people to see and respond to what is proposed.
- The decision maker will need to be satisfied that the consultation and representation period were appropriate, fair and open, and that the proposer has given full consideration to all the responses to the consultation.
- Proposers should be aware of the [guidance for decision makers](#) set out in this guidance and ensure that their proposals address the considerations that the decision maker must take into account. The decision maker must consider the expressed views of all those affected by a proposal or who have an interest in it, including cross-local authority border interests. The decision maker should not simply take account of the number of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most directly affected by a proposal – especially parents<sup>14</sup> of children at the affected school(s).
- In determining proposals decision makers must ensure that the guidance on [schools causing concern](#)<sup>15</sup> (intervening in failing, underperforming and coasting schools) has been considered where necessary.
- The School Organisation Team can make the necessary updates to the [Get Information About Schools](#)<sup>16</sup> (GIAS) system.

This guidance provides information on the following:

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<sup>13</sup> This is slightly different to how "proposers" is defined in EIA 2006, where the local authority is name-checked separately and "proposers" refers to anyone else other than the local authority

<sup>14</sup> A 'parent' should be considered to be anyone who has parental responsibility, including parents, carers and legal guardians

<sup>15</sup> <https://www.gov.uk/government/publications/schools-causing-concern--2>

<sup>16</sup> <https://www.get-information-schools.service.gov.uk>

Legislation	Proposer	Proposal <sup>17</sup>
Section 7	Academy trusts or other proposers (local authorities must initiate the competition but cannot make proposals under section 7)	Where the free school presumption process does not yield a suitable proposal, the Secretary of State can provide consent for the local authority to run a statutory competition, inviting proposals for a voluntary, foundation, foundation special school or an academy (free) school. Academy proposals will be considered first.
Section 10	Other proposers	To open a brand new <sup>18</sup> foundation, foundation special or voluntary controlled school.
Section 10	Local authorities	To open a community, community special, foundation or foundation special school to replace one or more existing maintained schools <sup>19</sup> .

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<sup>17</sup> Schools established under section 7, 10(1) or (2), or 11(A2) must not provide education suitable only to the requirements of persons above compulsory school age

<sup>18</sup> Where the proposal is to replace an existing foundation or voluntary controlled school with a religious character, independent school or non-maintained special school, proposals should be published under section 11

<sup>19</sup> But where a) the local authority proposes for a primary school to replace a maintained infant school and a maintained junior school; or b) section 11(A1) is satisfied, section 10 does not apply and the proposals must be published under the relevant subsection of section 11 instead



Legislation	Proposer	Proposal <sup>17</sup>
Section 11	Other proposers	To open: (1A) a new voluntary aided school (2) a new foundation, voluntary controlled or foundation special school which: replaces one or more foundation or voluntary schools with a religious character <sup>20</sup> ; replaces an independent school that is not an academy <sup>21</sup> , a city technology college or a city college for the technology of the arts; in the case of a new foundation special school, replaces a non-maintained special school <sup>22</sup> .
Section 11	Local authorities	To open: (A2) a new community, community special, foundation or foundation special school, where a section 7 competition has been held but did not identify a suitable provider <sup>23</sup> (A3) a new community, community special, foundation or foundation special primary school to replace a maintained infant and a maintained junior school (1) a new maintained nursery school.
Section 15	Local authorities	To close a community, foundation, voluntary, community special, foundation special, or maintained nursery school.
Section 15	Governing body	To close a voluntary, foundation, or foundation special school.

<sup>20</sup> The new school may have the same, different or no religious character

<sup>21</sup> The independent school should continue in existence but should then close as an independent school immediately before the proposals are implemented. It should also have been registered under Chapter 1 of Part 4 of the Education and Skills Act 2008 (regulation of independent educational institutions in England) for a continuous period of at least 2 years ending with the date of the publication of the proposals under section 11

<sup>22</sup> The non-maintained special school should continue in existence but should then close as a non-maintained special school immediately before the proposals are implemented. It should also have been approved under section 342 of EA 1996 (approval of non-maintained special schools) for a continuous period of at least 2 years ending with the date of the publication of the proposals

<sup>23</sup> Because no proposal was made or none of the proposals is approved under schedule 2 to EIA or result in academy arrangements being entered into

<b>Legislation</b>	<b>Proposer</b>	<b>Proposal<sup>17</sup></b>
Section 17	Secretary of State	To close a community special or foundation special in the interests of the health, safety or welfare of the pupils.
Section 30(1) School Standards and Framework Act 1998 (SSFA) 1998	Governing body	May give at least 2 years' notice of its intention to close a foundation or voluntary school to the Secretary of State and the local authority.
Section 30(10) SSFA 1998	Site trustees	May give at least 2 years' notice in accordance with section 30(11) to terminate a foundation or voluntary school's occupation of its land <sup>24</sup> .

**Table 1: summary of opening and closing proposals**

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<sup>24</sup> This might not necessarily lead to the closure of the school. The school might instead just move sites. Section 30(10) also specifies that the notice requirements at section 30(11) only need to be followed if the land is held for the purposes of the school and the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site

## Proposing a new school

This section sets out how to propose the establishment of a new school:

Type of proposal	Proposer	Decision maker	Right of referral to the Adjudicator <sup>25</sup>
Free School Presumption <sup>26</sup>	Academy trusts/sponsors	RD (on behalf of the Secretary of State <sup>27</sup> )	No
Section 7 (Stage 1): Any academy (free school) proposals will be considered first. If a proposal is received and considered suitable, the competition ends and the proposer/local authority/department take forward the academy (free school) proposal	Other proposers	RD (on behalf of the Secretary of State <sup>28</sup> )	No

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<sup>25</sup> Where the local authority is the decision maker. Where the Schools Adjudicator is the decision maker, there is no right of appeal

<sup>26</sup> Section 6A of EIA 2006

<sup>27</sup> Paragraph 7A of schedule 2 to EIA 2006

<sup>28</sup> Paragraph 7A of schedule 2 to EIA 2006

Type of proposal	Proposer	Decision maker	Right of referral to the Adjudicator <sup>25</sup>
Section 7 (Stage 2): Where no suitable academy (free school) bid is received, proposals submitted for a new foundation, foundation special or voluntary school will be considered	Other proposers	Local authority <sup>29</sup> (but Schools Adjudicator where the local authority is involved in the foundation of a proposed foundation school with a foundation (established otherwise than under the SSFA 1998) in one of the ways set out at paragraph 10(2) of schedule 2 to EIA 2006)	No <sup>30</sup>
Section 10	Local authorities	Schools Adjudicator <sup>31</sup>	No

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<sup>29</sup> Paragraphs 5A(2) and 8 of schedule 2 to EIA 2006. Where the local authority does not make a decision within the prescribed 2 month period, they must refer the proposal to the Schools Adjudicator

<sup>30</sup> The Secretary of State can direct the local authority to refer the non-academy proposals to the Adjudicator: paragraph 12 of schedule 2 to EIA 2006

<sup>31</sup> Paragraph 10(1)b of schedule 2 to EIA 2006

Type of proposal	Proposer	Decision maker	Right of referral to the Adjudicator <sup>25</sup>
Section 10	Other proposers	Local authority (Schools Adjudicator where the local authority is involved in the foundation of a foundation school with a foundation (established otherwise than under the SSFA 1998) in one of the ways set out at paragraph 10(2) of schedule 2 to EIA 2006)	Proposers. The Diocesan Board of Education of any Church of England (CofE) diocese any part of which is comprised in the area of the local authority. The bishop of any Roman Catholic diocese any part of which is comprised in the area of the local authority
Section 11	Local authority	Schools Adjudicator <sup>32</sup>	No

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<sup>32</sup> Paragraph 10(1)b of schedule 2 to EIA 2006

Type of proposal	Proposer	Decision maker	Right of referral to the Adjudicator <sup>25</sup>
Section 11	Other proposers	Local authority <sup>33</sup> (Schools Adjudicator where the local authority is involved in the foundation of a foundation school with a foundation (established otherwise than under the SSFA 1998) in one of the ways set out at paragraph 10(2) of schedule 2 to EIA 2006))	Proposers. The Diocesan Board of Education of any CofE diocese any part of which is comprised in the area of the local authority.  The bishop of any Roman Catholic diocese any part of which is comprised in the area of the local authority

Table 2: proposals to open a new school

## The free school presumption

Where a local authority identifies the need for a new school, section 6A of EIA 2006 places the local authority under a duty to seek proposals to establish an academy (free school) via the [‘free school presumption’](#)<sup>34</sup>.

In considering the need for a new school, the local authority should take account of any existing proposals they are aware of that will meet that need.

For more information on the free school presumption process see separate guidance [here](#)<sup>35</sup>.

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<sup>33</sup> Where the local authority does not make a decision within the prescribed 2 month period, they must refer the proposal to the Schools Adjudicator

<sup>34</sup> <https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption>

<sup>35</sup> <https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption>

## Section 7

### School competitions

If the free school presumption competition does not yield a suitable proposal, the Secretary of State may choose a different sponsor. In exceptional circumstances the Secretary of State may provide consent for a statutory competition to be held under section 7 of EIA 2006.

Where a local authority holds a section 7 competition, the local authority must follow the statutory process set out in schedule 2 to EIA 2006 and the Establishment and Discontinuance Regulations.

The local authority should publish a specification for the new school. The specification is only the minimum requirement and proposals may go beyond this.

Proposers (academy trusts or other proposers; local authorities cannot make proposals under section 7) may submit proposals for an academy (free) school, foundation, foundation special or voluntary school into the competition. Where one or more academy (free) school proposals are received, the RD (on behalf of the Secretary of State) will consider these first. Where no, or no suitable, academy proposals are submitted, the local authority will consider non-academy proposals (as per stage 4 onwards of the [statutory process](#)). The local authority is expected to provide premises and meet the capital costs of implementing the winning proposal.

### Process

Ahead of publishing a section 7 notice (thus commencing the competition), the local authority must consult any persons/organisations they think appropriate. The local authority must then publish a notice inviting proposals. The notice must include:

- an explanation of the competition procedure (including that academy proposals will be considered first);
- a possible site for the school;
- whether or not the proposed school is to be a special school; and
- the date by which proposals must be submitted (the competition must run for a minimum of 4 weeks).

The local authority must publish the notice on their website and place a notification of the competition (including the address of the website where the notice is published) in a national newspaper covering education issues and in a local newspaper. Both the notice

and notification must include details of how copies of the competition notice may be obtained.

Within one week of the date of its publication on the website, the local authority MUST send a copy of the notice to:

- the Secretary of State ([schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk));
- the Diocesan Board of Education of any CofE diocese any part of which is comprised in the area of the relevant local authority;
- the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the relevant local authority; and
- any other body or person that the local authority thinks is appropriate.

Within one week of receiving a request for a copy of the competition notice, the local authority must send a copy to the person requesting it. Proposers must set out the type, character (including any religious character), ethos and admission arrangements of the proposed school. Proposers should set out the estimated premises requirements and/or capital costs of a proposal submitted in response to a competition and, where these exceed the initial cost estimate made by the local authority, the proposer should set out the reasons for the additional requirements and/or costs.

The local authority must publish all proposals on their website. Where non-academy proposals are to be considered, the local authority must publish a statement inviting any person to object to or comment on the proposals – this representation period MUST last for 4 weeks. Within one week of publishing this statement, the local authority must send a copy of any non-academy proposals, together with the statement inviting comment, to any person or body that the local authority thinks appropriate. Within one week of receiving a request for a copy of the proposals the local authority must send a copy to the person requesting it.

## **Proposing a maintained school outside competitive arrangements**

It is possible to publish proposals for a new maintained school outside of the competitive arrangements at any time. Sections 10 and 11 of EIA 2006 permit proposals to establish new schools under certain conditions either with the Secretary of State's consent (section 10 cases) or without (section 11 cases).

In all cases, proposers must follow the required [statutory process](#).



## Section 10 proposals

It is possible to apply to the Secretary of State for 'consent to publish' proposals to establish a new school under section 10 of EIA 2006.

With Secretary of State consent, local authorities may publish proposals under section 10 for a community, community special, foundation or foundation special school to replace one or more existing maintained schools. The exception to this is where the proposal is for a primary school to replace a maintained infant school and a maintained junior school – in this case proposals must be published under section 11.

With the Secretary of State's consent, other proposers<sup>36</sup> may publish proposals under section 10 for a brand new<sup>37</sup> foundation, foundation special or voluntary controlled school.

Proposers wishing to apply for consent should email [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk) and request an application form. Each request for consent will be considered on its merits and the particular circumstances of the case.

Proposers should wait to receive confirmation of consent before following the [statutory process](#) to establish the new school.

The Schools Adjudicator will decide local authority proposals and section 7 cases where proposals include one (or more) in which the local authority is involved in the trust of a proposed foundation school. The local authority will decide proposals from other proposers<sup>38</sup>.

## Section 11 proposals

Under section 11 of EIA 2006 certain proposals for a new maintained school can be made outside of competitive process and without requiring the Secretary of State's consent.

Other proposers<sup>39</sup> e.g. a diocese or other relevant religious authority or charitable trust, may publish proposals for:

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<sup>36</sup> As per paragraph 3 of schedule 2 to EIA 2006, this does not include local authorities

<sup>37</sup> Where the proposal is to replace an existing foundation or voluntary school with a religious character, independent school or non-maintained special school, proposals should be published under section 11

<sup>38</sup> Where the local authority does not make a decision within the prescribed 2 month period, they must refer the proposal to the Schools Adjudicator

<sup>39</sup> As per paragraph 3 of schedule 2 to EIA 2006, this does not include local authorities

- a new voluntary aided school (e.g. in order to meet demand for a specific type of place such as demand from those of a particular faith); or
- a new foundation, voluntary controlled or foundation special school which:
  - replaces one or more foundation or voluntary schools with a religious character<sup>40</sup>;
  - replaces an independent school<sup>41</sup>; or
  - in the case of a foundation special school, replaces a non-maintained special school<sup>42</sup>.

Local authorities may publish proposals for:

- a new community, community special, foundation or foundation special school, where a section 7 competition has been held but did not identify a suitable provider;
- a new community, community special, foundation or foundation special primary school to replace a maintained infant and a maintained junior school; or
- a new maintained nursery school.

The [statutory process](#) must be followed to establish the new school.

## Factors to consider when proposing a new school

Proposals can be made to establish a school in an area other than that which published a competition notice (section 7) or is proposed should maintain the school (section 10 or 11). Relevant parties should read schedule 4 to the Establishment and Discontinuance Regulations.

Proposers should consider the following factors when making proposals to establish a new school.

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<sup>40</sup> The new school may have the same, different or no religious character

<sup>41</sup> The independent school should continue in existence but should then close as an independent school immediately before the proposals are implemented

<sup>42</sup> The non-maintained special school should continue in existence but should then close as a non-maintained special school immediately before the proposals are implemented

## Demand vs need

Excessive surplus capacity should be managed appropriately. Proposers may wish to discuss their plans with their local authority to understand levels of need for their proposed school.

Proposers should also demonstrate parental demand for the new school places and the type of provision being proposed, the quality and diversity of provision available in the local area, and the impact of the new places on existing educational provision in the local area.

## Proposed admission arrangements

Proposers should set out their intentions for the admission arrangements of the proposed school. Where the proposal is for a voluntary or foundation school, these should include whether the school will be designated as having a religious character and apply faith-based admissions criteria.

Proposers should ensure that they consider all expected admission applications when considering demand for the school, including those from outside the local authority area in which the school is situated.

## National Curriculum

All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community<sup>43</sup>.

## Integration and community cohesion

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of and respect for other cultures, faiths and communities.

Proposers should have regard to the [Integrated Communities Action Plan](#)<sup>44</sup> as well as any local integration and community cohesion strategies.

When making a proposal, the proposers should take account of the community to be served by the school and set out:

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<sup>43</sup> Under sections 90, 91, 92 and 93 of the Education Act 2002

<sup>44</sup> <https://www.gov.uk/government/publications/integrated-communities-action-plan>

- how the school will be welcoming to pupils of all faiths and none;
- how the school will address the needs of all pupils and parents;
- how the school will provide a broad and balanced curriculum and prepare children for life in modern Britain including through the teaching of spiritual, moral, social and cultural (SMSC) education;
- how the school will promote fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs or none; and
- how the school will encourage pupils from different communities, faiths and backgrounds to work together, learn about each other's customs, beliefs and ideas and respect each other's views.

## **Travel**

Proposers should consider how children will travel to the school and be satisfied that the proposals will not adversely impact any particular group, including those with protected characteristics or who are disadvantaged (for example, those who are eligible for free school meals or pupil premium). They should consider journey times and travel costs for families.

Local authorities have a duty to promote the use of sustainable travel and transport to school. Proposers should be satisfied that the children they expect to apply for the school will be able to travel there sustainably, where possible, e.g. by walking, cycling or using public transport.

## **Funding**

Proposers must include a statement setting out that any land, premises or necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement to the funding arrangements.

Proposers relying on the department as a source of capital funding should not assume that approval of the proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available.

## **School premises and playing fields**

Under the School Premises (England) Regulations 2012, all maintained schools are required to provide suitable outdoor space in order to enable physical education to be

provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

Under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, where proposals for a new voluntary aided school provide for the provision of playing fields, the duty to implement that part of the proposal (i.e. to provide the playing field) rests with the local authority.

For foundation, foundation special, and voluntary controlled schools, the duty to implement any proposals falls to either the governing body, or local authority, as the proposal provides for them to do so (i.e. the proposal for the new school will specify who will be providing the playing fields, which they then have a duty to actually provide).

[Non-statutory guidelines](#)<sup>45</sup> setting out suggested areas for pitches and games courts are in place.

Where the proposals for a new foundation or voluntary school are approved, the local authority must transfer any interest it has in the premises to either the trustees of the school or, where the school has no trustees, the school's governing body to be held by that body for the relevant purposes. The local authority must pay to relevant persons any reasonable costs incurred in connection with the transfer.

If any doubt or dispute arises as to the persons to whom that transfer is to be made, it must be made to such persons as the Schools Adjudicator thinks proper.

## Early years

Quality early education leads to better outcomes later in life. The department expects proposals for new primary schools to include a nursery, except in exceptional circumstances.

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<sup>45</sup> <https://www.gov.uk/government/publications/area-guidelines-and-net-capacity>

## Proposing to close (discontinue) a maintained school

This section sets out information for local authorities and governing bodies wishing to propose the closure of a maintained school.

Under section 15 of EIA 2006, a local authority can propose the closure of a community, foundation, voluntary, community special, foundation special or maintained nursery school; and the governing body of a voluntary, foundation or foundation special school may publish proposals to close its own school. The statutory process is set out in the Establishment and Discontinuance Regulations<sup>46</sup> and in [the statutory process section](#) of this guidance. Alternatively, the governing body of a foundation or voluntary school may give at least 2 years' notice of its intention to close the school to the Secretary of State and the local authority<sup>47</sup>.

The table below sets out a summary of proposals for closing a maintained school<sup>48</sup>:

Proposer	Type of proposal	Decision maker	Right of referral to the Adjudicator? <sup>49</sup>
Local authority <sup>50</sup>	Close a community, community special or maintained nursery school	Local authority	The Diocesan Board of Education of any CofE diocese any part of which is in the area of the local authority. The bishop of any Roman Catholic diocese any part of which is in the area of the local authority.

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<sup>46</sup> Part 4 concerns the proposals, part 5 concerns consideration of the proposals

<sup>47</sup> Section 30 Schools Standards and Framework Act 1998

<sup>48</sup> Proposers should be aware that in ALL cases where the local authority does not make a decision within the prescribed 2 month period, they must refer the proposal to the Schools Adjudicator (see regulations 14 and 15 of the Establishment and Discontinuance Regulations)

<sup>49</sup> Where the Schools Adjudicator is the decision maker, for example because the 2 month period has expired, there is no right of appeal

<sup>50</sup> Section 15(1) EIA 2006: proposal by local authority to discontinue—(a) a community, foundation or voluntary school, (b) a community special or foundation special school, or (c) a maintained nursery school

Proposer	Type of proposal	Decision maker	Right of referral to the Adjudicator? <sup>49</sup>
Local authority	Close a foundation, foundation special or voluntary (VC or VA) school	Local authority	The Diocesan Board of Education of any CofE diocese any part of which is in the area of the local authority. The bishop of any Roman Catholic diocese any part of which is in the area of the local authority. The governing body or trustees of the school.
Governing Body <sup>51</sup>	Close a voluntary (VC or VA), foundation or foundation special school	Local authority	The Diocesan Board of Education of any CofE diocese any part of which is in the area of the local authority. The bishop of any Roman Catholic diocese any part of which is in the area of the local authority. The governing body or trustees of the school.

**Table 3: proposals to close a school**

## Reasons for closing a school

Reasons for closing a maintained school include, but are not limited to, where:

- there are surplus places elsewhere in the local area which can accommodate displaced pupils and there is no predicted demand for the school in the medium to long term;
- it is to be amalgamated with another school;
- it has been judged inadequate by Ofsted and the Secretary of State has revoked the academy order;
- it is no longer considered viable;
- it is being replaced by a new school (as sections 10 and 11 provide for).

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<sup>51</sup> Proposal by governing body to discontinue (a) a foundation or voluntary school in England, or (b) a foundation special school

## Schools causing concern

In determining proposals, decision makers must ensure that the guidance on [schools causing concern](#)<sup>52</sup> (intervening in failing or underperforming schools) has been considered where necessary.

## The presumption against the closure of rural schools

Proposers should be aware that the department expects all decision makers to adopt a presumption against the closure of rural schools. This does not mean that a rural school will never close, but that the case for closure should be strong and clearly in the best interests of educational provision in the area.

The presumption does not apply where a rural infant and junior school on the same site are being closed to establish a new primary school.

Proposers should set out whether the school is referred to in the [Designation of Rural Primary Schools \(England\) Order](#)<sup>53</sup> or, where the school is a secondary school, whether the school is identified as rural on the [Get Information about Schools](#)<sup>54</sup> database (using the Office for National Statistics' [Rural and Urban Area Classification](#)<sup>55</sup>).

In formulating any closure proposals under this section in relation to a rural primary school<sup>56</sup>, proposers must have regard to:

- the likely effect of the discontinuance of the school on the local community;
- the availability, and likely cost to the local authority, of transport to other schools;
- any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase; and
- any alternatives to the discontinuance of the school.

Proposers, for all rural closures, in addition to the above, should also provide evidence to show they have carefully considered:

- alternatives to closure including:
  - conversion to academy status and joining a multi-academy trust;

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<sup>52</sup> <https://www.gov.uk/government/publications/schools-causing-concern--2>

<sup>53</sup> <https://www.gov.uk/government/publications/rural-primary-schools-designation>

<sup>54</sup> <https://get-information-schools.service.gov.uk/>

<sup>55</sup> <https://www.gov.uk/government/collections/rural-urban-classification>

<sup>56</sup> "Rural primary school" means a primary school designated as such for the purposes of this section by an order made by the Secretary of State



- federation with another local school;
- the scope for an extended school to provide local community services and facilities (e.g. childcare facilities, family and adult learning, healthcare, community internet access);
- the availability, and likely cost to parents, of transport to other schools;
- whether the proposal will result in unreasonably long journey times;
- the size of the school and whether it puts the children at an educational disadvantage e.g. in terms of breadth of curriculum or resources available;
- the proportion of pupils attending the school from within the local community i.e. whether the school is being used by the local community;
- the overall and long term impact on local people and the community of the closure of the school and of the loss of the building as a community facility;
- educational standards at the school and the likely effect on standards at neighbouring schools;
- whether the school is now surplus to requirements (e.g. because there are surplus places elsewhere in the local area which can accommodate displaced pupils, and there is no predicted demand for the school in the medium or long term);
- wider school organisation and capacity of good schools in the area to accommodate displaced pupils.

## **The presumption against the closure of nursery schools**

Proposers should be aware that decision makers are expected to adopt a presumption against the closure of maintained nursery schools. This does not mean that a maintained nursery school will never close, but that the case for closure should be strong.

Where a proposal is for the closure of a maintained nursery school, the proposer should set out:

- plans to develop alternative early years provision clearly demonstrating that it will be at least equal in quantity to the provision provided by the nursery school with no loss of expertise and specialism; and
- how replacement provision is more accessible and more convenient for local parents.

When proposing to close a school which includes early years provision, proposers should set out whether the alternative early years provision will integrate preschool education with childcare services and/or with other services for young children and their families.

## Amalgamations

There are 2 ways to amalgamate 2 (or more) existing maintained schools:

- The local authority and/or governing body (depending on school category) can publish proposals to close 2, or more, schools and the local authority (or a proposer other than the local authority depending on category) can publish a proposal to open a new school. Where this is a presumption school, this will be subject to publication of a section 6A notice (see part 2 of this guidance). This will result in a new school number being issued.
- The local authority and/or governing body (depending on school category) can publish a proposal to close one school (or more) and enlarge/change the age range/transfer site of an existing school (following the statutory prescribed alterations process as necessary), to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed. This is sometimes referred to as a 'merger'.

## Schools wishing to acquire, change or lose a religious character

It is not possible to add, change or remove the religious character of an existing maintained school. The school must be closed, following the usual statutory process, and a new school may be established.

Schools designated with a religious character that close will automatically have the designation revoked.

Where a new school with a religious character is proposed (including through amalgamation), the proposer will need to apply separately, to the Secretary of State, for the new school to be [designated with a religious character](#)<sup>57</sup>. This would normally be done once the proposal for the new school has been approved.

Where a new school is proposed to be designated as having a religious character, proposers should set out that the school will have a religious character and whether their admission arrangements would adopt any faith-based admissions criteria. It will need to have consulted on, and determined, its admission arrangements in accordance with the [School Admissions Code](#)<sup>58</sup>.

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<sup>57</sup> <https://www.gov.uk/guidance/religious-character-designation-guide-to-applying#application>

<sup>58</sup> <https://www.gov.uk/government/publications/school-admissions-code--2>

## Reversion of sites

Many Church of England schools occupy sites provided under the School Sites Act 1841. Section 2 of that Act enables a landowner to provide a site for the educational purposes listed (typically a school or a school house), under a statutory charitable trust. It also provides that, if the land ceases to be used for the purpose of the 1841 Act which is stated as the primary purpose in the trust deed (i.e. usually the school), it would revert to the donor or heirs by operation of law<sup>59</sup>. Section 14 of the 1841 Act allows a site to be sold or exchanged and any money arising from such a sale or exchange to be applied for the purposes of the trust deed (without triggering reverter), but it is important to keep in mind that if a school with a site provided under the 1841 Act were to close and not be replaced with a new school held on the same trusts, this would trigger the reversion (close attention must however always be paid to the detailed wording of the trust deed).

## Two years' notice of closure – voluntary and foundation schools

In addition to the statutory process for closure further to proposals made under section 15 of EIA 2006, the governing body of a voluntary or foundation school may, subject to specified provisions<sup>60</sup>, give the Secretary of State and the local authority at least 2 years' notice of their intention to close the school.

The site trustees of a foundation or voluntary school must give their governing body at least 2 years notice if they intend to terminate the school's occupation of its site, subject to specified provisions<sup>61</sup>. The minimum 2 years' notice allows the local authority and/or governing body time to make alternative arrangements for pupils. This might not necessarily lead to the closure of the school. The school might instead just move sites. Section 30(10) of SSFA 1998 also specifies that the notice requirements at section 30(11) only need to be followed if the land is held for the purposes of the school and the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site.

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<sup>59</sup> Though section 1 of the Reverter of Sites Act 1987 has now replaced statutory reverter with a non-charitable statutory trust of the land or its proceeds of sale to be held for the donor or heirs

<sup>60</sup> As outlined in section 30 of the School Standards and Framework Act 1998. Please also note the requirements to obtain the Diocesan Board of Education's advice at section 7 of the Diocesan Boards of Education Measure 2021 (the DBE Measure 2021)

<sup>61</sup> As also outlined in section 30 of SSFA 1998. Please again also note the requirements to obtain advice at section 7 of the DBE Measure 2021

## **Closure of a community special or foundation special school in the interests of pupils**

The Secretary of State may direct<sup>62</sup> a local authority to close a community special or foundation special school if they consider it is in the interests of the health, safety or welfare of the pupils. Prior to making the direction, the Secretary of State must consult: the local authority; any other local authority who would be affected by the closure of the school; for a foundation special school with a foundation, the person who appoints the foundation governors; and any other persons the Secretary of State considers appropriate.

The Secretary of State must give notice of the direction in writing to both the governing body and the head teacher of the school. The school must be closed on the date specified by the Secretary of State.

## **‘Closures’ which do not require the statutory closure process**

Temporary school closures – a proposal to close a school is not required where a school will temporarily cease to operate due to a rebuild.

Discontinuing use of a site – where a school operating over multiple sites proposes to cease operations on one (or more) of its sites the proposal will be for a [prescribed alteration](#)<sup>63</sup> and not a school closure.

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<sup>62</sup> Section 17 of EIA 2006

<sup>63</sup> <https://www.gov.uk/government/publications/school-organisation-maintained-schools>

## The statutory process

This section sets out the stages of the statutory process. The statutory process below must be followed for opening<sup>64</sup> and closing<sup>65</sup> a maintained school.

### Related proposals

A proposal should be regarded as 'related' if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Where proposals are related, this should be made clear in consultation and representation periods, in published notices, and proposals.

### Stage one: consultation

It is a statutory requirement to consult any parties the proposer thinks appropriate before publishing proposals under section 10 or 11 for new schools and for section 15 proposals to close a maintained school.

The proposer may use the consultation to consider a range of options for the future of a school (e.g. amalgamation, academy conversion, federation or closure). However, the proposer must then publish specific proposals (see stage 2 of the statutory process below). It is these specific proposals setting out details of the new school or the school to be closed which can be commented on or objected to during the statutory representation period.

It is for the proposer to determine the nature and length of the pre-publication consultation. It is best practice for consultations to be carried out in term time to allow the maximum number of people to respond. Proposers should have regard to the Cabinet Office guidance on [consultation principles](#)<sup>66</sup> when deciding how to carry out the consultation period.

In the case of the closure of rural primary schools and special schools, the Act sets out some particular groups who must be consulted. This is set out in Annex A to this guidance.

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<sup>64</sup> Under sections 10 and 11 of EIA 2006

<sup>65</sup> Under section 15 of EIA 2006

<sup>66</sup> <https://www.gov.uk/government/publications/consultation-principles-guidance>

## Stage 2: publication

A statutory proposal should be published within 12 months of the initial consultation period being completed. This is so that it can be informed by up-to-date feedback. A proposal MUST contain the information specified in either schedule 1 (for establishing a new school, as set out in Annex B to this guidance)<sup>67</sup> or schedule 2 (for closing a school, as set out in Annex C to this guidance) to the Establishment and Discontinuance Regulations.

The proposer must publish the full proposal on a website along with a statement setting out:

- how copies of the proposal may be obtained;
- that anybody can object to, or comment on, the proposal;
- the date that the representation period ends (4 weeks from publication); and
- the address to which objections or comments should be submitted.

A brief notice containing the website address of the full proposal must be published in a local newspaper.

In all cases, within one week of the date of publication on the website, the proposer MUST send a copy of the proposal and the information set above to:

- the Secretary of State ([schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk));
- the Diocesan Board of Education of any Church of England diocese in the relevant area;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority;
- any other body or person that the proposer thinks is appropriate (e.g. any relevant religious authority);
- where the proposal is for a new school under section 10 or 11 of EIA 2006 and the local authority is not the proposer, the local authority which it is proposed would maintain the school;
- where the proposal is to close a special school, the parents of every registered pupil at the school; and

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<sup>67</sup> Proposals published under section 11(1) (proposals to establish a new maintained nursery school) need not contain the information specified in paragraphs 7, 8, 10, 12, 18, 23, 24, and 25 of schedule 1

- where the proposal is for the closure of a maintained school, the governing body or the local authority responsible for maintaining the school (as appropriate).

Within one week of receiving a request for a copy of the proposal, the proposer must send a copy to the person requesting it.

### **Stage 3: representation**

Proposers should consult organisations, groups and individuals they feel to be appropriate during the representation period (the information in Annex A can be used for examples).

The representation period starts on the date of publication of the statutory proposal and **MUST** last for 4 weeks. During this period, any person or organisation can submit comments on the proposal, to the local authority, to be taken into account by the decision maker. It is also good practice for local authorities to forward representations to the proposer (subject to any issues of data protection or confidentiality) to ensure that they are aware of local opinion.

The decision maker will need to be satisfied that the proposer has had regard for the statutory process and must consider **ALL** the views submitted during the representation period, including all support for, objections to, and comments on the proposal.

### **Stage 4: decision**

Related opening and closing proposals must be considered together and, where applicable, referred to the Adjudicator together. Related prescribed alterations proposals should also be considered and, where possible, determined at the same time.

The local authority will be the decision maker on a school closure proposal, unless the closure proposal is 'related' to another proposal that is to be decided by the Schools Adjudicator.

The Schools Adjudicator will decide proposals for new schools made by the local authority and cases where one of the proposals has the local authority involved in the foundation of a proposed foundation school with a foundation in one of the ways set out in paragraph 10(2) of schedule 2 to EIA 2006. The local authority must refer such proposals within 2 weeks of the end of the representation period. The local authority will decide proposals for new schools from other proposers.

The Schools Adjudicator will also be the decision maker in any case where the local authority does not make a decision within a period of 2 months of the end of the

representation period. Where this happens, the local authority must, within a week of the end of that 2 month period, refer the case to the Schools Adjudicator.

Under paragraph 12 of schedule 2 to EIA 2006, the Secretary of State may also direct any section 7 proposals published by the local authority, but not yet determined, to be referred to the Schools Adjudicator.

The body or individual that takes the decision must have regard to the statutory decision makers guidance contained in this document.

When issuing a decision, the decision maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with such modifications as they think desirable; or
- approve the proposal, with or without modification, subject to certain conditions<sup>68</sup> (such as the granting of planning permission) being met.

A proposal can be withdrawn by the proposer at any point before a decision is taken. When revoking a proposal prior to a decision being made, the proposer must send written notice to the local authority and (where the proposal has been referred to the Adjudicator) also to the Schools Adjudicator.

Where the local authority is the decision maker, within one week of making a decision, they MUST publish their decision and the reasons for such a decision being made on their website. They MUST arrange for notification of the decision and reasons for it to be sent to:

- the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk));
- the proposers;
- the Schools Adjudicator;
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the relevant authority;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority; and
- any other body considered appropriate (e.g. site trustees).

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<sup>68</sup> As specified in regulation 16 of the Establishment and Discontinuance Regulations. If these conditions aren't met, the decision maker must consider the proposals afresh



Where the Schools Adjudicator is the decision maker, where possible they should send notification of the decision and reasons for it, within one week of deciding, to the local authority and the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) to ensure the appropriate records can be updated and to allow for any actions required as a consequence of the decision to be completed (e.g. an admissions preference exercise following approval to close a school).

## **Rights to refer local authority decisions to the Schools Adjudicator**

For rights to refer a decision taken by the local authority to the Schools Adjudicator, see table 2 (for establishment proposals) and table 3 (for closure proposals).

Within one week of receipt of a request for a referral, a local authority must send the proposal, representations received and the minutes and papers for the meeting at which it considered the proposals to the Schools Adjudicator.

There is no right of appeal against determinations made by the Schools Adjudicator. Adjudicator decisions can be challenged only by Judicial Review in the Courts.

## **Stage 5: implementation**

There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, decision makers should be confident the proposers have good justification (for example an authority-wide reorganisation) if they propose a timescale longer than 3 years.

The proposer must implement a proposal in the form approved, including any modifications made by the decision maker (unless modifying or revoking, as below).

The School Organisation Team will make the necessary changes to the school(s) GIAS record(s).

For proposals to establish a new school, the proposer should contact the School Organisation Team (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) at least one month before the proposed opening date to confirm that the new school will be opening on time. It is at this point that a GIAS record will be established, and the school will be assigned a URN.

## **Modification post determination**

If it proves necessary, due to a major change in circumstance, or it being unreasonably difficult to implement a proposal as approved, the proposer can propose modifications

(e.g. to amend the implementation date) to the decision maker before the approved implementation date. However, proposals cannot be modified to the extent that new proposals are substituted for those that have been approved.

The local authority or the Schools Adjudicator (where the decision in relation to the original proposal was decided by the Schools Adjudicator) will be the decision maker for any proposals for modifications post determination. The decision maker must notify the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) within one week of decision.

## Revocation

If the proposer does not wish to implement an approved proposal because doing so would be unreasonably difficult or circumstances have changed (so that implementation would be inappropriate) the proposer must publish a revocation proposal, to be relieved of the duty to implement. A revocation proposal must contain:

- a description of the original proposal as published;
- the date of the publication of the original proposal;
- details of who published the original proposals; and
- a statement as to why the duty to implement the original proposal should not apply.

The proposer must publish the revocation proposal on a website and a brief notice of the revocation proposal (which must include the address of the website where the proposals are published) in a local newspaper. Both must make clear:

- how copies of the revocation proposals may be obtained;
- that any person may object to or comment on the revocation proposals and the address of the local authority to which any objections or comments should be submitted; and
- the date by which such objections or comments must be submitted (which must be within 4 weeks of publication of the proposals).

Within one week of publication, the proposer must send copies of the proposal to:

- the local authority (where they are not the proposer);
- the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)); and
- any other body or person that the proposer thinks appropriate.

The local authority will be the decision maker for revocation proposals with the exception of cases where the initial decision in relation to the original proposal was decided by the Schools Adjudicator. In such cases the local authority must refer the revocation proposal (together with any comments or objections) within 2 weeks of the end of the representation period to the Schools Adjudicator.

## Guidance for decision makers

This section sets out the considerations that should be made by the local authority or Schools Adjudicator when deciding proposals to establish or discontinue (close) a school. Decision makers must have regard to this guidance.

In all cases, the decision maker should be satisfied that the proposer has carried out the requirements of the statutory process satisfactorily and should have due regard to all responses received during the representation period.

## Factors to consider when determining proposals

### Demand and need

When considering proposals to establish new provision, the decision maker should be satisfied that the proposer has demonstrated demand for the provision being proposed. This should include:

- evidence of any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools), in relation to the number of places to be provided;
- the quality and diversity of schools in the relevant area and whether the proposal will meet the needs of parents, raise local standards and narrow attainment gaps;
- the popularity of other schools in the area and evidence of parental demand for a new school; and
- surplus capacity should be a serious consideration – local authorities should consider the impact of the new places on existing good educational provision in the local area, and accumulating high levels of surplus should be avoided.

When determining proposals to discontinue (close) provision, the decision maker should be satisfied that there is sufficient capacity elsewhere in the local area to accommodate displaced pupils, and the likely supply and future demand for places in the medium and long term.

The decision maker should take into account the overall quality of alternative places in the local area, balanced with the need to reduce excessive surplus capacity in the system. The decision maker should have regard for the local context in which the proposals are being made, taking into account the nature of the area, the age of the children involved and, where applicable, alternative options considered for reducing excess surplus capacity.

## Suitability

When considering any proposal for a new maintained school, the decision maker should consider the proposal on its merits and take into account all matters relevant to the proposal. Any proposal put forward by organisations which advocate violence or other illegal activity must be rejected. In order to be approved, a proposal should demonstrate that, as part of a broad and balanced curriculum, the proposed new school would promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, as set out in the department's guidance on [Promoting fundamental British values through SMSC](#)<sup>69</sup>.

## Proposed admission arrangements

Before approving a proposal, the decision maker should confirm that the admission arrangements of the school are compliant with the [School Admissions Code](#)<sup>70</sup>. Although the decision maker cannot modify proposed admission arrangements, the decision maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

## School size

Decision makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. Section A2 of [how to apply to set up a mainstream free school](#)<sup>71</sup> sets out the department's expectations on school size.

## Equal opportunity issues

The decision maker must have regard to the Public Sector Equality Duty (PSED), which requires them to have due regard to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between people with a protected characteristic and those without that characteristic.

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<sup>69</sup> <https://www.gov.uk/government/publications/promoting-fundamental-british-values-through-smsc>

<sup>70</sup> <https://www.gov.uk/government/publications/school-admissions-code--2>

<sup>71</sup> <https://www.gov.uk/government/publications/free-school-application-guide/how-to-apply-to-set-up-a-mainstream-free-school>

The decision maker must consider the impact of the proposals on the relevant protected characteristics and any issues that may arise from the proposals (e.g. where there is a proposal to establish new single sex provision in an area, there is equal access to single sex provision for the other sex). Decision makers should be satisfied that the proposer has shown a commitment to providing access to a range of opportunities which reflect the ethnic and cultural mix of the area in which a school is located, whilst ensuring that such opportunities are open to all.

## Integration and community cohesion

The decision maker should consider the impact of any proposal on local integration and community cohesion objectives and have regard to the [Integrated Communities Action Plan](#)<sup>72</sup>.

When considering publishing or deciding a proposal, the proposers and the decision maker should take account of the community to be served by the school and the views of different sections within the community. They should also consider the relevant points set out on [integration and community cohesion](#) earlier in this guidance.

## Travel

Decision makers should be satisfied that the proposal will not adversely impact any particular group, including those with protected characteristics or who are disadvantaged (for example, those who are eligible for free school meals or pupil premium). Decision makers should also consider how the proposal will support the local authority's duty to promote the use of sustainable travel and transport to school.

When closing a school, decision makers should consider whether the proposal will result in unreasonably long journey times or increased travel costs for local authorities or families, as well as any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase.

When opening a school, decision makers should consider how children will travel to the school and be satisfied that the proposers have taken into account that the children they expect to apply for the school will be able to travel there sustainably, where possible, e.g. by walking, cycling or using public transport. Further information is available in the statutory [home-to-school travel and transport guidance](#)<sup>73</sup>.

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<sup>72</sup> <https://www.gov.uk/government/publications/integrated-communities-action-plan>

<sup>73</sup> <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

The decision maker will need to consider the local context, for example in areas with excessive surplus places, the decision maker should consider whether the travel implications of the proposal are reasonable compared to those for alternative options for reducing excessive surplus capacity.

## Funding

The decision maker should be satisfied that any land, premises or necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement to the funding arrangements.

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available.

Where a school is closing and other local schools need to take on displaced pupils, the following will apply in terms of the revenue funding support schools will receive for taking on additional pupils. Schools' core allocations in any given year are based on the number of pupils that they had on roll at the previous autumn census. This means that schools that take on additional pupils could be funded for fewer pupils for a given year. Local authorities can use growth funding to support schools to manage the revenue costs of an increase in pupil numbers before schools receive the corresponding increase in their core funding.

The department provides local authorities growth funding through the National Funding Formula (NFF) within their schools' block. Local authorities' growth funding is allocated based on the actual growth in pupil numbers experienced in the previous year. Local authorities determine criteria for allocating growth funding to schools in their area with the agreement of their schools forum. Further information is available in the [Schools Operational Guidance](#)<sup>74</sup> on local implementation of the funding system.

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<sup>74</sup> <https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2023-to-2024/schools-operational-guide-2023-to-2024#growth-funding>

## Schools causing concern

In determining proposals, decision makers must ensure that the guidance on [schools causing concern](#)<sup>75</sup> (intervening in failing or underperforming schools) has been considered where necessary.

## Rural schools and the presumption against closure

Decision makers should adopt a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and a proposal must be clearly in the best interests of educational provision in the area. Where a school is not recorded as rural on GIAS, the decision maker can consider evidence provided by interested parties that a particular school should be regarded as rural.

In deciding a proposal to close a rural school, the decision maker should refer to the section on [rural schools](#) earlier in this guidance.

## Nursery schools and the presumption against closure

Decision makers should adopt a presumption against the closure of maintained nursery schools. This does not mean that a maintained nursery school will never close, but the decision maker should refer to the section on [nursery schools](#) earlier in this guidance.

## Balance of denominational provision

In deciding a proposal to close a school that has been designated with a religious character, decision makers should consider the effect that this will have on the balance of denominational provision in the area, as well as taking account of the number of pupils currently on roll, the medium and long term need for places in the area, and whether standards at the school have been persistently low.

In relation to the balance of denominational provision, if an infant and a junior school of a particular religious character in an area are to close and be replaced with a new all-through school, then there should normally be a preference for that new school to be of the same religious character as the predecessor schools.

Where one school has a religious character and the other does not, or has a different religious character, both proposers and decision makers should consider what would best meet the needs of the local community. Decision makers should consider what

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<sup>75</sup> <https://www.gov.uk/government/publications/schools-causing-concern--2>



impact the proposal will have on the balance of denominational provision in the area, the quality of the provision available and parental demand in the area for the different types of provision.

## Community services

Some schools may be a focal point for family and community activity, providing extended services for a range of users, and their closure may have wider social consequences. Where the school is providing access to extended services, provision should be made for the pupils and their families to access similar services through their new schools or other means.

## Determining revocation proposals

The local authority will be the decision maker for revocation proposals, with the exception of cases where the initial determination of the original proposal was made by the Schools Adjudicator. In such cases, the local authority must refer the revocation proposal together with any comments or objections within 2 weeks of the end of the representation period to the Schools Adjudicator. Where the local authority made the initial determination of the original proposals and the proposals were later referred to the Adjudicator, the local authority should determine any revocation proposals made.

The decision maker should be satisfied that the proposer has carried out the statutory revocation process appropriately (as set out in the [revocation](#) section of this guidance) and should have regard for any responses received during the 4 week representation period.

Local authorities must determine a revocation proposal within 2 months of the end of the representation period. Where the local authority has not determined the proposed by the end of the 2 month period, they must refer the decision to the Schools Adjudicator. The decision maker should make such persons aware of the decision as they consider appropriate. This should include:

- the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk));
- the governing body/proposers (as appropriate);
- the Schools Adjudicator or local authority (as appropriate);
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the relevant authority;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority;

- for a special school, the parents of every registered pupil at the school;
- the trustees of the school (where relevant, e.g. site trustees); and
- any other body considered appropriate (e.g. other relevant religious authority).

Where the following bodies are unsatisfied with the outcome of a decision taken on a revocation, they may refer to the Schools Adjudicator (who will take a fresh decision on the proposals) within 4 weeks of the publication of the decision:

- the Diocesan Board of Education for any diocese in the Church of England that is comprised in the area of the relevant authority;
- the bishop of any Roman Catholic diocese in the area of the relevant authority;
- the proposers; or
- the governing body or trustees of any foundation or voluntary school which is the subject of the proposals (where relevant).

Within one week of receiving the referral, the local authority must send to the Adjudicator:

- any objections or comments in relation to the proposals;
- minutes of the meeting at which the revocation proposals were considered; and
- any papers considered by the local authority at that meeting.

## **Determining requests to modify approved proposals**

Proposers may request modifications to approved proposals or ask the body which approved the proposals to specify a later date in respect of conditional approval. Where the Schools Adjudicator made the initial decision on the original proposals, the local authority must refer the case to the Adjudicator within 2 weeks of receipt of the request from the proposers.

The decision maker should be satisfied that the proposal does not modify the existing proposals to the extent that new proposals are substituted for those that were originally published.

Where approved proposals are modified, the local authority or the Schools Adjudicator (as the case may be) must notify the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) within one week of the date of the proposals being modified.

## Annex A: Consultations

In the case of the proposed closure of a rural primary school or a community special or foundation special school, prior to publishing a statutory notice and proposal, proposers must<sup>76</sup> consult:

- the registered parents of registered pupils at the school;
- in the case of a rural primary school:
  - the local authority (where they are not the proposer);
  - where the local authority are a county council, any district council for the area in which the school is situated;
  - any parish council for the area in which the school is situated;
- in the case of a special school, any local authority which maintains an Education, Health and Care plan in respect of a registered pupil at the school;
- any other interested organisation/person that the proposer thinks appropriate.

The Secretary of State considers that these bodies, along with those listed below (as applicable) should be consulted in the case of the proposed opening or closure of all schools:

- the governing body (as appropriate);
- pupils at the school;
- if a proposal involves, or is likely to affect, a school which has a particular religious character, the appropriate diocese or relevant religious authority<sup>77</sup> ;
- the trustees of the school (if any);
- teachers and other staff at the school;
- any local authority likely to be affected by the proposal, 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;
- parents of any pupils at other schools who may be affected by the proposal including, where appropriate, families of pupils at feeder primary schools;

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<sup>76</sup> Under section 16(1) of EIA 2006.

<sup>77</sup> As highlighted by earlier footnotes, under the DBE Measure 2021 church school (as defined by the Measure) governing bodies must seek their Diocesan Board of Education's advice, before making closure proposals under s15(2) and site trustees have a duty to do this too.

- any trade unions who represent staff at the school, and representatives of any trade union of staff at other schools who may be affected by the proposal; and
- MPs whose constituencies include the school that is the subject of the proposal or whose constituents are likely to be affected by the proposal.

## **Annex B: Statutory proposals for establishing a new school**

As set out in schedule 1 to the Establishment and Discontinuance Regulations, the information below must be included in section 10 and 11 proposals to establish a new school:

### **Contact details**

The name and contact address of the local authority or the proposers (as the case may be).

### **Implementation**

The date on which it is proposed that the school be opened or, where it is proposed that the opening be implemented in stages, the dates of and information about each stage.

Where the proposals are to establish a voluntary, foundation or foundation special school, a statement as to whether the proposals are to be implemented by the local authority or by the proposers, and if the proposals are to be implemented by both:

- a statement as to the extent that they are to be implemented by each body; and
- a statement as to the extent to which the capital costs of implementation are to be met by each body.

### **Reason for the new school**

A statement explaining the reason why the new school is considered necessary and whether it is to replace an existing school or schools.

### **Category**

The category of school that it is proposed be established (a foundation or foundation special school and, if so, whether it is to have a foundation, a voluntary school, a community or community special school, or a local authority maintained nursery school) and, if required by section 10, a statement that the Secretary of State's consent has been obtained to publish the proposals.

## **Ethos and religious character**

A short statement setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.

If it is proposed that the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will or may be required to be provided at the school; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character.

Where it is proposed that the school has a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion.

Where it is proposed that the school adheres to a particular philosophy, evidence of the demand for education in accordance with that philosophy that is not already met in other maintained schools or academies in the area.

## **Pupil numbers and admissions**

The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is to be made at the school.

## **Admission arrangements**

Except in relation to proposals for special schools, the proposed admission arrangements and over-subscription criteria for the new school. Where the school is proposed to be a foundation or voluntary school which is to have a religious character:

- the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and
- the extent, if any, to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

## **Early years provision**

Where the proposals are to include provision for pupils aged 2 to 5:

- details of how the early years provision will be organised, including the number of full-time and part-time pupils, the number of places, the number and length of sessions in each week, and the services for disabled children that will be offered;

- how the school will integrate the early years provision with childcare services, and how the proposals for the establishment of the school are consistent with the integration of early years provision with childcare;
- evidence of parental demand for additional early years provision;
- assessment of capacity, quality and sustainability of provision in schools, and in settings outside of the maintained school sector which deliver the Early Years Foundation Stage, within 3 miles of the school; and
- the reasons why schools and settings outside the maintained school sector which deliver the Early Years Foundation Stage within 3 miles of the school, and which have spare capacity, cannot make provision for any forecast increase in the numbers of such children.

## Sixth form provision

Where it is proposed that the school will provide sixth form education, for 16 to 19 year olds in the area, how the proposals will:

- improve the educational or training achievements;
- increase participation in education or training;
- expand the range of educational or training opportunities available to them.

Where the addition of sixth-form provision to existing provision is being proposed, a change of age-range will be required, and proposers should refer to the separate guidance on [prescribed alterations](#)<sup>78</sup>.

## Special educational needs provision

Whether the school will have provision that is recognised by the local authority as reserved for children with special educational needs and, if so, the nature of such provision.

Details of the proposed policy of the school relating to the education of pupils with special educational needs.

Where the school will replace existing educational provision for children with special educational needs:

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<sup>78</sup> <https://www.gov.uk/government/publications/school-organisation-maintained-schools>

- a statement on how the proposer believes the proposal is likely to lead to improvements in the standard, quality and range of educational provision for these children;
- details of the improvements that the proposals will bring in respect of:
  - access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local authority's Accessibility Strategy;
  - access to specialist staff, both education and other professionals, including any external support or outreach services;
  - access to suitable accommodation; and
  - supply of suitable places.

## Single sex school

Where the school is to admit pupils of a single sex:

- evidence of local demand for single sex education and how this will be met if the proposals are approved; and
- a statement giving details of the likely effect the new school will have on the balance of provision of single sex education in the area.

## Curriculum

Confirmation that the school will meet the general requirements in relation to the curriculum contained in section 78 of the Education Act 2002 (EA 2002) and an outline of any provision that will be in addition to the basic curriculum required by section 80 of EA 2002, in particular any 14-19 vocational education.

## Relevant experience of proposers

Evidence of any relevant experience in education held by the proposers including details of any involvement in the improvement of standards in education.

## Effects on standards and contributions to school improvement

Information and supporting evidence on:



- how the school will contribute to enhancing the diversity and quality of education in the area; and
- how the school will contribute to school improvement.

## Location and costs

A statement about:

- the area or particular community or communities which the new school is expected to serve;
- the location of the site or sites including, where appropriate, the postal address or addresses;
- the current ownership and tenure (freehold or leasehold) on which the site will be held, and if the site is to be held on a lease, details of the proposed lease;
- whether the site is currently used for the purposes of another school and if so, why the site will no longer be required by the other school;
- the estimated capital costs of providing the site and how those costs will be met (including the extent to which the costs are to be met by the proposers and the local authority) and how the proposers intend to fund their share of the costs of implementing the proposals (if any);
- whether planning permission is needed under the Town and Country Planning Act 1990, and when it is anticipated that it will be obtained; and
- confirmation from the Secretary of State or local authority (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

## Travel

The proposed arrangements for travel of pupils to the school.

## Federation

Details of any proposals for the school to be established as a federated school.

## Voluntary aided schools

Where the school is to be a voluntary aided school:

- details of the trusts on which the site is to be held; and
- confirmation that the governing body will be able and willing to carry out their obligations under schedule 3 to SSFA 1998.

## **Foundation schools**

Where the school is to be a foundation or foundation special school, confirmation as to:

- whether it will have a foundation and if so, the name or proposed name of the foundation;
- the rationale for the foundation and the particular ethos that it will bring to the school;
- the details of membership of the foundation, including the names of the members;
- the proposed constitution of the governing body; and
- details of the foundation's charitable objects.

## **Independent schools entering the maintained sector**

Where a school is an independent school entering the maintained sector:

- a statement that the requirements of section 11(3) are met;
- a statement as to whether the premises will meet the requirements of the School Premises (England) Regulations 2012 and, if not:
  - details of how the premises are deficient; and
  - details of how it is intended to remedy the deficiency.

## **Annex C: Statutory proposals for school closures**

As set out in schedule 2 to the Establishment and Discontinuance Regulations the information below must be included in a proposal to close a school:

### **Contact details**

The name and contact address of the local authority or governing body publishing the proposals and the name, address and category of the school it is proposed that should be discontinued.

### **Implementation**

The date on which it is proposed to close the school or, where it is proposed that the closure be implemented in stages, the dates of and information about each stage.

### **Reason for closure**

A statement explaining the reason why closure of the school is considered necessary.

### **Pupil numbers and admissions**

The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is currently made at the school.

### **Displaced pupils**

A statement and supporting evidence about the need for school places in the area including whether there is sufficient capacity to accommodate displaced pupils.

Details of the schools or further education colleges at which pupils at the school to be discontinued will be offered places, including:

- any interim arrangements;
- the provision that is to be made for those pupils who receive educational provision recognised by the local authority as reserved for children with special educational needs; and

- in the case of special schools, the alternative provision (i.e. alternative suitable schools in the area) made by local authorities other than the local authority which maintain the school.

Details of any other measures proposed to be taken to increase the number of school or further education college places available in consequence of the proposed discontinuance.

## **Impact on the community**

A statement and supporting evidence about the impact on the community of the closure of the school and any measures proposed to mitigate any adverse impact.

## **Rural primary schools**

Where proposals relate to a rural primary school designated as such by an order made for the purposes of section 15, a statement that the local authority or the governing body (as the case may be) considered section 15(4).

## **Balance of denominational provision**

Where the school has a religious character, a statement about the impact of the proposed closure on the balance of denominational provision in the area and the impact on parental choice.

## **Maintained nursery schools**

Where proposals relate to the discontinuance of a maintained nursery school, a statement setting out:

- the local authority's assessment of the quality and quantity of the alternative provision (i.e. alternative suitable schools in the area) compared to the school proposed to be discontinued and the proposed arrangements to ensure the expertise and specialism continues to be available; and
- the accessibility and convenience of replacement provision for local parents.

## **Sixth form provision**

Where the school proposed to be discontinued provides sixth form education, the effect for 16 to 19 year olds in the area that the closure will have in respect of:

- their educational or training achievements;
- their participation in education or training; and
- the range of educational or training opportunities available to them.

## **Special educational needs provision**

Where existing provision that is recognised by the local authority as reserved for pupils with special educational needs is being discontinued, a statement as to how the local authority or the governing body (as the case may be) believe the proposals are likely to lead to improvements in the standard, quality and/or range of the educational provision for these children.

## **Travel**

Details of length and journeys to alternative provision (i.e. alternative suitable schools in the area).

The proposed arrangements for travel of displaced pupils to other schools including how the proposed arrangements will mitigate against increased car use.

## Annex D: Further Information

This guidance primarily relates to:

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#)
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#)
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#)
- [Rural primary schools designation](#)
- [Rural and Urban Area Classification](#)
- [The Religious Character of Schools \(Designation Procedure\) Regulations 1998](#)
- [How to apply for religious designation](#)
- [Schools Adjudicator](#)
- [School Admissions Code](#)

It also relates to:

- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Governance Handbook](#)
- [School Premises \(England\) Regulations 2012](#)
- [The School Companies Regulations 2002](#) as amended by the [2003 Regulations](#) and the [2014 Regulations](#)
- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [Change your charity's governing document](#)
- [Academies Act 2010](#)
- [The free school presumption](#) - departmental advice for local authorities and new school proposers
- [Making significant changes to an academy](#)
- [Closure of an academy by mutual agreement](#)
- [Regional Department for Education Directors](#)
- [Consultation principles](#)



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