



Department  
for Education

Appendix 5

# **School Organisation**

## **Maintained Schools**

### **Annex B: Guidance for Decision-makers**

**January 2014**

# Contents

Summary	3
Key points	3
Related proposals	3
Conditional approval	3
Publishing decisions	4
Factors to consider	4
Factors relevant to all types of proposals	5
Factors relevant to certain types of proposals:	9
Expansion	9
Expansion of existing grammar schools	10
Changes to boarding provision	10
Addition of post-16 provision	10
Changes of category to voluntary-aided	11
Changes to special educational need provision – the SEN improvement test	11
Additional factors relevant to proposals for new maintained schools	13
Additional factors relevant to closure proposals	16
Additional factors relevant to proposals to change category to foundation, acquire/remove a Trust and acquire/remove a foundation majority governing body	19

# Summary

## Key points

1. This Annex is for local authorities, the Schools Adjudicator and governing bodies in their roles as decision-makers. It is relevant to the 2013 School Organisation Regulations<sup>1</sup>. Decisions on proposals published before 28 January 2014 must be made with regard to the previous Decision-makers Guidance.
2. The table in [Annex A.5](#) sets out the decision-maker for each type of school organisation proposal. The department does not prescribe the exact process by which a decision-maker carries out their decision-making function; however, decision-makers must have regard<sup>2</sup> to this guidance when making a decision.
3. The decision-maker should consider the views of those affected by a proposal or who have an interest in it, including cross-LA border interests. The decision-maker should not simply take account of the numbers 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 of children at the affected school(s).

## Related proposals

4. Any proposal that is 'related' to another proposal must be considered together. 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', the decisions should be compatible.
5. Where a proposal is 'related' to another proposal to be decided by the Secretary of State (e.g. for the establishment of a new academy) the decision-maker should defer taking a decision until the Secretary of State has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

## Conditional approval

6. Decision-makers may give conditional approval for a proposal subject to certain prescribed events<sup>3</sup>. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

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<sup>1</sup> In the case of the removal of a Foundation or Foundation majority this guidance is relevant to The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

<sup>2</sup> Under paragraphs 8(6) and 17 of Schedule 2 to the EIA 2006 and regulation 7 of the Prescribed Alterations Regulations.

<sup>3</sup> The prescribed events are those listed under paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations (for prescribed alterations), regulation 16 of the Establishment and Discontinuance Regulations (for closures and new schools) and paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations (for foundation and trust proposals).

7. The proposer should inform the decision-maker (and the Secretary of State via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk) in the case of school closures) when a condition is modified or met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

## Publishing decisions

8. All determinations (rejected and approved – with or without modifications) must give reasons for such a decision being made. Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for the decision and the reasons behind it to be published on the website where the original proposal was published. The decision-maker must also arrange for the bodies below to be notified of the decision and reasons<sup>4</sup>:

- the LA (where the Schools Adjudicator or governing body is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;
- the parents of every registered pupil at the school – where the school is a special school;
- any other body that they think is appropriate; and
- the Secretary of State via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk) (in school opening and closure cases only).

## Factors to consider

9. Paragraphs [10](#) to [78](#) of this annex set out some the factors that decision-makers should consider when deciding a proposal. Paragraphs [10](#) to [29](#) are relevant to all types of proposals. Paragraphs [30](#) to [78](#) are more relevant to certain types of proposals (as specified). These factors are not exhaustive and the importance of each will vary depending on the type and circumstances of the proposal. All proposals must be considered on their individual merits.

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<sup>4</sup> In the case of proposals to change category to foundation, acquire/remove a Trust and/or acquire/remove a Foundation majority the only bodies the decision-maker must notify are the LA and the governing body (where the Schools Adjudicator is the decision-maker).

## **Factors relevant to all types of proposals**

### **Consideration of consultation and representation period**

10. The decision-maker will need to be satisfied that the appropriate consultation and/or representation period has been carried out and that the proposer has had regard to the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider all the views submitted, including all support for, objections to and comments on the proposal.

### **Education standards and diversity of provision**

11. Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the aspirations of parents, raise local standards and narrow attainment gaps.

12. The decision-maker should also take into account the extent to which the proposal is consistent with the government's policy on academies as set out on the department's website.

### **Demand**

13. In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools).

14. The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

15. Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

### **School size**

16. 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. The decision-maker should also

consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

## **Proposed admission arrangements (including post-16 provision)**

17. In assessing demand the decision-maker should consider all expected admission applications, not only those from the area of the LA in which the school is situated.

18. Before approving a proposal that is likely to affect admissions to the school the decision-maker should confirm that the admission arrangements of the school are compliant with the School Admissions Code. 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.

## **National Curriculum**

19. All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community<sup>5</sup>.

## **Equal opportunity issues**

20. The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations.

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

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<sup>5</sup> Under sections: 90, 91, 92 and 93 of the Education Act 2002.

## Community cohesion

22. 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. When considering a proposal, the decision-maker must consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different sections within the community.

## Travel and accessibility

23. Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

24. The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.

25. A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

## Capital

26. The decision-maker should be satisfied that any land, premises or capital required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement. A proposal cannot be approved conditionally upon funding being made available.

27. 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; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

## School premises and playing fields

28. Under the School Premises Regulations all 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.
29. [Guidelines](#) setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.



## Factors relevant to certain types of proposals:

### Expansion

30. When deciding on a proposal for an expansion on an additional site (a 'satellite school'), decision-makers will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school (which would trigger the academy presumption in circumstances where there is a need for a new school in the area<sup>6</sup>). Decisions will need to be taken on a case-by-case basis, but decision-makers will need to consider the following non-exhaustive list of factors which are intended to expose the extent to which the new site is integrated with the existing site, and to ensure that it will serve the same community as the existing site:

- The reasons for the expansion
  - What is the rationale for this approach and this particular site?
- Admission and curriculum arrangements
  - How will the new site be used (e.g. which age groups/pupils will it serve)?
  - What will the admission arrangements be?
  - Will there be movement of pupils between sites?
- Governance and administration
  - How will whole school activities be managed?
  - Will staff be employed on contracts to work on both sites? How frequently will they do so?
  - What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- Physical characteristics of the school
  - How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
  - Is the new site in an area that is easily accessible to the community that the current school serves?

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<sup>6</sup> Or require an proposal under section 11 of the EIA 2006 for a new maintained school.

## Expansion of existing grammar schools

31. Legislation prohibits the establishment of new grammar schools<sup>7</sup>. Expansion of any existing grammar school onto a satellite site can only happen if it is a genuine continuance of the same school. Decision-makers must consider the factors listed in paragraph 30 on 'expansions' when deciding if an expansion is a legitimate enlargement of an existing school.

## Changes to boarding provision

32. In making a decision on a proposal to close a school that has boarding provision, or to remove boarding provision from a school that is not closing, the decision-maker should consider whether there is a state maintained boarding school within reasonable distance from the school. The decision-maker should consider whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

## Addition of post-16 provision

33. In assessing a proposal to add post-16 provision, decision-makers should look for evidence that the proposal will improve, extend the range, and increase participation in high quality educational or training opportunities for post-16 pupils within the LA or local area.

34. The decision-maker should also look for evidence on how new places will fit within the 16-19 organisation in an area and that schools have collaborated with other local providers in drawing up a proposal.

35. The decision-maker may turn down a proposal to add post-16 provision if there is compelling and objective evidence that the expansion would undermine the viability, given the lagged funding arrangements, of an existing high quality post-16 provider.

36. Decision-makers should consider the viability of a proposal bearing in mind the formulaic approach to funding; that the school will have to bear any potential diseconomies of scale; and the impact of future demographic trends.

37. A proposal should take account of the timeline for agreeing 16-19 funding which will be available in the most recent guidance on the department's website. Decision-makers should note that post-16 funding runs on an August – July academic year cycle.

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<sup>7</sup> Except where a grammar school is replacing one of more existing grammar schools. See [paragraph 53](#).

## **Changes of category to voluntary-aided**

38. For a proposal to change the category of a school to voluntary-aided, the decision-maker must be satisfied that the governing body and/or the Foundation are able and willing to meet their financial responsibilities for building work. The decision-maker may wish to consider whether the governing body has access to sufficient funds to enable it to meet 10% of its capital expenditure for at least five years from the date of implementation, taking into account anticipated building projects.

## **Changes to special educational need provision – the SEN improvement test**

39. In planning and commissioning SEN provision or considering a proposal for change, LAs should aim for a flexible range of provision and support that can respond to the needs of individual pupils and parental preferences. This is favourable to establishing broad categories of provision according to special educational need or disability.

Decision-makers should ensure that proposals:

- take account of parental preferences for particular styles of provision or education settings;
- take account of any relevant local offer for children and young people with SEN and disabilities and the views expressed on it;
- offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise) and regional and sub-regional provision; out of LA day and residential special provision;
- take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, within a learning environment where children can be healthy and stay safe;
- support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- ensure appropriate provision for 14-19 year-olds; and
- ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs must be amended and all parental rights must be ensured. Other interested partners, such as the Health Authority

should be involved. Pupils should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need.

40. When considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of parental or independent representations which question the proposer's assessment.

## **Additional factors relevant to proposals for new maintained schools**

### **Suitability**

41. When considering a proposal for a new maintained school, the decision-maker should consider each proposal on its merits, and take into account all matters relevant to the proposal. Any proposals put forward by organisations which advocate violence or other illegal activity must be rejected. In order to be approved, a proposal should demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect.

### **Competitions (under section 7 EIA 2006)**

42. Where a LA considers that there is a need for a new school in its area it must first seek proposals to establish an academy/free school under section 6A of EIA 2006 (though proposals may also be made under section 10 and 11 of the EIA 2006). In such cases the Secretary of State is the decision-maker. However, in exceptional circumstances where no academy/free school proposals are received (or are received but are deemed unsuitable) a statutory competition under section 7 of the EIA 2006 may be held. Where there is demand for faith places the LA may seek to establish a new faith VA school (see paragraphs [47-51](#)).

43. Where two or more proposals are complementary, and together meet the requirements for the new school, the decision-maker may approve all the proposals.

44. The specification for the new school is only the minimum requirement; a proposal may go beyond this. Where a proposal is not in line with the specification, the decision-maker must consider the potential impact of the difference to the specification.

45. Where additional provision is proposed (e.g. early years or a sixth-form) the decision-maker should first judge the merits of the main proposal against the others. If the proposal is judged to be superior, the decision-maker should consider the additional elements and whether they should be approved. If the decision-maker considers they cannot be approved, they may consider a modification to the proposal, but will need to first consult the proposers and - if the proposal includes provision for 14-19 year olds - the Education Funding Agency (EFA).

### **Capital in competitions**

46. For competitions the LA will be expected to provide premises and meet the capital costs of implementing the winning proposal, and must include a statement to this effect in

the notice inviting proposals. Where the estimated premises requirements and/or capital costs of a proposal submitted in response to a competition exceed the initial cost estimate made by the LA, the decision-maker should consider the reasons for the additional requirements and/or costs, as set out in the proposal and whether there is agreement to their provision.

## **New voluntary-aided schools (under section 11 of EIA 2006)**

47. Section 11 of the EIA 2006 permits a new VA school to be proposed without the requirement for the Secretary of State's approval. Such a school must be proposed following the required statutory process and may be for a school with or without a designated religious character.

48. Many VA schools are schools with a religious character. The department recognises the important contribution that faith schools make to the education system and that 'faith need' (demand for faith places on choice grounds) may be viewed as separate from 'basic need' (demand for new school places).

49. When assessing basic need, LAs need to look at the general demand for places and if a new school is needed to address basic need, must go down the academy presumption route. Where there is a demand for faith places, the law allows for LAs to seek to establish a new academy with religious designation, or for other proposers to establish new VA schools outside the presumption process.

50. The approval of a new school to meet local demand for faith places may also meet the demand (or some of the demand) for basic need.

51. Legislation allows maintained schools to seek to convert to academy status.

## **Independent faith schools joining the maintained sector**

52. Legislation allows an independent faith school to move into the maintained sector. However, decision-makers must ensure that the decision to proceed with such a proposal is clearly based on value for money and that the school is able to meet the high standards expected of state-funded educational provision. The department would expect the decision-maker to consider the following points:

- that there is genuine demand/need for this type of school place in the local community;
- that the current and projected financial health of the proposer is strong;
- that the proposal represents long term value for money for the taxpayer;
- that the school will be able to deliver the whole of the national curriculum to the expected high standard;
- that all aspects of due diligence have been considered and undertaken; and

- that the school building is appropriate for the delivery of a high standard of education and in good condition throughout, or can easily be improved to meet such standards.

## **Replacement grammar schools**

53. A new school can only be designated as a grammar school by the Secretary of State where it is being established in place of one or more closing grammar schools<sup>8</sup>. Decision-makers should therefore satisfy themselves that if a new school is proposed as a grammar school it is eligible for designation. Where an existing grammar school is expanding the proposer and decision maker must consider the points listed in paragraph [30](#).

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<sup>8</sup> Under section 104 of the SSFA 1998.

## **Additional factors relevant to closure proposals**

### **Closure proposals (under s15 EIA 2006)**

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

### **Schools to be replaced by provision in a more successful/popular school**

55. Such proposals should normally be approved, subject to evidence provided.

### **Schools causing concern**

56. For all closure proposals involving schools causing concern, copies of the Ofsted monitoring letters for the relevant schools should be made available. Decision-makers should have regard to the length of time the school has been in special measures, requiring improvement or otherwise causing concern. The decision-maker should also have regard to the progress the school has made, the prognosis for improvement, and the availability of places at other existing or proposed schools within a reasonable travelling distance. There is a presumption that these proposals should be approved, subject to checking that there are sufficient accessible places of an acceptable standard available to accommodate displaced pupils and to meet foreseeable future demand for places in the area.

### **Rural schools**

57. There is 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 the proposal clearly in the best interests of educational provision in the area<sup>9</sup>. Those proposing closure should provide evidence to show that they have carefully considered the following:

- alternatives to closure including the potential for federation with another local school or conversion to academy status and joining a multi-academy trust or umbrella trust to increase the school's viability;

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<sup>9</sup> Not applicable where a rural infant and junior school on the same site are closing to establish a new primary school on the same site(s).



- the scope for an extended school to provide local community services; and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.;
- the transport implications; and
- the overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.

58. When deciding a proposal for the closure of a rural primary school the decision-maker must refer to the [Designation of Rural Primary Schools Order](#) to confirm that the school is a rural school.

59. For *secondary schools*, the decision-maker must decide whether a school is to be regarded as rural for the purpose of considering a proposal. In doing so the decision-maker should have regard to the department's register of schools – EduBase<sup>10</sup> which includes a rural/urban indicator for each school in England. Where a school is not recorded as rural on Edubase, the decision-maker can consider evidence provided by interested parties, that a particular school should be regarded as rural.

## Early years provision

60. In considering a proposal to close a school which currently includes early years provision, the decision-maker should consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and Childcare Partnership.

61. The decision-maker should also consider whether the new, alternative/extended early years provision will maintain or enhance the standard of educational provision for early years and flexibility of access for parents. Alternative provision could be with providers in the private, voluntary or independent sector.

## Nursery school closures

62. There is a presumption against the closure of nursery schools. This does not mean that a nursery school will never close, but the case for closure should be strong and the proposal should demonstrate that:

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

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10 Any school classed as urban will have a rural/urban indicator of either 'Urban>10K – less sparse' or 'Urban>10K – sparse' – all other descriptions refer to rural schools.

## **Balance of denominational provision**

63. In deciding a proposal to close a school with religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area.

64. The decision-maker should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of relevant denominational places in the area. However, this guidance does not apply in cases where the school concerned is severely under-subscribed, standards have been consistently low or where an infant and junior school (at least one of which has a religious character) are to be replaced by a new all-through primary school with the same religious character on the site of one or both of the predecessor schools.

## **Community Services**

65. Some schools may be a focal point for family and community activity, providing extended services for a range of users, and its closure may have wider social consequences. In considering proposals for the closure of such schools, the effect on families and the community should be considered. 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.

## **Additional factors relevant to proposals to change category to foundation, acquire/remove<sup>11</sup> a Trust<sup>12</sup> and acquire/remove a foundation majority governing body**

### **Standards**

66. Decision Makers should consider the impact of changing category to foundation and acquiring or removing a Trust on educational standards at the school. Factors to consider include:

- the impact of the proposals on the quality, range and diversity of educational provision in the school;
- the impact of the proposals on the curriculum offered by the school, including, if appropriate, the development of the school's specialism;
- the experience and track record of the Trust members, including any educational experience and expertise of the proposed trustees;
- how the Trust might raise/has raised pupils' aspirations and contributes to the ethos and culture of the school;
- whether and how the proposals advance/have advanced national and local transformation strategies;
- the particular expertise and background of Trust members. For example, a school seeking to better prepare its pupils for higher education might have a higher education institution as a partner.

67. In assessing standards at the school, the decision-maker should take account of recent reports from Ofsted or other inspectorates and a range of performance data. Recent trends in applications for places at the school (as a measure of popularity) and the local reputation of the school may also be relevant context for a decision.

68. The government wants to see more schools benefit from the freedom to control their own assets, employ their own staff and set their own admissions criteria. However, if a proposal is not considered strong enough to significantly improve standards at a school that requires it, the decision maker should consider rejecting the proposal.

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<sup>11</sup> Regulation 19 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 requires the governing body, LA, trustees and Schools Adjudicator to have regard to guidance when exercising their functions in relation to the removal of: a foundation, a Trust, or a Foundation majority.

<sup>12</sup> A 'Trust school' is a foundation school with a charitable foundation complying with the requirements set out in section 23A of the SSFA 1998. These include that the Trust must have a charitable purpose of advancing education and must promote community cohesion.

## Community Cohesion

69. Trusts have a duty<sup>13</sup> to promote community cohesion. In addition to the factors outlined in paragraph [22](#), the decision-maker should also carefully consider the Trust's plans for partnership working with other schools, agencies or voluntary bodies.

## General points on acquiring a Trust

70. For new Trust schools (foundation schools with a charitable foundation) the decision-maker must be satisfied that the following criteria are met for the proposal to be approved:

- the proposal is not seeking to alter the religious character of a school or for a school to acquire or lose a religious character. These alterations cannot be made simply by acquiring a Trust;
- the necessary work is underway to establish the Trust as a charity and as a corporate body; and
- that none of the trustees are disqualified from exercising the function of trustee, either by virtue of:
  - disqualifications under company or charity law;
  - disqualifications from working with children or young people;
  - not having obtained a criminal record check certificate<sup>14</sup>; or
  - the Requirements Regulations which disqualify certain persons from acting as charity trustees.

## Other points on Trust proposals

71. Additionally, there are a number of other factors which should be considered when adding or removing a Trust:

- whether the Trust acts as the Trust for any other schools and/or any of the members are already part of an existing Trust;
- if the proposed Trust partners already have a relationship with the school or other schools, how those schools perform (although the absence of a track record should not in itself be grounds for regarding proposals less favourably);
- how the partners propose to identify and appoint governors. What, if any, support would the Trust/foundation give to governors?

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<sup>13</sup> Under section 23(A)6 of the EIA 2006.

<sup>14</sup> Under section 113A of the Police Act 1997.

- to what extent the proposed Trust partners have knowledge of the local community and the specific needs of the school/area and to what extent the proposal addresses these; and
- the particular expertise and background of Trust members.

## General point on removing a Trust

72. If a proposal is for the removal of a Trust, the governing body should consider the proposal in the context of the original proposal to acquire the Trust, and consider whether the Trust has fulfilled its expectations. Where new information has come to light regarding the suitability of Trust partners, this should be considered.

## Suitability of partners

73. Decision-makers will need to be satisfied of the suitability of Trust partners and members. They should use their own discretion and judgement in determining on a case-by-case basis what circumstances might prevent the reputation of a Trust partner being in keeping with the charitable objectives of a Trust, or could bring the school into disrepute. However, the decision-maker should seek to come to a balanced judgement, considering the suitability and reputation of the current/potential Trust. Decision-makers should seek to assure themselves that:

- the Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in illegal activities and/or activities which could bring the school into disrepute;
- the Trust partners are not involved in activities that may be considered inappropriate for children and young people (e.g. tobacco, gambling, adult entertainment, alcohol).

74. The following sources may provide information on the history of potential Trust partners:

- [The Health and Safety Executive Public Register of Convictions](#)<sup>15</sup>;
- [The Charity Commission's Register of Charities](#); and
- [The Companies House web check service](#).

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<sup>15</sup> Appearance on this database should not automatically disqualify a potential Trust member; decision-makers will wish to consider each case on its merits.

## **Land and Assets, when removing a Trust/foundation majority**

75. When removing a Trust, the governing body is required to resolve all issues relating to land and assets before the publication of proposals, including any consideration or compensation that may be due to any of the parties. Where the parties cannot agree, the issues may be referred to the Schools Adjudicator to determine.

76. The Schools Adjudicator will take account of a governing body's ability to pay when determining any compensation. Therefore, all of these issues must be resolved by the point at which the decision is made and the amount of compensation due to either party may be a factor in deciding proposals to remove a Trust.

## **Finance - when removing a Trust/foundation majority**

77. Trusts are under no obligation to provide financial assistance to a school, but there may be instances where the Trust does provide investment. The well-being and educational opportunities of pupils at the school should be paramount, and no governing body should feel financial obligations prevent the removal of a Trust where this is in the best interests of pupils and parents.

## **Other services provided by the Trust - when removing a Trust/foundation majority**

78. Trusts may offer a variety of services to the school, such as careers advice, work experience placements, strategic partnerships with other schools, access to higher education resources and so on. The damage to relationships and/or loss of any of these advantages should be weighed up against the improvements envisaged by a change in governance or the removal of the Trust.



Department  
for Education

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