



Department
for Education

Making ‘prescribed alterations’ to maintained schools

Statutory guidance for proposers and decision-makers

April 2016

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1: Summary

About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out functions relating to making 'prescribed alterations' to maintained schools.

The purpose of this guidance is to ensure that additional good quality school places can be provided quickly where they are needed; that local authorities and governing bodies do not take decisions that will have a negative impact on other schools in the area, and that changes can be implemented quickly and effectively where there is a strong case for doing so. In line with these aims it is expected that, where possible, additional new places will only be provided at schools that have an overall Ofsted rating of 'good' or 'outstanding'.

A governing body, LA or the [Schools Adjudicator](#) must have regard to this guidance when exercising functions under [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) ('the Prescribed Alterations Regulations') and [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) ('the Establishment and Discontinuance Regulations'). It should be read in conjunction with Parts 2 and 3 and Schedule 3 of the [Education and Inspections Act \(EIA\) 2006](#) (as amended by the [Education Act \(EA\) 2011](#)) and *the Prescribed Alterations Regulations*. It also relates to *the Establishment and Discontinuance Regulations* and [The School Organisation \(Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations \(2007\)](#).

It is the responsibility of LAs and governing bodies to ensure that they act in accordance with the relevant legislation when making changes to a maintained school and they are advised to seek independent legal advice where appropriate.

Review date

This guidance will be reviewed in April 2017.

Who is this guidance for?

Those proposing to make changes to maintained schools (e.g. governing bodies and LAs), decision-makers (LAs, the Schools Adjudicator and governing bodies), and for information purposes for those affected by a proposal (dioceses, trustees, parents etc.)

This guidance is relevant to all categories of maintained schools (as defined in section 20 of the [School Standards and Framework Act \(SSFA\) 1998](#)), unless explicitly stated. It is not relevant to [Pupil Referral Units](#). Separate advice [on making significant changes to an academy](#), [opening and closing a maintained school](#) and the [guidance for decision-makers](#) is available.

Main points

- All proposals for prescribed alterations must follow the processes set out in this guidance.
- Where a LA proposes to expand a school that is eligible for intervention they should copy the proposal to the relevant [Regional Schools Commissioner](#)
- To enable the department to monitor potentially controversial proposals, the proposer should copy any proposal which falls within the definitions set out in part 3 to the School Organisation mailbox – schoolorganisation.notrifications@education.gsi.gov.uk.
- Where a LA is the decision maker, it must make a decision within a period of two months of the end of the representation period, taking into account the factors outlined in the [guidance for decision-makers](#). Where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.
- It is not possible for any school to gain, lose or change religious character through a change of category. Information on the process to be followed is available in the opening and closing maintained school guidance.
- It is the department's view that governing bodies should convert to academy status rather than change category to a foundation. Governing bodies wishing to discuss this issue should email schoolorganisation.notifications@education.gsi.gov.uk and a member of the school organisation team will contact them to discuss the proposed change of category.
- **Once a decision** has been made the proposer (school governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and MUST have done so by the date the change is implemented.

2: Prescribed alteration changes

Enlargement of premises

Details of how [special schools can increase their intake](#) are covered below.

Local authorities are under a statutory duty to ensure the sufficiency of school places in their area. They can propose an enlargement of the premises of community foundation and voluntary schools. When doing so they must follow the statutory process as set out in the [Prescribed Alterations Regulations](#) (see [part 5](#)) if:

- the proposed enlargement of the premises of the school is permanent (longer than three years) and would increase the capacity of the school by:
 - more than 30 pupils; **and**
 - 25% or 200 pupils (whichever is the lesser).
- the proposal involves the making permanent of any temporary enlargement (that meets the above threshold).

Where a proposal seeks to increase the school's pupil number to over 2,000 or would result in an increase of over 50% of the school's current capacity, the LA should copy the proposal to schoolorganisation.notifications@education.gsi.gov.uk for monitoring purposes.

Governing bodies of all categories of mainstream schools and LAs can propose smaller expansions that do not meet the thresholds above without the need to follow the formal statutory process in [part 4](#). In many cases this can be achieved solely by increasing the school's published admissions number (PAN); please see [the School Admissions Code](#).

The table below sets out who can propose an enlargement of premises and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--------------------------------|-------------------------|-------------------|----------------|---|
| LA for community | Enlargement of premises | Statutory process | LA | CofE Diocese RC Diocese |
| LA for voluntary or foundation | Enlargement of premises | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|---------------------------------|---|-----------------------|----------------|------------------------------------|
| LA for voluntary and foundation | Enlargement of premises (on small scale expansions) | Non statutory process | LA | N/A |
| GB of all categories mainstream | Enlargement of premises (on small scale expansions) | Non statutory process | GB | N/A |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Expansion onto an additional site ('or satellite sites')

Where proposers seek to expand onto an additional site they will need to ensure that the new provision is genuinely a change to an existing school and not in reality the establishment of a new school. Where a LA decides that a new school is need to meet basic need the free school presumption process must be followed. Other proposals seeking to establish a new school should follow the free school application process.

Decisions about whether a proposal represents a genuine expansion will need to be taken on a case-by-case basis, but proposers and decision makers will need to consider this non-exhaustive list of factors:

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?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change will be considered as an expansion. Where a LA considers there is a need for a new school to address basic need for school places it must¹ seek proposals to establish a free school under the free school presumption.

LAs should copy any proposal to expand a school onto a satellite site to schoolorganisation.notifications@education.gsi.gov.uk for monitoring purposes.

Quality of new places created by expansions

Where schools are underperforming, the quality of new places provided may be compromised by expansion. The department expects that schools should not generally expand if they are eligible for intervention by the local Regional Schools Commissioner ('RSC'). There will be exceptional cases where there is no viable alternative to ensuring sufficient school places locally. In cases where there is a proposal for a school that is eligible for intervention to expand, we expect LAs to send a copy of the proposals to the [RSC](#) so that they can ensure appropriate intervention strategies are agreed or, where appropriate, that there is a robust improvement plan in place.

Change in number of pupils in a special school

Governing bodies of all categories of special school and LAs for community special schools may seek to increase the number of places by following the statutory process in [part 5](#), if the increase is by:

¹ Under section 6A of Education and Inspections Act 2006.

- 10%; or
- 20 pupils (five for all boarding special schools) (whichever is the lesser).

The exception to this is where a special school is established in a hospital.

Governing bodies of all categories of special school and LAs for community special schools may seek to decrease the number of pupils, by following the statutory process in [part 5](#).

The table below sets out who can propose a change in the number of pupils in a special school and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--------------------------|---|-------------------|----------------|---|
| GB foundation special | Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB community special | Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers | Statutory process | LA | CofE Diocese RC Diocese |
| LA for community special | Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers | Statutory process | LA | CofE Diocese RC Diocese |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Reducing pupil numbers in mainstream schools

Reductions in pupil numbers at maintained mainstream schools which result in a decrease to the Published Admission Number (PAN) are not covered by the [Prescribed Alterations Regulations](#). Where this is proposed the admissions authority (the LA in the case of community and voluntary controlled (VC) schools or the

governing body in the case of voluntary aided (VA) and foundation schools) must consult on the proposed change in accordance with [the School Admissions Code](#). Community and VC schools have the right to object to the Schools' Adjudicator if the PAN proposed is lower than they would wish.

Change of age range

For changes that are expected to be in place for more than 2 years (as these are considered permanent increases):

Local authorities can propose:

- a change of age range of up to 2 years (except for adding or removing a sixth-form) for voluntary and foundation schools by following the non-statutory process, see [part 4](#).
- a change of age range of 1 year or more for community schools (including the adding or removal of sixth-form or nursery provision) and community special schools or alter the upper age limit of a foundation or voluntary school to add sixth-form provision by following the statutory process, see [part 5](#).

Governing bodies of foundation and voluntary schools can propose

- an age range change of up to 2 years (except for adding or removing a sixth-form) by following the non-statutory process, see [part 4](#).
- an age range change of 3 years or more or alter the upper age limit of the school to add or remove sixth form provision by following the statutory process, see [part 5](#).

Governing bodies of community schools can propose the alteration of their upper age limit to add sixth-form provision following the statutory process, see [part 5](#)

Governing bodies of community special and foundation special schools can propose a change of age range of 1 year or more following the statutory process, see [part 5](#).

Where a proposed age range change would also require an expansion of the school's premises, the LA or governing body must also ensure that they act in accordance with the requirements relating to proposals for the [enlargement of premises](#).

Where a proposal seeks to change the age range of a primary school to make it an all-through (cross phase) school the proposer (as set out below) should copy the

proposal to schoolorganisation.notifications@education.gov.uk for monitoring purposes.

The table below sets out who can propose a change of age range and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--|--|-----------------------|----------------|---|
| LA for voluntary and foundation | Alteration of upper or lower age range of up to 2 years (excluding adding or removing a sixth form) | Non statutory process | LA | NA |
| GB of voluntary and foundation | Alteration of upper or lower age range by up to 2 years (excluding adding or removing a sixth-form) | Non statutory process | GB | N/A |
| GB of voluntary and foundation | Alteration of upper or lower age range by three years or more | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| LA for community and community special | Alteration of upper or lower age range by 1 year or more (for community school including the adding or removal of sixth form or nurse provision) | Statutory process | LA | CofE Diocese RC Diocese |
| GB foundation special | Alteration of upper or lower age range by one year or more | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|---------------------------------|---|-------------------|----------------|---|
| GB community special | Alteration of upper or lower age range by one year or more | Statutory process | LA | CofE Diocese RC Diocese |
| LA for community | Alteration of upper age range so as to add or remove sixth-form provision | Statutory process | LA | CofE Diocese RC Diocese |
| LA for voluntary and foundation | Alteration of upper age range so as to add sixth-form provision. | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of voluntary and foundation | Alteration of upper age range so as to add sixth-form provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of community | Alteration of upper age range so as to add sixth-form provision | Statutory process | LA | CofE Diocese RC Diocese |
| GB of voluntary and foundation | Alteration of upper age range so as to remove sixth-form provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Adding or removing a sixth-form

The department wants to ensure that all new provision is of the highest quality and provides genuine value for money. There is a departmental expectation that proposals for the addition of sixth-form provision will only be put forward for secondary schools that are rated as 'good' or 'outstanding' by Ofsted. Proposers should also consider the supply of other local post-16 provision in the area and assess if there is a genuine need for the proposal.

In deciding whether new sixth-form provision would be appropriate, proposers and decision makers should consider the following guidelines:

- the quality of pre-16 education must be good or outstanding;
- the proposed sixth-form will provide places for a minimum of 200 students;
- the proposed sixth-form will, either directly or through partnership, offer a minimum of 15 A level subjects:
- there is a clear demand for the new sixth-form (including evidence of a shortage of post-16 places and a consideration of the quality of L3 provision in the area);
- the proposed sixth-form is financially viable (there is evidence of financial resilience should student numbers fall and the proposal will not impact negatively on 11-16 education or cross subsidisation of funding).

To admit external pupils to the sixth-form a request for a variation to admission arrangements, in line with the [Schools Admissions Code](#) will be needed.

Closing an additional site

For foundation and voluntary schools that are already operating on a satellite site, governing bodies must follow the statutory process in [part 5](#), if they are proposing the closure of one or more sites where the main entrance at any of the school's remaining sites is one mile or more from the main entrance of the site which is to be closed. The LA may make such a proposal for a community school following the statutory process in [part 5](#).

The table below sets out who can propose the closure of an additional site and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|----------------------------|----------------------------------|-------------------|----------------|---|
| LA for community | Closure of one or multiple sites | Statutory process | LA | CofE Diocese RC Diocese |
| GB voluntary or foundation | Closure of one or multiple sites | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

NB: the LA must make a decision within a period of two months of the end of the representation period or the proposal must be referred to the [Schools Adjudicator](#) for a decision.

Transfer to a new site

Where the main entrance of the proposed new site for a school would be more than two miles from the main entrance of the current school site, or if the proposed new site is within the area of another local authority:

Local authorities can propose the transfer to an entirely new site for community schools, community special schools and maintained nursery schools following the statutory process in [part 5](#).

Governing bodies of voluntary, foundation, foundation special and community special schools can also propose a transfer to a new site following the statutory process in [part 5](#).

The table below sets out who can propose a transfer to a new site and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--|----------------------|-------------------|----------------|---|
| LA for community, community special and maintained nursery | Transfer to new site | Statutory process | LA | CofE Diocese RC Diocese |
| GB voluntary foundation or foundation special | Transfer to new site | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB community special | Transfer to new site | Statutory process | LA | CofE Diocese RC Diocese |

NB: the LA must make a decision within a period of two months of the end of the representation period or the proposal must be referred to the [Schools Adjudicator](#) for a decision.

Changes of category

The department has set out its intention to legislate to remove the option of making a change of category to a foundation. It is the department's view that schools considering foundation status should convert to academy status in order to gain these freedoms. Governing bodies wishing to discuss a change of category to a foundation should email schoolorganisation.notifications@education.gsi.gov.uk and a member of the school organisation team will contact them to discuss the proposed change of category.

Governing bodies of all categories of maintained schools may, exceptionally, propose to change category by following the statutory process. The [addition or removal of a foundation](#) is set out [in part 6](#).

The table below sets out who can propose a change of category and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|------------------|---|--|----------------|--|
| GB of voluntary | VC to VA VA to VC | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of voluntary | VC or VA to foundation VC or VA to foundation and acquire foundation VC or VA to foundation, acquire foundation and majority foundation governors on GB | Foundation proposals statutory process | GB | For proposals at a VA school when decided by the GB: LA CofE Diocese RC Diocese |
| GB of foundation | Foundation to VC or VA | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of foundation | Acquire foundation Acquire a majority of foundation governors on the GB Removal of foundation and/or reduction in majority of foundation | Foundation proposals statutory process | GB | N/A |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--------------------------|---|--|----------------|------------------------------------|
| | governors on GB | | | |
| GB of community | Community to VC or VA | Statutory process | LA | CofE Diocese RC Diocese |
| GB of community | Community to foundation Community to foundation and acquire foundation Community to foundation and acquire majority of foundation governors on GB | Statutory process | GB | N/A |
| GB of foundation special | Remove foundation and/or reduce majority of foundation governors on GB | Foundation proposals statutory process | GB | N/A |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Single sex school becoming co-educational (or vice versa)

Proposers can seek to change their school from single sex to co-educational (or vice versa) when they can show that this would better serve their local community. A co-educational school cannot change its nursery or post-16 provision to single sex.

The table below sets out who can change a school from single sex to co-educational (or vice versa) and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|---|----------------------------------|-------------------|----------------|---|
| LA for community or community special | To co-ed or single sex provision | Statutory process | LA | CofE Diocese RC Diocese |
| GB of foundation. foundation special or voluntary | To co-ed or single sex provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of community special | To co-ed or single sex | Statutory process | LA | CofE Diocese |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|----------|------------------|---------|----------------|------------------------------------|
| | provision | | | RC Diocese |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Mainstream school: establish/remove/alter SEN provision

The table below sets out who can propose to establish, remove or alter SEN provision and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|---------------------------------|--|-------------------|----------------|---|
| LA for community | Establish, remove or alter SEN provision | Statutory process | LA | CofE Diocese RC Diocese |
| LA for voluntary and foundation | Establish or remove SEN provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of foundation and voluntary | establish, remove or alter SEN provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Change the types of need catered for by a special school

The table below sets out who can propose a change to the type of need catered for by a special school and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|---------------------------|--|-------------------|----------------|---|
| LA for community special | change designation and categories of SEN provision | Statutory process | LA | CofE Diocese RC Diocese |
| LA for foundation special | change designation and categories of SEN provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|--------------------------|--|-------------------|----------------|---|
| GB of community special | change designation and categories of SEN provision | Statutory process | LA | CofE Diocese RC Diocese |
| GB of foundation special | change designation and categories of SEN provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

Boarding provision

Local authorities can propose for:

- community schools the establishment, removal or alteration (decrease by 50 pupils or 50% whichever is the greater) of boarding provision by following the statutory process in [part 5](#).
- community special schools the establishment, removal or alteration (increase or decrease by 5 places or more where there are both day and boarding places) of boarding provision following the statutory process in [part 5](#).

Governing bodies of voluntary and foundation schools can propose the establishment or increase of boarding provision following the non-statutory process ([part 4](#)) and the removal or alteration (decrease by 50 pupils or 50% whichever is the greater) of boarding provision by following the statutory process([part 5](#)).

Governing bodies of special schools can add or remove boarding provision or where the school makes provision for day and boarding pupils can increase or decrease boarding provision by five pupils or more following the statutory process in [part 5](#).

The table below sets out who can propose to establish, change or remove boarding provision and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|------------------|------------------------------------|-------------------|----------------|------------------------------------|
| LA for community | Add, remove or change (decrease by | Statutory process | LA | CofE Diocese RC Diocese |

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|-------------------------------|---|-----------------------|----------------|---|
| | 50 pupils or 50% whichever is greater) boarding provision. | | | |
| LA for community special | Add, remove or change (increase or decrease by 5 pupils or more) boarding provision. | Statutory process | LA | CofE Diocese RC Diocese |
| GB of foundation or voluntary | Add boarding provision. | Non-statutory process | GB | N/A |
| GB of foundation or voluntary | Remove or change (decrease by 50 pupils or 50% whichever is greater) boarding provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of foundation special | Add, remove or change (increase or decrease by 5 pupils or more) boarding provision | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of community special | Add, remove or change (increase or decrease by 5 pupils or more) boarding provision | Statutory process | LA | CofE Diocese RC Diocese |

NB: the LA must make a decision within a period of two months of the end of the representation period or the proposal must be referred to the [Schools Adjudicator](#) for a decision.

Remove selective admission arrangements at a grammar school

The table below sets out who can propose the removal of selective admission arrangements² and what process must be followed:

| Proposer | Type of proposal | Process | Decision-maker | Right of appeal to the adjudicator |
|-------------------------------|---|-------------------|----------------|---|
| GB of voluntary or foundation | Remove selective admission arrangements | Statutory process | LA | CofE Diocese RC Diocese GB / Trustees |
| GB of community | Remove selective admission arrangements | Statutory process | LA | CofE Diocese RC Diocese |

NB: the LA must make a decision within a period of two months of the end of the representation period or the proposal must be referred to the [Schools Adjudicator](#) for a decision.

² In accordance with s.109 (1) of the School Standards and Frameworks Act 1998.

3: Contentious / controversial proposals

The department is keen to ensure that, when proposing:

- enlargement of premises;
- changes to a school's age range, and / or
- adding a sixth form.

LA's and governing bodies act reasonably, in line with the principles of public law, to ensure that the changes do not have a negative impact on the education of pupils in the area.

It is the department's expectation that, in the majority of cases, it would not be appropriate for a primary school to change its age range to meet the need for new secondary provision. Where the level of basic need is such that a new secondary school is needed, this will trigger the free school presumption process.

To enable the department to monitor potentially controversial proposals, LAs and governing bodies should notify

schoolorganisation.notifications@education.gsi.gov.uk of the publication of, any proposals which would:

- result in an [existing primary school becoming an all-through school / cross phase school](#);
- result in an [increase of over 50% in the school's capacity](#);
- [increase the school's pupil numbers to over 2,000](#);
- propose [expansion onto a separate 'satellite' site](#); or
- have received objections from the LA and / or neighbouring school that the proposed change will undermine the quality of education.

4: Changes that can be made outside of the statutory process

Local authorities and governing bodies of mainstream maintained schools can make limited changes (see [section 2](#) for the exact detail) to their schools without following a statutory process; they are nevertheless required to adhere to the usual principles of public law. They MUST:

- act rationally;
- take into account all relevant and no irrelevant considerations; and
- follow a fair procedure.

The department **expects** that in making these changes LA's and governing bodies will:

- liaise with the LA and trustees/diocese (as appropriate) to ensure that, a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained;
- not undermine the quality of education provided or the financial viability of other 'good' and 'outstanding' schools in the local area; or
- not create additional places in a local planning area where there is already surplus capacity in schools rated as 'good' or 'outstanding' and
- ensure open and fair consultation with parents and other interested parties to gauge demand for their proposed changes and to provide them with sufficient opportunity to give their views. The [consultation principles guidance](#) can be referenced for examples of good practice.

Before making any changes governing bodies should ensure that:

- they have consulted with the LA to ensure the proposal is aligned with local place planning arrangements
- they have secured any necessary funding;
- they have identified suitable accommodation and sites;

- they have secured planning permission and/or agreement on the transfer of land where necessary³;
- they have the consent of the site trustees or other land owner where the land is not owned by the governing body;
- they have the consent of the relevant religious authority (as required); and
- the admissions authority is content for the published admissions number (PAN) to be changed where this forms part of expansion plans, in accordance with the School Admissions Code.

Once a decision on the change has been made the proposer (i.e. LA or governing body) is responsible for making arrangements for the necessary changes to be made to the school's record in the department's [EduBase](#) system. These changes must be made no later than the date of implementation for the change.

³ Including, where necessary, approval from the Secretary of State for change to the use of playing field land under Section 77(1) of the SSFA 1998.

5: Statutory process: prescribed alterations

The statutory process for making prescribed alterations to schools has four stages:

| Stage | Description | Timescale | Comments |
|---------|--|--|---|
| Stage 1 | Publication (statutory proposal / notice) | | |
| Stage 2 | Representation (formal consultation) | Must be at least 4 weeks | As prescribed in the 'Prescribed Alteration' regulations. |
| Stage 3 | Decision | LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator. | Any appeal to the adjudicator must be made within 4 weeks of the decision. |
| Stage 4 | Implementation | No prescribed timescale | However it must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker. |

Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and LAs will consult interested parties, in developing their proposal prior to publication, as part of their duty under public law to act rationally and take into account all relevant considerations. Schools will also need to ensure that they have the consent of the site trustees and other relevant religious authorities⁴ (where necessary).

When considering making a prescribed alteration change, it is best practice to take timing into account, for example:

- by holding consultations and public meetings – either formal or informal – during term time, rather than school holidays;
- plan where any public and stakeholder meetings are held to maximise response: and

⁴ Including under the CofE Diocesan Board of Education (DBE) Measure 1991.

- take into account the admissions cycle for changes that will impact on the school's admission arrangements.

A number of changes can impact on admissions, necessitating reductions in PAN, new relevant age groups for admission or the adoption of revised admission criteria. Changes to admission arrangements can be made by the admission authority in one of two ways:

- the consultation on changing the admission arrangements (as set out in the [School Admissions Code](#)) takes place sufficiently in advance of a decision on the prescribed alteration so that the change to admissions can be implemented at the same time as the proposals; or
- a variation is sought, where necessary in view of a major change in circumstances, from the [Schools Adjudicator](#) so that the changes to the admission policy can be implemented at the same time as the prescribed alteration is implemented.

Decision-makers should, so far as is possible, co-ordinate with the admission authority, if different, to ensure they avoid taking decisions that will reduce a PAN or remove a relevant age group for admission after parents have submitted an application for the following September (e.g. 31 October for secondary admissions or 15 January for primary admissions).

Publication

A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. [Annex A](#) sets out the minimum that this should include. The proposal should be accessible to all interested parties and should therefore use 'plain English'.

Where the proposal for one change is linked to another, this should be made clear in any notices published. Where a proposal by a LA is 'related' to a proposal by other proposers (e.g. where one school is to be enlarged because another is being closed) a single notice could be published.

The full proposal must be published on a website (e.g. the school or LA's 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; and

- the address to which objections or comments should be submitted.

A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper. If the proposal is published by a governing body then notification must also be posted in a conspicuous place on the school premises and at all of the entrances to the school.

Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out in the paragraph above to:

- the governing body/LA (as appropriate);
- the parents of every registered pupil at the school - where the school is a special school;
- if it involves or is likely to affect a school which has a religious character:
 - the local Church of England diocese;
 - the local Roman Catholic diocese; or
 - the relevant faith group in relation to the school; and
- any other body or person that the proposer thinks is 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.

There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, proposers will be expected to show good reason (for example an authority-wide reorganisation) if they propose a timescale longer than three years.

Representation (formal consultation)

The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the LA to be taken into account by the decision-maker. It is also good practice for representations to be forwarded to the proposer to ensure that they are aware of local opinion.

Decision

The LA will be the decision-maker in all cases except where a proposal is 'related' to another proposal that must be decided by the [Schools Adjudicator](#)⁵.

Decisions must be made within a period of two months of the end of the representation period or they must be referred to the Schools Adjudicator.

However, the body or individual that takes the decision must have regard to the statutory [guidance for decision-makers](#).

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with modifications, having consulted the LA and/or governing body (as appropriate); or
- approve the proposal – with or without modification – subject to certain conditions⁶ (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 doing so the proposer must send written notice to the LA or the governing body (as appropriate); or the Schools Adjudicator (if the proposal has been sent to them). A notice must also be placed on the website where the original proposal was published.

Within one week of making a decision the LA must publish their decision and the reasons for it, on the website where the original proposal was published and send copies to:

- the LA (where the Schools Adjudicator is the decision-maker);
- the Schools Adjudicator (where the LA is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;

⁵ For example where a change is conditional on the establishment of a new school under section 10 or 11 of EIA 2006 (where the Schools Adjudicator may be the default decision maker).

⁶ The prescribed events are those listed in paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations

- the local Roman Catholic diocese;
- the parents of every registered pupil at the school – where the school is a special school; and
- any other body that they think is appropriate (e.g. other relevant faith organisation).

If the [Schools Adjudicator](#) is the decision-maker they must notify the persons above of their decision, together with the reasons, within one week of making the decision. Within one week of receiving this notification the LA must publish the decision, with reasons, on the website where the original proposal was published.

Within one week of the decision being made the proposer (i.e. governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and must make the change by the date of implementation.

Rights of appeal against a decision

The following bodies may appeal to the Schools Adjudicator against a decision made by a LA decision-maker, within four weeks of the decision being made:

- the local Church of England diocese;
- the local Roman Catholic diocese; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

On receipt of an appeal, an LA decision-maker must then send the proposal, representations received and the reasons for their decision to the Schools Adjudicator within one week of receipt. There is no right of appeal on determinations made by the Schools Adjudicator.

Implementation

The proposer must implement a proposal in the form that it was approved, taking into account any modifications made by the decision-maker.

Modification post determination

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

(e.g. to the implementation date) from 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 published.

Details of the modification must be published on the website where the original proposals were published.

Revocation of proposals

If the proposer cannot implement an approved proposal because circumstances have changed so that implementation would be inappropriate or implementation of the proposal would be unreasonably difficult, the proposer must publish a revocation proposal, to be determined by the decision-maker, 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; and
- a statement as to why the duty to implement the original proposal should not apply.

The proposer must publish the revocation proposal on the website and a brief notice of the proposal, including the website address where the proposal is published in a local newspaper. The proposal must contain details of how copies can be obtained; details of where to send comments to; and the date by which comments must be sent.

Where the proposer is the governing body it must send the revocation proposal to the LA within one week of the date of publication on the website. Where the original proposal was decided by the [Schools Adjudicator](#) the LA must refer the revocation proposal together with any comments or objections within two weeks of the end of the representation period to the Schools Adjudicator.

The LA decision-maker, who must determine the revocation proposal within two months of the end of the representation period, must arrange for the revocation determination to be published on the website where the original proposal and revocation proposal were published. The LA decision-maker must also arrange for the following persons to be notified of the revocation decision together with reasons:

- the local Church of England diocese;
- the local Roman Catholic diocese; and

- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

The same persons also have the right of appeal to the [Schools Adjudicator](#) (within four weeks of determination of the revocation proposal) if they disagree with the decision to revoke the proposal.

Land and buildings for foundation, foundation special or voluntary controlled schools

Where a LA is required to provide a site for a foundation, foundation special or voluntary controlled school, the LA must:

- transfer their interest in the site and in any buildings on the site which are to form part of the school's premises to the trustees of the school, to be held by them on trust for the purposes of the school; or
- if the school has no trustees, to the governing body, to be held by that body for the purposes of the school.

In the case of a dispute as to the persons to whom the LA is required to make the transfer, the adjudicator will make a decision.

Further details on land and buildings can be found in paragraphs 17 and 18 of Schedule 3 of the Prescribed Alteration Regulations.

6: Statutory process: foundation proposals

Changing category to foundation, acquiring a Trust and/or acquiring a foundation majority

It is the department's view that governing bodies should convert to academy status rather than change category to a foundation. Governing bodies wishing to discuss this issue should email schoolorganisation.notifications@education.gsi.gov.uk and a member of the school organisation team will contact them to discuss the proposed change of category.

A 'Trust school' is a foundation school with a charitable foundation complying with the requirements set out in SSFA 1998⁷. These include that the Trust must have a charitable purpose of advancing education and must promote community cohesion.

The term 'acquire a foundation majority' means acquiring an instrument of government whereby the school's Trust has the power to appoint a majority of governors on the governing body.

Where exceptionally a school's governing body considers changing category:

- from community, VA or VC to foundation: or
- from community special to foundation special,

acquiring a Trust and / or acquiring a foundation majority on the school's governing body, the following five-stage statutory process must be followed:

| Stage | Description | Timescale | Comments |
|---------|--------------------------------------|-----------------|--|
| Stage 1 | Initiation | | The governing body considers a change of category to foundation / acquisition of a trust / acquisition of a foundation majority. |
| Stage 2 | Publication | | Having gained consent where appropriate. |
| Stage 3 | Representation (formal consultation) | Must be 4 weeks | As set out in the prescribed alteration regulations. The LA may refer a Trust proposal to the |

⁷ Section 23A

| Stage | Description | Timescale | Comments |
|---------|----------------|--|---|
| | | | Schools Adjudicator during this period if it considers the proposal to have a negative effect on standards at the school. |
| Stage 4 | Decision | The governing body must decide within 12 months of the date of publication | Unless the LA has referred the proposal to Schools Adjudicator at Stage 3. |
| Stage 5 | Implementation | No prescribed timescale. | Must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker. |

Initiation

For a proposal to change the category of a school to foundation, the governing body should inform the LA in writing, at least seven days in advance of a meeting, if a motion to consult on a change of category proposal is to be discussed.

Before the governing body can publish a proposal to change category from a voluntary school to a foundation school, the existing trustees and whoever appoints the foundation governors must give their consent.

Publication

A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. Annex B specifies the information that the statutory proposal must contain.

Where a proposal is 'related' to another proposal, details of this should be made clear in the notice.

The full proposal must be published on a website (e.g. the school or LA's 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; and

- the address to which objections or comments should be submitted.

A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper, and posted in a conspicuous place on the school premises and at all of the entrances to the school.

Within one week of the date of publication on the website, the governing body must send a copy of the proposal and notification information to:

- the LA;
- the parents of every registered pupil at the school - where the school is a special school;
- if it involves or is likely to affect a school which has a religious character:
 - the local Church of England diocese;
 - the local Roman Catholic diocese; or
 - the relevant faith group in relation to the school; and
- any other body or person that the proposer thinks is 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.

Representation (formal consultation)

The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the governing body, to be taken into account when the decision is made.

During the representation period, the LA has the power to require the referral of a proposal to acquire a Trust/foundation majority to the [Schools Adjudicator](#) for decision if they consider it will have a negative impact on standards at the school. The specific circumstances in which a referral can be made are if the proposed alteration would result in a community, community special, foundation, foundation special or VC school becoming either or both: a foundation or foundation special school having a foundation; or a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation

governors. The LA does not have this power in respect of a proposal solely to change category to foundation⁸.

Where a proposal is referred to the [Schools Adjudicator](#), the governing body must forward any objections or comments it has received to the Schools Adjudicator within one week of the end of the representation period.

Decision

Unless a proposal has been referred to the Schools Adjudicator (as set out above), the governing body will be the decision-maker and must make a decision on the proposal within 12 months of the date of publication of the proposal.

Where a proposal to acquire a Trust or a foundation majority is linked to a proposal to change category to foundation, they will fall to be decided together.

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification; or
- approve the proposal with modifications, having consulted the LA.
- approve the proposal with or without modifications but conditional upon:
 - the making of any scheme relating to any charity connected with the school; and
 - the establishment of a foundation⁹

Where the LA has referred a proposal to acquire a Trust/foundation majority to the Schools Adjudicator for decision, any related proposal(s) (including a change of category to foundation) will also fall to be decided by the Schools Adjudicator.

Within one week of making a decision the governing body must publish a copy of the decision (together with reasons) on the website where the original proposal was published and send copies to:

- the LA
- the local Church of England diocese; and

⁸ However, where such a proposal is related to a proposal to acquire a Trust, then the whole set of proposals will be referred to the Schools Adjudicator

⁹ As defined in section 23A of the School Standards and Framework Act 1998

- the local Roman Catholic diocese.

Within one week of the decision being made the proposer (i.e. governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and must make the change by the date of implementation.

Where a proposal has been decided by the governing body and is to change the category of a VA school to foundation (with or without the acquisition of a Trust/foundation majority), the following bodies have the right of appeal to the [Schools Adjudicator](#)¹⁰:

- the LA;
- the local Church of England diocese; and
- the local Roman Catholic diocese.

Implementation

The governing body must implement any approved proposal by the approved implementation date, taking into account any modifications made by the decision-maker.

Modification post determination

Modifications can be made to a proposal by the governing body after determination but before implementation.

Revocation of proposals

See the advice set out for prescribed alteration changes.

Governance and staffing issues

Schedule 4 to the Prescribed Alterations Regulations provides further information on the requirements about:

- the revision or replacement of the school's instrument of government;

¹⁰ The specific circumstances in which a referral can be made are prescribed under paragraphs 15 of Schedule 1 to the Prescribed Alterations Regulations.

- reconstitution or replacement of the governing body;
- current governors continuing in office;
- Surplus governors;
- transfer of staff; and
- transitional admission arrangements.

Land transfer issues

Requirements as to land transfers, when a school changes category or acquires a Trust, are prescribed in Schedule 5 to the Prescribed Alterations Regulations.

Removing a Trust and/or removing a foundation majority

There are five or six statutory stages (depending on the proposal and circumstances) to remove a Trust and/or to reduce a Trust majority. It may be triggered in two different ways – either by a majority or a minority of the governing body:

| Stage | Description | Timescale | Comments |
|---------|---|--|---|
| Stage 1 | Initiation | | <p>Majority</p> <p>A majority of governors considers publishing a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p> <p>or</p> <p>Minority</p> <p>A minority (of not less than a third of the governors) notify the clerk of the governing body of their wish to publish a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p> |
| Stage 2 | Land Issues (applicable only to removal of Trusts) | If not resolved within 3 months, disputes must be referred to the Schools Adjudicator. | In cases of removing Trusts, the governing body, Trustees and the LA must resolve issues related to land and assets before a proposal is published. |
| Stage 3 | Consultation | <p>Majority</p> <p>A minimum of 4 weeks is recommended.</p> <p>or</p> <p>Minority</p> <p>No consultation required.</p> | Majority It is for the governing body to determine the length of consultation. |
| Stage 4 | Publication and representation | <p>Majority</p> <p>6 week representation</p> | |

| Stage | Description | Timescale | Comments |
|---------|----------------|---|--|
| | | <p>period.</p> <p>or</p> <p>Minority</p> <p>Where there are no land or asset issues – publish within 3 months of receipt of notice by governing body clerk – followed by a 6-week representation period.</p> <p>Where there are land issues, publish within 1 month of receipt of School Adjudicator’s determination – followed by a 6-week representation period.</p> | |
| Stage 5 | Decision | Within 3 months. | (A proposal initiated by a minority of governors may not be rejected unless at least two-thirds of the governing body are in favour of the rejection). |
| Stage 6 | Implementation | No prescribed timescale, | But must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker. |

Initiation

A proposal for removing a Trust and/or removing a foundation majority can be triggered by:

a) a majority¹¹ of the governing body or a committee deciding to publish a proposal. The decision to publish must be confirmed by the whole governing body at a meeting held at least 28 days after the meeting at which the initial decision was made; or

¹¹ Regulation 4 of the Removal Regulations

b) at least one-third¹² of the governors requesting in writing to the clerk of the governing body, that a proposal be published. No vote of the governing body is required as they are obliged to publish a proposal. To prevent on-going challenges there are a number of prescribed circumstances¹³ in which there is no obligation to follow the wishes of the minority of governors.

All decisions must be taken in accordance with the processes prescribed in Procedures Regulations¹⁴.

Land and assets (when removing a Trust)

Before publishing proposals to remove a Trust the governing body must reach agreement with the trustees and LA on issues relating to the school's land and assets. Where such issues remain unresolved within three months of the initial decision (majority) or receipt of notice by the clerk (minority), they must be referred to the [Schools Adjudicator](#) for determination.

On the removal of the Trust, all publicly provided land held by the Trust for the purposes of the school will transfer to the governing body¹⁵. Where the land originated from private sources (for example, where land was gifted on trust), the land will transfer to the governing body in accordance with a transfer agreement, providing for consideration to be paid by the governing body to the Trust where appropriate. However, there may be land which has benefited from investment from public funds which remains with the trustees under the transfer agreement.

Alternatively, there may have been investment by trustees in the publicly provided land or from public funding in the land provided by the trustees. In either of these cases, it may be appropriate for either the trustees or the public purse to be compensated. The possibility of stamp duty land tax may also need to be taken into account.

The Schools Adjudicator will announce its determination in writing to both parties.

Consultation

Where a minority of governors initiated the process, this stage does not apply.

Where a majority of governors initiated the process, before publishing a proposal the governing body must consult:

¹² See regulation 5 of the Removal Regulations

¹³ See regulation 5(4) of the Removal Regulations

¹⁴ Except as otherwise provided by the Removal Regulations.

¹⁵ By virtue of regulation 17(1) of the Removal Regulations

- Families of pupils at the school;
- Teachers and other staff at the school;
- The trustees and, if different, whoever appoints foundation governors;
- The LA;
- The governing bodies of any other foundation or foundation special schools maintained by the same LA for which the foundation acts as a foundation;
- Any trade unions who represent school staff;
- If the school has a religious character, the appropriate diocesan authority or other relevant faith group;
- Any other person the governing body consider appropriate.

Publication

Where the decision to publish a proposal was made by a majority of governors, the governing body at this stage must decide whether to go ahead with publishing the proposal.

Where the decision to publish a proposal was made by a minority of governors and there are no land issues to be determined, the governing body must publish the proposal within 3 months of the receipt of the notice by the clerk. If land issues were referred to the [Schools Adjudicator](#), the proposal must be published within 1 month of receipt of its determination.

Proposals to remove a Trust must contain the information at Annex C. Proposals to alter the instrument of government so that foundation governors cease to be the majority of governors must contain the information at Annex D.

Representation

The representation period starts on the date of the publication of the proposal and must last six weeks. During this period, any person or organisation can submit comments on the proposal to the governing body to be taken into account when the decision is made.

Unlike the Trust acquisition process there is no power for the LA to refer to the Schools Adjudicator a proposal to remove a school's Trust or to reduce the number of governors appointed by the Trust. However, governing bodies must bear in mind

that failure to follow the requirements of the statutory process could lead to a complaint to the Secretary of State under Section 496/497 of the Education Act 1996, and/or ultimately be challenged through judicial review.

Decision

The governing body is the decision-maker for a removal proposal and must determine the proposal within 3 months of the date of its publication. Decisions must be taken in accordance with the [Decision-makers Guidance](#).

If a proposal was brought forward by a majority of governors, then it may be determined by a majority vote of those governors present¹⁶.

If a proposal was brought forward by a minority of governors, then the governing body may not reject the proposal unless two thirds or more of the governors indicate that they are in favour of its rejection¹⁷.

The governing body must notify the relevant LA and Trustees of their decision.

Within one week of the decision being made the proposer (i.e. governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and must make the change by the date of implementation.

Implementation

The governing body is under a statutory duty to implement any approved proposal, as published, by the approved implementation date, taking into account any modifications made.

Removal of a Trust must be implemented in accordance with regulations 14-18, and reconstitution of the governing body must be implemented as per regulation 14-16 of the Removal Regulations.

In changing category, an implementation period begins when the proposal is decided and ends on the date the proposal is implemented. During this period the LA and governing body are required to make a new instrument of government for the school, so enough time must be built into the timeframe for this to happen. The governing body must then be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account the [School Governance \(Constitution\) \(England\) Regulations 2012](#).

¹⁶ As per the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

¹⁷ As per regulation 11(2) of the Removal Regulations

When removing a Trust or a Trust majority, a governor may continue as a governor in the corresponding category (e.g. staff governor, parent governor) if that category remains under the new instrument of government. A member of a current governing body who continues as a governor on these grounds holds office for the remainder of the term for which he or she was originally appointed or elected. Where a school with a religious character has no foundation, the governing body must appoint partnership governors with a view to ensuring that the religious character of the school is preserved and developed in accordance with the School Governance (Constitution) (England) Regulations 2012. There is nothing to prevent the appointment of a former foundation governor being reappointed by the governing body as a partnership governor.

The Trust of a voluntary or foundation school often makes very specific provisions regarding the conduct of the school and the use of any fund held by the Trust for the use of the school and premises. When making a proposal to change category, proposers will need to consider whether the school's current Trust allows for the change in category proposed. If in doubt, or if a variation in the Trust is clearly necessary, promoters and the relevant site trustees are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.

Modification of proposals

Modifications can only be made to the implementation date and the proposed constitution of the governing body.

Annex A: Information to be included in a prescribed alteration statutory proposal

A statutory proposal for making a prescribed alteration to a school must contain sufficient information for interested parties to make a decision on whether to support the proposed change. A proposal should be accessible to all interested parties and therefore use 'plain English'.

Proposers will need to be mindful of the factors that will inform the decision-makers assessment when determining the proposal.

As a minimum, the department would expect a proposal to include:

- School and LA details;
- Description of alteration and evidence of demand;
- Objectives (including how the proposal would increase educational standards and parental choice);
- The effect on other schools, academies and educational institutions within the area;
- Project costs and indication of how these will be met, including how long term value for money will be achieved;
- Implementation and any proposed stages for implementation; and
- A statement explaining the procedure for responses: support; objections and comments.

Annex B: Information that must be included in foundation proposals

- a) name, address and category of the school for which the proposals are being published;
- b) implementation date;
- c) a statement of which one of, or combinations of, the prescribed alterations in regulation 3 comprise the proposals.

Where the prescribed alteration is a change of category to foundation, the proposals must contain the following information:

- a) a statement whether the school will have a foundation and if so, the name or proposed name of the foundation;
- b) where it is a change of category to foundation from a VA or VC school, a statement that, in accordance with section 20, the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained; and
- c) the rationale for the change and the particular ethos that the foundation will bring to the school.

Where the prescribed alteration is the acquisition of a foundation or a relevant change at a school for which a foundation already acts, the proposals must contain the following information:

- a) name or proposed name of the foundation;
- b) details of membership of the foundation, including members names;
- c) proposed constitution of the school's governing body;
- d) foundation's charitable objects; and
- e) rationale for the alteration and the particular ethos that the foundation will bring to the school.

In addition where the relevant change relates to:

- a) a foundation school which, immediately before 25th May 2007, was a foundation school having a foundation; or
- b) a foundation school which, having been a voluntary school immediately before 25th May 2007, changed category to a foundation school on or after that date,

the proposal must include a statement that in accordance with section 20 the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained.

Annex C: Information to be included in proposals to remove a Trust

All proposals must include the following information—

- The name, address and category of the school for which the governing body are publishing the proposals,
- The proposed implementation date,
- A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—
 - (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
 - (ii) the address to which objections or comments should be sent.
- Whether proposals are to be published as required by regulation 4 or under regulation 5(2).
- Information on why it is proposed to remove the school's foundation.
- Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on removing the school's foundation.
- Information about the transfer of land held on trust for the purposes of the school should the proposals be approved (with or without modification), including—
 - (a) the proposed terms of any transfer agreement to be entered into in relation to the land, and
 - (b) details of any payments which will fall to be made in relation to the land—
 - (i) by the governing body or the local education authority to the trustees, or
 - (ii) by the trustees to the governing body or the local education authority.
- Confirmation that after any land transfer, the requirements of the School Premises Regulations 1999 will continue to be satisfied.
- The proposed constitution of the governing body after the foundation is removed (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body after the removal of the foundation, and, where the school has a religious character, the body who it is proposed will nominate the partnership governors.

Annex D: Information to be included in proposal to reconstitute the governing body

- All proposals must include the following information—
- The name, address and category of the school for which the governing body are publishing the proposals,
- The proposed implementation date,
- A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—
 - (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
 - (ii) the address to which objections or comments should be sent.
- Whether proposals are to be published as required by regulation 4 or under regulation 5(2).
- Information on why it is proposed to alter the instrument of government so that the foundation governors cease to constitute the majority of governors.
- Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on altering the instrument of government so that the foundation governors will cease to constitute the majority.
- The proposed constitution of the governing body following the reduction of the foundation governor majority, (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body.

Annex E: Further Information

This guidance primarily relates to:

- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#)
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#)
- [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](#)

It also relates to:

- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) .
- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [The School Governance \(Constitution and Federations\) \(England\) \(Amendment\) Regulations 2014](#)
- [The School Governance \(Miscellaneous Amendments\) \(England\) Regulations 2015](#)
- [The School Governance \(New Schools\) England Regulations 2007](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Childcare Act 2006](#)
- [School Premises \(England\) Regulations 2012](#) .
- [Making Significant Changes to an Existing Academy \(2014\)](#);
- [Academy/Free School Presumption – departmental advice \(2013\)](#); and
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\)](#).
- [The Schools Admissions Code](#)

Annex F: Contact details for RSC offices

- East and North East London - RSC.EASTNELONDON@education.gsi.gov.uk
- North - RSC.NORTH@education.gsi.gov.uk
- East Midlands and Humber - EMH.RSC@education.gsi.gov.uk
- Lancashire and West Yorkshire - LWY.RSC@education.gsi.gov.uk
- South Central England and North West London - RSC.SCNWLON@education.gsi.gov.uk
- South East and South London - RSC.SESL@education.gsi.gov.uk
- South West - RSC.SW@education.gsi.gov.uk
- West Midlands - RSC.WM@education.gsi.gov.uk



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