



Department  
for Education

# **School Organisation**

## **Maintained Schools**

**Guidance for proposers and decision-makers**

**January 2014**

# Contents

Chapter 1: Summary	3
About this guidance	3
What legislation does this guidance refer to?	4
What previous guidance does this replace?	4
Transitional arrangements	5
Chapter 2: Significant changes: expansion, age range changes and adding boarding provision	6
Governing Bodies	6
Local Authorities	7
Expanding onto an additional site ('satellite schools'/split site schools)	7
Chapter 3: Significant changes: prescribed alterations	9
Statutory process	10
Chapter 4: Establishment of new provision	15
Academy presumption	15
New maintained schools	15
Chapter 5: School closure	17
Who can close a school?	17
Statutory process	18
Closure of rural schools	21
'Amalgamations/mergers'	22
Schools wishing to acquire, change or lose a Religious Character	22
Two years notice of closure – voluntary and foundation schools	22

[Annex A](#): Further information for proposers

[Annex B](#): Guidance for Decision-makers

[Annex C](#): Foundation and Trust proposals

# Chapter 1: Summary

## About this guidance

This guidance accompanies new School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and (Establishment and Discontinuance of Schools) Regulations 2013 that came into force on 28 January 2014. It provides information on the processes involved in making significant changes to maintained schools (e.g. expansion), establishing new provision and school closure. Three annexes give further information for proposers, guidance for decision-makers and, guidance on foundation and Trust proposals.

A governing body, local authority (LA) or the Schools Adjudicator must have regard to this guidance when exercising functions under the Prescribed Alterations Regulations and the Establishment and Discontinuance Regulations. There are also a number of provisions in the Education and Inspections Act 2006 requiring bodies to have regard to guidance. Where bodies are so required, this guidance sets out (either in the paragraph or footnote) the requirement.

The new School Organisation regulations support the government's aim of increasing school autonomy and reducing bureaucracy. They allow schools to have more control when making decisions about their size and composition and therefore enable them to be more responsive to the needs of parents and local communities.

This guidance is relevant to all categories of maintained schools unless explicitly stated. Separate advice is available on making significant changes to an academy at: <https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>.

## Review date

This guidance will be reviewed in January 2015.

## Who is this guidance for?

This guidance is for those proposing to open, close or make changes to 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.).

## What legislation does this guidance refer to?

This guidance primarily relates to the 2013 School Organisation Regulations (which replace the 2007 Regulations of the same name):

- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) (“Prescribed Alterations Regulations”); and
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) (“Establishment and Discontinuance Regulations”).

It also relates to:

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#) (“EIA 2006”) and (“Education Act 2011”);
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#) (“SSFA 1998”) and (“Education Act 2002”);
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#) (“Removal Regulations”);
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#) (“Requirements Regulations”);
- [School Governance \(Constitution\) \(England\) Regulations 2012](#) (“Constitution Regulations”);
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#) (“Procedures Regulations”); and
- [School Premises \(England\) Regulations 2012](#) (“School Premises Regulations”).

## What previous guidance does this replace?

This guidance replaces the following departmental documents:

- Making Changes to a Maintained Mainstream School;
- Closing a Maintained Mainstream School;
- Expanding a Maintained Mainstream School by Enlargement or Adding a Sixth Form;
- Changing School Category to Foundation;
- Removal of a school’s Trust and reduction in the number of governors appointed by the Trust;
- Trust School Proposals;

- Deciding Statutory Proposals for Maintained Schools;
- Changing to a Foundation School - Decision Makers Guidance; and
- Changing to a Trust School - Decision Makers Guidance.

## Related guidance

The following advice relates to this guidance:

- [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 \(2013\)](#).

## Transitional arrangements

Proposals published after the 28 January 2014 should follow the requirements and process set out in the new 2013 Regulations. Proposers who have published proposals before 28 January 2014 will need to continue the process set out in the 2007 Prescribed Alterations Regulations and Establishment and Discontinuance Regulations until they have been implemented unless the proposal has been withdrawn or revoked (as the case may be).

## Chapter 2: Significant changes: expansion, age range changes and adding boarding provision

### Governing Bodies

1. As a consequence of the changes introduced by the 2013 Regulations, governing bodies of all categories of mainstream school can now make the following changes to their schools without following a formal statutory process:

- Expansion (enlargement of premises);
- Alteration of upper or lower age limit by up to two years (except for adding or removing a sixth-form); and
- Adding boarding provision<sup>1</sup>.

2. Before making any changes governing bodies should ensure that:

- they have secured any necessary capital funding;
- they have identified suitable accommodation and sites;
- they have secured planning permission and/or agreement on the transfer of land where necessary<sup>2</sup>;
- 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.

3. Although governing bodies are no longer required to follow a statutory process for the alterations set out in paragraph 1, they are nevertheless required to adhere to the usual principles of public law: they must act rationally; they must take into account all relevant considerations; and they must follow a fair procedure. The department expects that in making the changes set out in paragraph 1 governing bodies will:

- liaise with the LA and trustees/diocese (if any) to ensure that, where possible, a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained; and

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<sup>1</sup> Governing bodies will need to ensure that boarding schools comply with other relevant legislation – see paragraph 10 of [Annex A.1](#).

<sup>2</sup> 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.

- ensure effective consultation with parents and other interested parties to gauge demand for their proposed change(s) and to provide them with sufficient opportunity to give their views.

4. **Once proposed changes have been implemented, the governing body must<sup>3</sup> inform the Secretary of State by ensuring that the department’s Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at:**

<http://www.education.gov.uk/edubase/faq.xhtml>

## Local Authorities

5. Local authorities have a duty<sup>4</sup> to ensure sufficiency of school places. They can also propose all of the changes outlined in paragraph 1 for community schools, and can propose expansion for foundation and voluntary schools. When doing so they must follow a streamlined statutory process as set out in the Prescribed Alterations Regulations (see chapter 3 for further information).

6. Expansions at a mainstream school that do not require a physical enlargement to the premises of the school are not covered by the Prescribed Alterations Regulations. An increase in pupil numbers may be achieved solely by increasing the PAN in line with the School Admissions Code.

## Expanding onto an additional site ('satellite schools'/split site schools)

7. 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 a new school. Decisions will need to be taken on a case-by-case basis, but proposers 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?

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<sup>3</sup> Section 538 of the Education Act 1996 imposes an obligation on governing bodies of maintained schools to provide information to the Secretary of State that he may require for the purpose of the exercise of his education functions. Section 29(5) of the Education Act 1996 requires LAs to publish information at such times and in such manner as may be required by regulations in respect of their arrangements relating to primary or secondary education.

<sup>4</sup> Under section 14 of the Education Act 1996.

- 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 can be considered as an expansion. Where a LA considers there is a need for a new school to address a basic need for school places it must<sup>5</sup> seek proposals to establish an academy/free school under the academy presumption (see chapter 4).

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<sup>5</sup> Under section 6A of the Education Act 2006.



## Chapter 3: Significant changes: prescribed alterations

8. The other significant changes that governing bodies and LAs may propose by following a statutory process are the following prescribed alterations<sup>6</sup>:

- Alteration of upper or lower age limit by 3 years or more;
- Adding/removing a sixth-form;
- Removing boarding provision;
- Single sex school becoming co-educational or vice versa;
- Transferring to a new site;
- Closure of one site in a split site school;
- Removing selective admission arrangements at a grammar school;
- Changes of category (excluding changes of category to foundation<sup>7</sup>);
- Establishing/removing/altering SEN provision at a mainstream school;
- Alteration of upper or lower age limit at a special school;
- Increasing/decreasing pupil numbers at a special school; and
- Changing the types of needs catered for by a special school

Further information on these categories of changes can be found at [Annex A.1](#). The 'Who Can Do What?' table at [Annex A.5](#) shows exactly which changes can be proposed by LAs and governing bodies at each type of school.

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<sup>6</sup> Regulations 4 and 5 of the Prescribed Alterations Regulations set out which alterations can be made by governing bodies and LAs in respect of each type of school.

<sup>7</sup> Changes of category to foundation follow a different process (see [Annex C](#)).

## Statutory process

9. The statutory process for making significant changes to schools has four stages:

Stage 1	<b>Publication</b>	Statutory proposal published – 1 day.
Stage 2	<b>Representation (formal consultation)</b>	Must be 4 weeks, as prescribed in regulations.
Stage 3	<b>Decision</b>	The decision-maker (usually the LA) must decide proposals within 2 months of the end of the representation period or decision defaults to Schools Adjudicator (OSA) <sup>8</sup> .  Any appeal to the adjudicator must be made within 4 weeks of the decision.
Stage 4	<b>Implementation</b>	No prescribed timescale, but must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker.

10. Although there is no longer a prescribed ‘pre-publication’ consultation period for prescribed alterations, there is a strong expectation on schools and LAs to 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 authorities<sup>9</sup> (where necessary).

11. It is best practice to take timing into account when considering a significant change or prescribed alteration to a school. For example, by holding consultations and public meetings – either formal or informal – during term time, rather than school holidays. The location of any public and stakeholder meetings should also be planned to maximise response. The admissions cycle should also be taken into account, for changes that will impact on the school’s admission arrangements.

## Publication

12. 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.2](#) sets out the minimum that this should include. The proposal should be accessible to all interested parties and should therefore use ‘plain English’.

<sup>8</sup> For further information on the Schools Adjudicator see: <http://www.education.gov.uk/schoolsadjudicator>

<sup>9</sup> Including under the CofE Diocesan Board of Education (DBE) Measure 1991.

13. 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.

14. 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 comments (objections or support) should be submitted.

15. 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 in a conspicuous place on the school premises and at all of the entrances to the school.

16. 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 at paragraph 14 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.

17. 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 (consultation)**

18. 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

19. The LA will be the decision-maker for all proposals outlined in paragraph 8 except where a proposal is 'related' to another proposal that must be decided by the Schools Adjudicator<sup>10</sup>.

20. 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.

21. The department does not prescribe the exact process by which a decision-maker carries out their decision-making function. However, the body or individual that takes the decision must have regard to the statutory 'Decision-makers Guidance' (at [Annex B](#)).

22. 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 prescribed events<sup>11</sup> (such as the granting of planning permission) being met.

23. 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 and the governing body (as appropriate) and 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.

24. Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for their decision and the reasons for it to be published on the website where the original proposal was published. They must arrange for notification of the decision and reasons for it to be sent to:

- the LA (where the Schools Adjudicator 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;

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

<sup>11</sup> The prescribed events are those listed in paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations.

- 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).

## Rights of appeal against a decision

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

## Implementation

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

27. **Once proposed changes have been implemented, the proposer must<sup>12</sup> inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at: [www.education.gov.uk/edubase/faq.xhtml](http://www.education.gov.uk/edubase/faq.xhtml).**

## Modification post determination

28. If it proves impossible 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.

## Revocation

29. 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

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<sup>12</sup> Under paragraph 13(2) of Schedule 3 to the Prescribed Alternations Regulations.

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 department does not prescribe any further details on the exact content of a revocation proposal.

30. The proposer must publish the revocation proposal on the website and a brief notice of the proposal in a local newspaper. Details of what must be included in this notice are the same as in paragraph 15.

31. 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.

32. The LA decision-maker must determine the revocation proposal within two months of the end of the representation period. It must then 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 original proposal.

## Chapter 4: Establishment of new provision

### Academy presumption

33. Where a LA considers there is a need for a new school<sup>13</sup> in its area it must<sup>14</sup> seek proposals to establish an academy/free school (or act in accordance with paragraph 36 below). The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs. All new academy/free school proposals require the Secretary of State's approval and it is the Secretary of State who will enter into a funding agreement with the academy trust/sponsor.

34. In deciding the proposer with whom he will enter into a funding agreement, the Secretary of State will consider the assessments and preferences of the LA carefully. However, he reserves the right to put in place a sponsor of his own choice. The intention is to ensure that the school is always established by the best proposer possible. This is intended as a summary only – full guidance on the academy presumption process can be found in: '[Academy/Free School Presumption – Departmental Advice \(2013\)](#)'.

### New maintained schools

35. If the academy presumption does not result in a suitable academy/free school proposal, a statutory competition can be held with the consent of the Secretary of State (known as a section 7 case<sup>15</sup>). This will not require a separate application for consent, since the Secretary of State will indicate to the LA that a competition can be held. Academy/free school proposals and proposals for foundation, voluntary-controlled, voluntary-aided and foundation special schools can be submitted into the competition. Where an academy/free school proposal is entered into a competition by the specified deadline, the Secretary of State must consider these proposals first. If an academy/free school proposal is deemed suitable, the competition ends and the proposer works with the department and local authority to progress its proposal. If an academy/free school proposal is not considered suitable, or no academy/free school proposal is received, the competition continues and it is for the local authority to decide which maintained school proposal wins (unless they are involved in the Trust of a proposed foundation school). For competitions there is no right of appeal.

36. It is also possible to publish a proposal for new schools outside of academy presumption and competitions in a limited number of circumstances<sup>16</sup>. The Secretary of

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13 In considering the need for a new school LAs should factor in any free school projects that are due to open.

14 Under section 6A of the EIA 2006.

15 Under section 7(1) of the EIA 2006.

16 This will require a five-stage statutory process as set out in the Establishment and Discontinuance Regulations and the EIA 2006.

State's consent is required for this to happen (section 10 cases)<sup>17</sup>, except in a very limited number of special cases (known as section 11 cases)<sup>18</sup>. The special cases are:

- a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- a new voluntary-aided school;
- a new foundation or voluntary school resulting from the reorganisation of existing faith schools in an area, including an existing faith school losing or changing its religious designation;
- a new foundation or community school, where suitable academy/free school proposals have not been identified and a competition has been held but did not identify a suitable provider;
- a former independent school wishing to join the maintained sector; and
- a new LA maintained nursery school.

37. For section 10 and 11 cases the Schools Adjudicator will decide LA proposals (and cases where the LA are involved in the Trust of a proposed foundation school). The LA will decide proposals from other proposers.

38. Further information on section 7, 10 and 11 proposals can be found in the Decision-makers Guidance (at [Annex B](#)) and '[Establishing New Maintained Schools - departmental advice for LAs and new school proposers \(2013\)](#)'.

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<sup>17</sup> Under section 10 of the EIA 2006.

<sup>18</sup> Under section 11 of EIA the 2006.



## Chapter 5: School closure

39. Local authorities are under a statutory duty to ensure that there are sufficient school places in their area, promote high educational standards, ensure fair access to educational opportunity and promote the fulfilment of every child's educational potential. To help them meet these duties and restructure local provision they have the power to close all categories of maintained schools.

40. Where a LA publishes proposals to close a school the department has no direct role in the decision-making process. All decisions related to school closures are taken locally following a statutory process to allow those directly affected by the proposals to feed in their comments.

41. The department recognises that school closure is a sensitive issue and the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013 therefore retain the established five-stage statutory process for closing a school.

42. All determinations on school closure proposals must be based on the factors outlined in the Decision-makers Guidance (at [Annex B](#)).

### Who can close a school?

43. A LA can propose the closure of any category of maintained school, including community, community special, foundation, foundation special, voluntary-aided, voluntary-controlled and nursery schools, following a five-stage statutory process.

44. The governing body of a voluntary, foundation, or foundation special school may also publish proposals to close its own school following a statutory process. Alternatively, it may<sup>19</sup> give at least two years' notice of its intention to close the school to the Secretary of State and the LA (see paragraph 68 and 69).

45. The Secretary of State may direct a LA to close a maintained school requiring special measures (under section 68 of EIA 2006). This will usually be done only where there is no prospect of the school making sufficient improvements and where there is a sufficient supply of alternative school places in the area. Prior to making the direction, the Secretary of State must consult with the LA, the governing body, and – in the case of a voluntary or foundation school – the diocese or other appointing authority. Such a direction will not require the publication of a statutory proposal for the school's closure but a proposal may be required for the opening of a new school<sup>20</sup> or for alterations to an existing school as a consequence of the directed closure.

46. Reasons for closing a maintained mainstream school include where:

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<sup>19</sup> Under section 30 of the SSFA 1998.

<sup>20</sup> See guidance on the academy/free school presumption in chapter 4.

- it is surplus to requirements (e.g. as a result of an area-wide reorganisation and/or there are sufficient places in neighbouring schools to accommodate displaced pupils);
- it is to be 'amalgamated'/'merged' with another school (see paragraph 66);
- it is failing and there is no viable sponsored academy solution;
- it is to acquire, lose or change religious character (see paragraph 67); or
- it is being replaced by a new school.

47. Where a school will temporarily cease operations on a site due to a rebuild a proposal to close the school is not required. Where a school operating over multiple split sites seeks to cease operations on one (or more) of its sites the proposal will be for a prescribed alteration and not a school closure (see paragraph 21 of [Annex A.1](#)).

## Statutory process

48. The statutory process for closing a school has five stages:

Stage 1	<b>Consultation</b>	No prescribed timescale (minimum of 6 weeks recommended; school holidays should be taken into consideration and avoided where possible). Likely to be no longer than 12 months.
Stage 2	<b>Publication</b>	1 day
Stage 3	<b>Representation</b>	Must be 4 weeks  (this is prescribed in legislation and cannot be shortened or lengthened).
Stage 4	<b>Decision</b>	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator.  Where permitted appeals must be made within 4 weeks of the decision.
Stage 5	<b>Implementation</b>	No prescribed timescale – but must be as specified in the published notice, subject to any modifications agreed by the decision-maker.

## Consultation

49. Except where the school is a rural school or a special school where there are prescribed consultees (as set out at [Annex A.3](#)), proposers of a school closure must<sup>21</sup> consult bodies they feel to be appropriate. In doing so they must have regard to the Secretary of State's statutory guidance on school closure consultations which is contained at [Annex A.3](#) and [A.4](#) to this guidance. The information that must be included in a closure proposal is set out at [Annex A.4](#).

50. Where a LA or governing body carries out preliminary (informal) consultation to consider a range of options for a possible reorganisation, this would not be regarded as a statutory consultation as set out in legislation<sup>22</sup>. The statutory consultation would need to cover the specific closure proposal of the school in question.

51. How statutory consultation is carried out is not prescribed in regulations and it is for the proposer to determine the nature of the consultation and its length (although a minimum of six weeks is recommended). It is best practice for consultations to be carried out in term time to allow the maximum amount of people to respond.

52. If the need for the closure arises from an area-wide reorganisation (e.g. as a result of long-term LA planning), any related proposal should be consulted on at the same time. Notices for related proposals should be published at the same time and specified as 'related' so that they are decided together.

## Publication

53. A proposal should be published within 12 months of consultation being concluded so that it can be informed by up-to-date feedback. A proposal must contain the information specified in Schedule 2 of the Establishment and Discontinuance Regulations (see [Annex A.4](#) for further details).

54. 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.

55. On the day of publication the proposer must send a copy of the proposal to the governing body/LA (as appropriate), and a brief notice (including details on how the full proposal can be accessed e.g. a website address) must be published in a local newspaper.

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<sup>21</sup> Under section 16(2) of the EIA 2006.

<sup>22</sup> Under section 16(2) of the EIA 2006.

56. 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 at paragraph 54 to:

- the Secretary of State (via: schoolorganisation.notifications@education.gsi.gov.uk);
- the parents of every registered pupil at the school - where the school is a special school;
- the local Church of England diocese;
- the local Roman Catholic diocese; and
- any other body or person that the proposer thinks is appropriate (e.g. relevant faith group).

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

57. The representation period is identical to that for making significant changes as outlined in paragraph 18. The representation period is set at four weeks.

## Decision

58. The LA will be the decision-maker on a school closure proposal, unless the closure proposal is 'related' to another proposal that is to be decided by the Schools Adjudicator<sup>23</sup>.

59. The decision-making process for school closure is the same as that for making significant changes (as outlined in paragraphs 20 to 24) with two exceptions:

- the prescribed events upon which the decision-maker can grant a conditional approval for school closures are different from the events for conditional approvals for other types of changes<sup>24</sup>; and
- the Secretary of State must be notified of decisions in addition to the persons listed in paragraph 24(via: schoolorganisation.notifications@education.gsi.gov.uk).

## Rights of appeal against a decision

60. The process for appealing a decision is the same as that outlined in paragraph 25 for significant changes.

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<sup>23</sup> For example the establishment of a new school under section 10 or 11 of the EIA 2006.

<sup>24</sup> The events relevant to closure proposals are listed in regulation 16 of the Establishment and Discontinuance Regulations.

## Implementation

61. The implementation (including modification and revocation) process for school closure is the same as that for making significant changes (as outlined in paragraphs 26 to 32) except that, in addition to the bodies listed in paragraphs 32, revocation proposals and decisions on them must also be sent to the Secretary of State (via: [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk)).

## Closure of rural schools

62. 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 a proposal clearly in the best interests of educational provision in the area.

63. When formulating a proposal, the proposer must carefully consider<sup>25</sup>:

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

64. When deciding a proposal for the closure of a rural primary school, the decision-maker must refer to the [Designation of Rural Primary Schools \(England\) Order](#) to confirm that the school is a rural school. It is for the decision-maker to determine whether or not a *secondary school* should be considered as rural. The academy presumption (as outlined in Chapter 4) will not apply in cases where a rural infant and junior school on the same site are being closed to establish a new primary school<sup>26</sup>.

65. In order to assist the decision-maker, the proposer of a rural school closure should provide evidence to the decision-maker to show that it has carefully considered:

- 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; 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.;
- 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.

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<sup>25</sup> Under section 15(4) of the EIA 2006.

<sup>26</sup> This is a section 11 special case under the EIA 2006.

## **‘Amalgamations/mergers’**

66. There are two ways to 'merge' or 'amalgamate' two or more existing maintained schools<sup>27</sup>:

- The LA or governing body (depending on school category) can publish a proposal to close two (or more) schools and the LA or a proposer other than the LA (e.g. diocese, faith or parent group, Trust) depending on category, can publish a proposal to open a new school or academy (see chapter 4 - Establishment of new provision). This results in a new school number being issued.
- The LA and/or governing body (depending on school category) can publish a proposal to close one school (or more) and enlarge/change the age range/transfer site (following a statutory process as/when necessary) of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed.

## **Schools wishing to acquire, change or lose a Religious Character**

67. It is not possible<sup>28</sup> to make any change in the religious character of a school. To make such a change the LA or governing body would need to publish a proposal to close the school, and a faith organisation (as proposers) would need to bring forward a 'related' proposal to establish a new voluntary school with a religious character – either after gaining the Secretary of State's approval under section 10 or as a special case under section 11 of EIA 2006.

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

68. Instead of following the statutory process for closure as outlined above, the governing body of a voluntary or foundation school may (subject to specified provisions<sup>29</sup>) give at least two years' notice of their intention to close the school, to the Secretary of State (via: [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk)) and the LA.

69. The trustees of a foundation or voluntary school must give their governing body at least two years notice if they intend to terminate the school's occupation of its site. The minimum two years' notice allows the LA and/or governing body time to make alternative arrangements for pupils.

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<sup>27</sup> Federation cannot be used to merge/amalgamate schools.

<sup>28</sup> Under section 18(4) of the EIA 2006.

<sup>29</sup> As outlined in section 30 of the SSFA 1998, and including those in the DBE Measure 1991.



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