

DERBYSHIRE COUNTY COUNCIL

CABINET

22 October 2013

Report of the Strategic Director for Children & Younger Adults

**DEPARTMENT FOR EDUCATION CONSULTATION ON CHANGES TO THE
SYSTEM OF SCHOOL ORGANISATION – (Children and Young People)**

1. Purpose of the Report

To seek approval to submit a response to the DfE's consultation on school organisation.

2. Information and Analysis

2.1. Certain changes to school organisation are defined in law as 'prescribed alterations'. These changes can only be made following a statutory process involving informal consultation, statutory notices and statutory consultation. These processes are tightly regulated. Prescribed alterations include for example, changing the age range or adding ERS special needs provision to schools.

2.2. The consultation document is included at Appendix 1.

2.3. There are three broad elements to the proposed consultation which will be discussed separately below:

- Giving individual maintained schools the freedom to make certain changes without a statutory process
- Streamlining the statutory process
- Academies are not subject to the same restrictions as maintained schools with regards to changes but they do have to seek the approval of the Secretary of State. The consultation is proposing to remove this requirement for some changes.

Freedoms for individual schools

2.4. The changes that will no longer require statutory process are: expansion (that is increasing physical capacity by 25% or more); changes to the age range (other than introducing a sixth form); adding boarding provision.

Proposed response

These proposals are problematic for two reasons.

1. *Community schools are maintained schools but they are not their own admissions body. The Local Authority sets the admissions criteria for the schools as part of the tightly regulated School Admissions Code. There appears to be an inconsistency here as the apparent freedom cannot be realised without a separate decision by the admissions body.*
2. *Maintained schools that are their own admissions bodies (foundation and aided schools) would be able to make use of these freedoms. Derbyshire County Council is concerned at the impact of these proposed freedoms on the ability of Authority to meet its duty to ensure there are sufficient school places. For example, if a foundation junior school decides to become a primary school and significant capital were not available, this could only be done by reducing the number of places available each year. This could create unused spaces in the infant phase but a shortage of spaces at junior. The Authority is of the view that proposals such as changes from infant /junior to primary, should only be introduced through planning and co-ordination across the educational service rather than as individual actions by schools. The danger would be that the authority would face costs in adapting the rest of the service to respond to the consequences of the decisions by individual schools. This proposal has a clear intent to reduce the ability of the Local Authority to co-ordinate education provision, which potentially could lead to additional cost to the public purse as well as duplication at a time when local authorities are having to make cuts to their budget in response to the Governments cuts to their grant funding.*
3. *It is recognised that the present arrangements do disadvantage some schools in providing pre-school places. The Authority would welcome a change that allowed a more efficient use of existing pre-school accommodation, but this should be done in a way that does not impact on the number of statutory aged places available. It is not clear that the present proposal does that.*

Streamlined statutory process

- 2.5. The process for statutory changes currently in place requires a consultation with specified bodies and individuals before the publication of statutory notices, followed by a representation period (4 or 6 weeks) in which objections and comments can be submitted. The proposal is that the two stage process is reduced to one, with the initial consultation removed. Furthermore, the statutory representation period is reduced from six weeks to four.

Proposed response

It is always welcome to reduce administrative burdens and procedures where possible. However, the current arrangements allow major decisions with wide ranging consequences for the education service as a whole – such as the introduction or removal of sixth form provision – to be informed by the

views of all those affected. This includes neighbouring local authorities. Under the proposed arrangements, individual governing bodies would have to decide who they should consult. If the opportunity to make representations on proposals such as these is reduced to a four week period, this does not give sufficient time for a proper appraisal of the likely consequences of potentially major changes, and does not allow sufficient time for the Authority to go through its formal decision making process. The Authority is therefore opposed to this change. Removal of prescribed consultees and reduced consultation periods could lead to inadequate consultation, increased scope for challenge and greater uncertainty about school place provision and proposals. This reduction in consultation is likely to result in proposals being approved without the full implications being considered. This can only further add to the problems local authorities face in meeting their statutory duties, including the provision of sufficient school places

Alterations to Academies

- 2.6.** Academies are not subject to the same statutory processes as other publicly funded schools within the education service. Changes to academies are decided solely by the Secretary of State for Education. The Department is now proposing that Academies should have the freedom to make certain changes without reference to the Secretary of State. These changes are: expansion (that is increasing physical capacity by 25% or more – although the Academy needs to find any funding required); changes to the age range (other than introducing a sixth form); adding boarding provision. These are the same freedoms being proposed for maintained schools.

Proposed response

The Authority is of the view that all schools should be treated equally. The current position is that the Local Authority retains the legal duty to ensure there are sufficient school places, including local authority areas where all school places are provided in academies. The local authority that has the legal duty to provide school places would have no influence on any decisions relating to that provision. The freedoms proposed here could in some circumstances make it more difficult for the Authority to discharge its legal duties. The Authority is of the view that any changes to academies should only be made when due consideration has been given to the implications of those changes for other schools and academies and for the efficiency of the education service as a whole. The Authority therefore thinks that these changes should not be made and that the Secretary of State should have a duty to take into account the view of any Local Authority affected by the proposed change in reaching a decision on Academy proposals.

It is clear that, taken together, these proposals will have a negative impact on Local Authorities' ability to plan school places. Planning the provision of sufficient school places is a key and challenging responsibility at a time of significant demographic growth and rapid housing development. To further

undermine the authority's ability to do this, as set out in the responses above, has the potential to cause additional cost to the taxpayer and produce worse solutions for local communities and students.

3. **Financial Considerations**

None

4. **Property Considerations**

None

5. **Other Considerations** In preparing this report the relevance of the following factors has been considered: - prevention of crime & disorder, equality of opportunity; environmental, health; human resources; legal & human rights; and transport considerations.

6. **Key Decision?** No

7. **Is it required that the call-in period be waived in respect of the decisions being proposed within the report?** No

8. **Officer Recommendation**

8.1. That a response to this consultation is made to the Department for Education in accordance with this report.

Ian Thomas, Strategic Director for Children & Younger Adults



Department
for Education

Launch date 12 September 2013

Respond by 24 October 2013

Ref: Department for Education

Changes to the System of School Organisation

Changes to the System of School Organisation

The Department for Education is considering amending the existing legislative and policy requirements for making significant changes to schools and academies.

The aim is for schools to be more in charge of their own decisions about size and composition and to be able to respond to what parents want locally without being unduly restricted by process. In practice, this means that:

- individual maintained schools would have the freedom to make certain changes (e.g. enlargement of premises) without following a statutory process;
- the statutory processes would be slimmed down for certain other changes to maintained schools (e.g. a single sex school becoming co-educational) by reducing the length of the process and the level of prescription;
- the requirement for academies to apply to the department for permission to make similar changes would be removed.

This consultation seeks views on the implementation of these aims.

To Parents/Carers, Nurseries and Other Pre-School Settings, Local Authorities, Training Providers, Early Years Practitioners, Childminders, Schools, Teachers

Issued 12 September 2013

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288

e-mail: schoolorganisation.consultation@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370

000 2288 or via the Department's '[Contact Us](#)' page.

1 Alterations to maintained schools

1.1 Alterations to maintained schools¹

Freedoms for individual schools

Provided they already have suitable accommodation, or have secured any necessary funding to expand school buildings,² **individual maintained mainstream schools will have the freedom to make the following changes without following a statutory process:**

- expansion (enlargement of premises);
- changes to a school's lower or upper age range (other than adding or removing a sixth form) by a year or more. In particular this will make it easier for schools to offer Early Learning places to two-year-olds³;
- adding boarding provision.

1.2 Although we are removing the duty to follow a statutory process, we would still expect some form of consultation to be undertaken by schools when proposing these changes.

1.3 In line with their sufficiency duties, LAs will still have the power to propose these changes for community schools, but must follow a streamlined statutory process.

1.4 Streamlined statutory processes

For alterations where a statutory process is to be retained, we intend to streamline the legislative requirements by introducing new secondary legislation – The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013⁴ – which is available [here](#).

1 - Section 19 of the Education and Inspections Act (EIA) 2006

2 - Section 19 of the Education and Inspections Act (EIA) 2006

3 - This does not allow schools to add an additional phase of education, which may constitute a new school for which the academy presumption would apply

4 - These replace the 2007 Regulations of the same name.

1.5 This will reduce the length of the statutory process by:

- removing the requirement to consult before publishing proposals_(usually 4 to 6 weeks at present). This does not prevent proposers from undertaking informal consultation if they want to do so.⁵
- reducing the statutory representation period from 6 to 4 weeks. This will continue to allow for the submission of comments that must be taken into account by the decision maker.

1.6 It will also reduce the level of prescription for:

- the detail that proposals must contain;
- publication requirements;
- the prescribed list of bodies to whom proposals must be sent.

1.7 The slimmed down processes would apply to the following changes: adding/ removing a sixth form; removing boarding provision; adding/ removing/ altering SEN provision; single sex school becoming co-educational (or vice versa); transferring to a new site; closure of one site in a split site school; changes of category.

1.8 Special schools will have to follow the new streamlined statutory process to make changes to their school size and composition.

1.9 Further information on who will be able to make what changes under the new Prescribed Alteration Regulations is available [here](#) and guidance will also be made available.

5 - Expansion of buildings will be subject to planning law and regulations that include public consultation.

2 Alterations to academies

2.1 We are proposing to give individual academies the freedom to make the following changes (provided they have secured any necessary funding, and have conducted a local consultation as part of their decision making process), **without having to follow a formal process to seek agreement from ministers:**

- expansion (enlargement of premises), the costs of which the academy would meet through its own resources or having been successful in obtaining funding. There is no automatic right for capital funding as a result of having taken the decision to expand;
- changes to an academy's lower or upper age range (other than adding or removing a sixth form) by a year or more. In particular this will make it easier for academies to offer Early Learning places to two-year-olds⁶;
- adding boarding provision;
- any changes in admissions arrangements for the first (around 200) academies where this was written into their funding agreements⁷.

2.2 Academies will still need to secure Education Funding Agency consent for all other significant changes not listed here. They will also need to contact the Education Funding Agency to make changes to their funding agreements, and the details that are held for them.

6 - This does not allow academies to add an additional phase of education without seeking consent from the EFA.

7 - Changes to admission arrangements can only be made in line with the School Admissions Code.

3 Establishing and discontinuing maintained schools

3.1 The Education Act 2011 introduced the ‘academy presumption’ (where a LA has identified the need for a new school, it must first seek proposals to establish an academy or free school). However, there are still limited circumstances in which a new maintained school can be established⁸ and we intend to streamline the legislative requirements by:

- removing the statutory requirement to hold a public meeting;
- reducing the level of prescription for:
 - how maintained school proposals⁹, and revocation of proposals where circumstances have changed and the proposal is no longer needed, must be published;
 - the detail that proposals must contain;
 - the length of the representation period for non-academy bids;
 - the bodies – other than the Secretary of State – who must be informed of non-academy bids.¹⁰ This will be for the LA to determine and they need only inform others if no academy proposals are received or approved.

3.2 We have updated the conditions that a decision may be subject to ‘conditional approval’. **Decisions now only need to be published on the LA’s website** and the list of bodies that must be notified separately has been reduced, leaving this largely to the LA’s discretion.

3.3 We have also reduced the level of prescription required to close a school, whilst retaining the statutory consultation period. Specifically, we have reduced: how proposals must be published;¹¹ the detail they must contain; the length of the representation period; and the bodies who must be informed of the decision.

8 - School competitions under section 7 of the Education and Inspections Act (EIA) 2006

9 - Under section 10 of EIA 2006, or in special cases (under section 11 of EIA 2006)

10 - To compliment this we intend to add a requirement that where a copy of the notice is requested, the LA must provide this within one week.

11 - Under section 15 of EIA 2006

- 3.4** The proposed new secondary legislation for establishing and discontinuing maintained schools – The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013 – is available [here](#).¹²

12 - These replace the 2007 Regulations of the same name.

4 How To Respond

- 4.1** Consultation responses can be completed online at www.education.gov.uk/consultations

by emailing: schoolorganisation.consultation@education.gsi.gov.uk

or by downloading a response form which should be completed and sent to:

Jamie Zucker
Education Choice and Access Division,
4th Floor
Department for Education
Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT

5 Additional Copies

- 5.1** Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: www.education.gov.uk/consultations

6 Plans for making results public

- 6.1** The results of the consultation and the Department's response will be published on the DfE e-consultation website by the end of 2013.