



## Free schools

Standard Note: SN/SP/6058  
Last updated: 17 August 2012  
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Section: Social Policy Section

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This Standard Note provides background information on free schools, one of the Government's flagship education reforms. Free schools are usually new state-funded schools set up in areas where there is a local demand; however, applications from fee-paying independent schools wanting to enter the state sector are also considered. Existing maintained schools cannot become free schools but they may convert to academies.

Free schools will have the same legal requirements as academies. Each application for a free school will be judged on its merits, as viewed by the Secretary of State, taking into account matters relevant to that proposal. All mainstream free schools have freedom over their curriculum, provided it is broad and balanced. As with academies, free schools are able to set their own pay and conditions for their staff. Free schools must comply with the statutory School Admissions Code, and no fees are charged for admission.

The first 24 free schools opened in September 2011. A further 65 have been approved and about 50 of these are due to open in September 2012. On 13 July 2012, the Government announced details of a further 102 applications that had been approved; the majority of these expected to open in September 2013.

The main purpose of this note, which relates to England only, is to outline the Government's policy on various aspects of the free schools programme, and to indicate where more information may be found. It is not intended to contribute to a wider debate about the merits or otherwise of free schools. However, [Library Research Paper 10/48](#), which was written for the House of Commons' second reading debate on the *Academies Bill*, reviewed the main debates surrounding academies and free schools, and the background section of this Standard Note includes some additional material.

The Government is also committed to supporting [University Technical Colleges](#) and [Studio Schools](#). These schools also operate as academies, and further information about them is provided on the DFE website.

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## **1 Background**

Free schools are usually new state-funded schools set up in areas where there is a local demand; however, applications from fee-paying independent schools wanting to enter the state sector are also considered. Existing maintained schools cannot become free schools but they may convert to academies. Free schools have the same legal requirements as academies.

The 2010 Conservative Election Manifesto proposed a ‘schools revolution’, drawing on the Swedish ‘free schools’ model and the ‘charter school’ movement in the US, to allow parents, charities, teachers and others to set up new small academy schools. The manifesto also said that a Conservative government would enable all existing schools to have the chance to

acquire academy status; that 'outstanding' schools would be pre-approved; and that the academy programme would be extended to primary schools.

The Government's *The Coalition: our programme for government*, published on 20 May 2010, proposed school reform to ensure that new providers can enter the state school system in response to parental demand. On 26 May 2010, Michael Gove, Secretary of State for Education, wrote to schools saying that he wanted to open up the academies programme to all schools - including, for the first time, primaries and special schools, and he invited schools to register their interest in becoming an academy.

On 18 June 2010, the DFE posted details of the Government's free schools policy on the [DFE free schools website](#). This included examples of the bodies that had expressed an interest in, and/or support for the policy. The [DFE free schools website](#) explained that free schools would operate as academies:

#### **What is the difference between Free Schools and academies?**

Free Schools will have the same legal requirements as academies. Free Schools are normally brand-new schools set up by charities, universities, business, community or faith groups, teachers and groups of parents where there is parental demand. Academies are usually a change to an existing maintained school.

Legally the structure is the same, and they are expected to meet the same requirements as other academies. Free Schools will also benefit from the same freedoms and flexibilities as academies, including

the ability to set their own pay and conditions for staff

freedom from following the National Curriculum

greater control of their budget

freedom to change the length of terms and school days

freedom from local authority control.

On 21 June 2010, the Education Secretary made a statement on free schools to the House of Commons. He set out why he believed the policy was crucial to improve standards, and referred to more than 700 expressions of interest in free schools.<sup>1</sup>

The first piece of education legislation introduced by the new Government was the *Academies Act 2010*. This contains provisions to allow the governing body of each maintained school in England to apply to the Secretary of State to convert the school to an academy. The Act also makes provision relating to free schools (referred to in the Act as 'additional' schools). Amongst other things, the Act requires the Secretary of State to take account of what the impact of establishing an additional school would be likely to have on maintained schools, academies, and institutions within the further education sector in the area in which the additional school is to be situated.<sup>2</sup> Under the Act applicants to set up additional schools must consult as they deem appropriate.<sup>3</sup>

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<sup>1</sup> HC Deb 21 June 2010 c25

<sup>2</sup> [HAcademies Act 2010](#)H, section 9

<sup>3</sup> [HAcademies Act 2010](#)H, section 10

The *Education Act* 2011 contained provisions to allow the setting up free schools solely catering for pupils aged 16 to 19, and for alternative provision free schools offering full and/or part time provision.

In his Autumn Statement on 29 November 2011, the Chancellor of the Exchequer said that the Government would fund 100 additional free schools including new maths free schools for 16 to 18 year olds.<sup>4</sup> Replying to a PQ on 20 February 2012, Nick Gibb, the Schools Minister, said that the Government was developing proposals for how specialist maths schools for 16 to 18 year olds might operate, and that further details would be announced in due course.<sup>5</sup>

The free school programme is highly controversial, and the evidence relating to the educational performance of 'free schools' and 'charter schools' is mixed. There was much debate on the subject in the run-up to the General Election.<sup>6</sup>

Those who are sceptical about the educational and social benefits of free school model point to the overall fall of Sweden in international league tables for pupil performance since the free schools were introduced, and point out that the free schools tend to be attended by children from relatively affluent backgrounds. Furthermore, they note that pupils attending them do not do better in post-school education. However, others argue that the free schools have performed better than other schools, and that this, in turn, has led schools to improve their organization and teaching in order to improve results.<sup>7</sup>

The arguments for and against free schools, and some of the relevant evidence, were debated in exchanges between the Education Secretary and Ed Balls, the then Shadow Education Secretary, in the House of Commons on 21 June 2010. The former pointed to the academic research on the subject, and the latter stressed comments made by the Swedish Schools Minister, and the position of Sweden in TIMSS (Trends in Mathematics and Science Study) league table in maths and science.<sup>8</sup> [Library Research Paper 10/48](#), which was written on 14 July 2010 for the House of Commons' second reading debate on the *Academies Bill*, noted some of the research that had been cited on both sides of the argument.

On 12 May 2011, in a Westminster Hall debate on education performance, Stephen Twigg emphasised the need for caution when considering the effect of school reform on pupil performance:

...there is a need to be cautious when we are studying school reform movements in other parts of the world. When the case is made for the Government's policy on free schools and academies, great emphasis is placed on the experience of the US charter schools and the Swedish free schools. In preparation for today's debate, I have looked at some of the evidence from the US and Sweden, and I think that it is fair to say that the evidence from both countries is mixed.

I think that the Secretary of State for Education and the Minister who is here today have both referred to a US programme called KIPP, which is the Knowledge is Power

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<sup>4</sup> HC Deb 29 November 2011 c809

<sup>5</sup> HC Deb 20 February 2012 c723W

<sup>6</sup> [Hhttp://news.bbc.co.uk/1/hi/programmes/newsnight/8504961.stm](http://news.bbc.co.uk/1/hi/programmes/newsnight/8504961.stm);

[Hhttp://news.bbc.co.uk/1/hi/programmes/newsnight/8506214.stm](http://news.bbc.co.uk/1/hi/programmes/newsnight/8506214.stm)

<sup>7</sup> e.g. see Channel 4 blog summarising evidence: [Hhttp://blogs.channel4.com/factcheck/2010/05/04/do-swedish-free-schools-mean-higher-standards/H](http://blogs.channel4.com/factcheck/2010/05/04/do-swedish-free-schools-mean-higher-standards/H) ; [H"Private companies will run 'free schools'"](http://www.guardian.co.uk/education/2010/may/25/private-companies-will-run-free-schools), Guardian, 25 May 2010

<sup>8</sup> [HHC Deb 21 June 2010 cc 25-28](#)

Project. I had an opportunity to visit KIPP schools in New York and Texas some time ago and I was hugely impressed by what was being achieved in those schools. KIPP schools are a great example of how some of these new, more autonomous schools in the US are delivering, particularly for children from some of the poorest backgrounds. There is no doubt that both the US charter schools and the Swedish free schools are hugely popular with the parents of the children who attend them.

However, the evidence about the impact on standards of those schools is mixed. There have been a number of studies in New York that suggest there has been real improvement in the charter schools compared with non-charter schools and that in particular some of the poorest children from ethnic minorities have done better than they might have done otherwise. On the other hand, the Centre for Research on Education Outcomes at Stanford university published a report in 2009 that suggested that there is a much more mixed picture across the US, including significant state-by-state variation. That suggests that the extra autonomy granted to those schools may in itself bring benefits—but there are clearly other factors at play in addition to that extra autonomy, which help to determine whether those schools are successful or less successful.

In some ways, the picture in Sweden is quite similar. The Swedish free schools are popular with parents. One piece of research that I looked at showed higher grade point averages in free schools compared with those achieved in other Swedish schools. It has been suggested that in an area with a concentration of free schools, there was a wider positive impact. On the other hand, other significant studies that I looked at earlier today suggest that there has been a general worsening of performance in the Swedish school system in recent years, so that it is perhaps the case that the free schools have not delivered the national system-wide improvement in Sweden that their proponents originally anticipated.

Furthermore, there is real concern in Sweden—this is different from the experience in the US of the charter school system—that the gaps in terms of socio-economic achievement have widened in the country. Admittedly, those gaps in Sweden have always been much narrower than the gaps in the UK, so I still think that we have a lot to learn from Sweden and from some of the other Scandinavian countries. Nevertheless, we still need to tread with care on both sides of this debate, because I have heard both advocates of the Government's proposals and critics of them somewhat overstating the case for or against by citing evidence from the US and Sweden. As I said, the evidence from those countries is decidedly mixed.<sup>9</sup>

Steven Twigg, now Shadow Education Secretary, has said that while Labour would not have chosen the free school approach, he was not opposed to every single free school and would back those that helped poorer children and the wider community; however, he thought there were major problems with the Government's free schools policy, which he viewed as a distraction in diverting attention away from what happens in the classroom to improve standards.<sup>10</sup>

## 2 What is the DFE definition of free schools?

The [DFE's free schools website](#) describes free schools as all-ability state-funded schools set up in response to what local people say they want and need in order to improve education for children in their community. The DFE website [What are Free Schools?](#) states:

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<sup>9</sup> HHC Deb 12 May 2011 c512WH

<sup>10</sup> H"Labour's teaching mission", *Guardian*, 19 October 2011, p32H; see also H"Twigg backs 'free schools' despite Miliband criticism", *Guardian*, 15 October 2011 p17H; H"I will back free schools, says Labour's new shadow education minister Stephen Twigg", *Liverpool Daily Post*, 14 October 2011

Free Schools are non-profit making, independent, state-funded schools. There is not a 'one-size-fits-all' approach. They are not defined by size or location: there is not a single type of Free School or a single reason for setting them up. Free Schools could be primary or secondary schools. They could be located in traditional school buildings or appropriate community spaces such as office buildings or church halls. They could be set up by a wide range of proposers – including charities, universities, businesses, educational groups, visionary teachers or committed parents – who want to make a difference to the educational landscape. They might be needed because there simply are not enough school places in a local area and children have to travel too far to the nearest school.

The thing which unites all Free Schools is that they are being set up in response to real demand within a local area for a greater variety of schools, they meet rigorous standards and they are all absolutely committed to providing young people with the best possible chance to succeed.

It is clear from the Academies programme that this autonomy has transformed the life chances of pupils. Free Schools will have some additional freedoms. For example, teachers in Free Schools will not necessarily need to have Qualified Teacher Status.

Like academies, Free Schools will be funded on a comparable basis to other state-funded schools. Groups running Free Schools cannot make a profit. They will be subject to the same Ofsted inspections as all state schools and will be expected to maintain the same rigorous standards.

The admissions arrangements of any Free School must be fair and transparent. Free Schools are expected to be open to pupils of all abilities from the area and cannot be academically selective. Free Schools will need to take part in their local coordinated admissions process, and so parents apply for places for their child in the same way as any other local school.

Free Schools are required to enter into a funding agreement with the Secretary of State. The funding agreement provides the framework within which the free school operates. A [model funding agreement](#) and annexes are available on the DFE free schools website.

The issue of free schools being non-profit making has been raised on several occasions. An answer to a PQ in the Lords on 9 February 2012 noted that while academy trusts must be established on a non-profit-making basis, any school, whether an academy, free school or local authority maintained school could outsource the management of, and teaching at, the school to a third party, which could involve a profit-making company. However, under such an arrangement, the academy trust or governing body of a maintained school would remain legally responsible for the running of the school and would manage the contract accordingly.<sup>11</sup>

Most recently, the Shadow Education Secretary expressed concern about comments the Education Secretary made in his evidence to the Leveson Inquiry to the effect that he had an open mind about free schools being run for profit in the future.<sup>12</sup> The National Union of Teachers (NUT) issued a press notice criticising the Education Secretary's comments.<sup>13</sup>

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<sup>11</sup> HL Deb 9 February 2012 cWA106

<sup>12</sup> [HStephen Twigg warns against 'quick buck' school profit, BBC News, 31 May 2012](#)

<sup>13</sup> ["HFree schools and profit", NUT press notice, 30 May 2012. H](#)

### 3 Who can set up a free school?

The DFE website, [Who can set up a Free School?](#) notes that a free school could be set up by any suitable proposer, where there is evidence of parental demand “such as a petition or declaration from interested parents and a clear and compelling business case.” Proposers could include one or more of the following groups: teachers, charities, academy sponsors, universities, independent schools, community and faith groups, parents, and businesses (on a not-for-profit basis).

Each application for a free school will be judged on its merits, as viewed by the Secretary of State, taking into account matters relevant to that proposal. The [Department for Education's free schools website](#) provides information on the application process and gives links to key documents on the free schools programme. The application guidance issued by the DFE sets out the information that is required and the specific criteria that must be met.

As noted above, independent schools can become free schools, provided they satisfy certain criteria. Existing local authority maintained schools cannot become free schools; however, they can convert to academy status under the *Academies Act 2010*.

The DFE's [Free Schools FAQs – types](#) website states<sup>14</sup>:

#### **Can an existing fee-paying independent school become a Free School?**

Yes.

However, it should be noted that Free Schools cannot charge fees. Details of additional requirements for independent schools can be found in the frequently asked questions on the Free School application process.

#### **Can an existing fee-paying independent school become a Free School?**

The [Free Schools FAQs – application process website](#) gives further details:

Yes. If an independent school becomes a Free School, however, it will not be able to charge fees. As well as the requirements outlined in the application guidance, independent schools must meet the following additional criteria:

- they must have no significant or outstanding issues on compliance in their most recent inspection report;
- they should have achieved a judgement of good or better in the key areas of their most recent inspection report (see the How to apply guide for details); and
- they must show a good track record of managing their accounts.

We will also take into account factors including examination performance; the popularity of the school; demand from parents who do not currently have children at the school, the level of deprivation in the area and whether the case for becoming a Free School offers good value for money.

Further information is included in the application guidance.

The New Schools Network may be able to provide information and advice about setting up a free school:

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<sup>14</sup> Extract taken on 8 August 2012

New Schools Network  
7 Heron Quays  
London  
E14 4JB  
United Kingdom  
Telephone: 0207 537 9208  
Website: <http://www.newschoolsnetwork.org/>

## **4 Free school applications**

### **4.1 The first wave of applications**

The deadline for the first wave of proposals closed on 11 February 2011. 323 free school applications were received by the DFE for schools opening in September 2011 or beyond. The [DFE website](#) noted the outcome as at 1 August 2011.

Of the 323 proposals received, 41 were approved to move to business case and plan stage or beyond, although one proposal was subsequently withdrawn by the proposer, and 8 proposer groups were invited to apply through the new application process. We will assess their applications alongside the new applications we receive. The results for all applications submitted or re-submitted in this period will be announced in September.

30 of the remaining 32 proposals, including a number that aim to open in September 2012 or beyond, have now been approved to move to the pre-opening stage.

The groups behind 13 of these proposals have entered into a funding agreement with the Secretary of State. Further applications which have moved to pre-opening stage or have signed a funding agreement will be listed in due course.

A written answer to a PQ on 7 June 2011 listed the 32 free schools and their locations.<sup>15</sup>

### **4.2 The second wave of application**

The second application round was launched on 17 March 2011 and closed on 15 June 2011. On 20 June 2011, the Secretary of State announced that in this round there were 281 applications to open free schools in 2012.<sup>16</sup>

Further details including a breakdown of the applications were given in the [DFE press notice](#) on the announcement.

The NUT drew attention to the number of applications that were not accepted<sup>17</sup>, and the Association of Teachers and Lecturers (ATL) expressed concern about the use of resources on free schools rather than concentrating support on existing state schools that educate the overwhelming majority of pupils.<sup>18</sup>

### **4.3 Rejected applications**

The DFE does not publish details of unsuccessful free school applications. An answer to a parliamentary question on 18 October 2011 noted that for the round of free schools that opened in September 2011 approximately 90% of the applications were rejected, and in the

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<sup>15</sup> HL Deb 7 June 2011 ccWA122-123

<sup>16</sup> Michael Gove announces 2012 Free School applications, DFE press release, 20 June 2011.

<sup>17</sup> [HFree Schools Applications, NUT press release, 20 June 2011](#)

<sup>18</sup> [HATL comment on the 2012 Free School applications round, ATL press release, 20 June 2011](#)

round of applications for free schools opening in 2012, approximately 75% of applications were rejected:

**Ian Mearns:** To ask the Secretary of State for Education what proportion of applications to set up a free school have been rejected; and for what reasons in each case. [72272]

**Mr Gibb:** During the application round for Free Schools opening in 2011 approximately 90% of the 323 applications were rejected. In the application round for Free Schools opening in 2012, the outcome of which was announced on 10 October 2011, Official Report, columns 62-64, by the Secretary of State for Education, my right hon. Friend the Member for Surrey Heath (Michael Gove), approximately 75% of the 281 applications are not being taken forward. The Department does not publish details of unsuccessful applications.<sup>19</sup>

#### **4.4 Applications to open free schools in 2013**

The period for applications to open a free school in 2013 has now closed. On 13 July 2012, the Government announced details of the outcome of that application round (see section 7 below).

DFE guidance set out the application guidelines and criteria. Different guidance was issued in relation to applications for different types of proposed free schools. (For the relevant documents scroll to the bottom of the website: [How to apply to open a Free School](#)).

The guidance, *Free Schools in 2013 - How to apply: Mainstream and 16 to 19 Free Schools*, for example, set out the aims of the free schools programme; outlined the timetable for the preparation, submission and assessment of applications; gave details of the information applicants had to provide; and, set out the criteria against which applications would be assessed. The guidance made clear that in assessing an application, the Secretary of State would take into account a wide set of contextual factors (see section 4 of the guidance). Amongst other things, applicants were required to set out their educational vision and provide an educational plan for the proposed structure of the school, including information on admissions, curriculum and learning, the organisation of pupils and matters relating to their development and performance, including behaviour and attendance, and how the school would engage with the local community. The applicants also had to provide evidence of demand; demonstrate that the group/team would have the capacity to set up and run the proposed school; provide information on possible site options; and, demonstrate the cost of establishing the school and its financial viability.

#### **4.5 Applications to open free schools in 2014**

The application process to open free schools in 2014 and beyond will open on 17 December 2012 and close on Friday 4 January 2013. Details are given on the DFE website, [How to apply to open a Free School](#) (dated 13 August 2012). The application guidance for the different types of free school is given in on the website.

### **5 Free schools that opened in September 2011**

On 30 August 2011 the Education Secretary announced that 24 free schools would open in September 2011. The [DFE press notice](#) on the announcement said that of the 24 schools, 17 are primary schools, five are secondary schools and two are all-age schools, and it went on to note that

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<sup>19</sup> HC Deb 18 October 2011 c919W

The schools are spread throughout the country, but are primarily concentrated in areas of deprivation (half of the 24 schools are located in the most deprived 30 per cent of communities in the country).<sup>20</sup>

A list of the schools was given in the 'notes to editors' at the end of [DFE press notice](#). An answer to a PQ in the Lords listed the schools by type of proposer.<sup>21</sup>

## 6 Free Schools opening in 2012 and beyond

On 10 October 2011 the Education Secretary made a statement on the successful applications to open free schools in 2012 and beyond that had been approved to pre-opening stage.<sup>22</sup> The DFE press notice on the statement summarised the position as follows.

Of the Free Schools aiming to open from 2012 onwards, 21 are primary schools, 33 are secondary schools, eight are all-through schools and one is a 16-19 school. More than two thirds have proposed sites which are situated in the 50 per cent most deprived areas of the country. Others will meet additional need for schools places, meaning that more than 90 per cent of successful applicants have proposed school.<sup>23</sup>

In a Written Ministerial Statement on 14 November 2011, the Education Secretary confirmed details of three special and five alternative provision free schools that had been approved with a view to opening in September 2012.<sup>24</sup> A list of the approved free schools opening in 2012 and beyond was posted on the [DFE website](#) (updated on 13 July 2012).

## 7 Free Schools opening in 2013 and beyond

On 13 July 2012, the Prime Minister and the Education Secretary announced that a further 102 free schools had been approved to open in 2013 and beyond.<sup>25</sup> A spreadsheet containing a list of the approved free schools and a map which shows the approximate areas where they will be based are available on the DFE website [Free Schools opening in 2013 and beyond](#) (dated 3 August 2012). The [DFE Press Notice](#) on the announcement provided the following information in its 'notes to editors' section.

Of the 102 Free Schools approved to open from 2013 onwards:

85 are mainstream schools. Of these there are:

40 primary

28 secondary

10 all through

One 14 – 19 school

Five 16 – 19 schools

One 5 – 7 school

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<sup>20</sup> [H24 Free Schools to open across England this year](#)H, DFE press notice 30 August 2011

<sup>21</sup> HL Deb 15 February 2012 cWA169

<sup>22</sup> HC Deb 10 October 2011 c62

<sup>23</sup> [H79 new schools now approved to open from 2012 onwards, DFE Press Notice, 10 October 2011](#)

<sup>24</sup> [HWritten Ministerial Statement, HC Deb 14 November 2011, c29WS](#)

<sup>25</sup> [HPrime Minister: More new Free Schools than ever before to raise standards and increase choice, DFE Press Notice, 13 July 2012](#)

In addition there are five special Free Schools and 12 Alternative Provision Free Schools.

### **Types of schools and proposers**

59 are being set up by teachers, existing schools, and educational organisations (including five independent schools which will join the state sector).

43 are being set up by parent, community, charity and local groups.

Of the 102 schools approved, 33 characterise themselves as faith schools. Of the 33, 20 will be designated faith schools, and will be able to select some pupils on the basis of faith.

### **The regional breakdown of all 102 Free Schools is as follows**

East Midlands – 4

East of England – 10

London – 34

North East – 3

North West – 12

South East – 16

South West – 9

West Midlands – 7

Yorkshire and Humber – 7

## **8 Free school buildings**

Finding a suitable site is one of the most common obstacles faced by free school applicants. The Education Funding Agency can provide advice and guidance on finding a site. Further information is provided on the DFE website, [How to find a Free School site](#) (updated 1 August 2012).

### **8.1 New planning measures to support the creation of free schools**

On 15 August 2011, the Communities Secretary, Eric Pickles announced new planning measures to encourage the creation of free schools and the expansion of state schools. The measures outlined included a presumption in favour of the development of state-funded schools including free schools, as expressed in the National Planning Policy Framework. The changes, which took immediate effect, are summarised below.

The Government believes that the planning system should operate in a positive manner when dealing with proposals for the creation, expansion and alteration of state-funded schools, and that the following principles should apply with immediate effect:

There should be a presumption in favour of the development of state-funded schools, as expressed in the National Planning Policy Framework.

Local authorities should give full and thorough consideration to the importance of enabling the development of state-funded schools in their planning decisions. The Secretary of State will attach significant weight to the need to establish and develop

state-funded schools when determining applications and appeals that come before him for decision.

Local authorities should make full use of their planning powers to support state-funded schools applications. This should include engaging in pre-application discussions with promoters to foster a collaborative approach to applications and, where necessary, the use of planning obligations to help to mitigate adverse impacts and help deliver development that has a positive impact on the community.

Local authorities should only impose conditions that clearly and demonstrably meet the tests set out in Circular 11/95. Planning conditions should only be those absolutely necessary to making the development acceptable in planning terms.

Local authorities should ensure that the process for submitting and determining state-funded schools' applications is as streamlined as possible, and in particular be proportionate in the information sought from applicants. For instance, in the case of free schools, authorities may choose to use the information already contained in the free school provider's application to the Department for Education to help limit additional information requirements.

A refusal of any application for a state-funded school, or the imposition of conditions, will have to be clearly justified by the local planning authority. Given the strong policy support for improving state education, the Secretary of State will be minded to consider such a refusal or imposition of conditions to be unreasonable conduct, unless it is supported by clear and cogent evidence.

Appeals against any refusals of planning permission for state-funded schools should be treated as a priority. Where permission is refused and an appeal made, the Secretary of State will prioritise the resolution of such appeals as a matter of urgency in line with the priority the Government places on state education.

Where a local planning authority refuses planning permission for a state-funded school, the Secretary of State will consider carefully whether to recover for his own determination appeals against the refusal of planning permission.

This statement applies to both change of use development and operational development necessary to the operational needs of the school.<sup>26</sup>

## **8.2 Free school building works**

An answer to a PQ in the Lords noted the requirements on free schools relating to school buildings:

**The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford):**

The Education Funding Agency (EFA) supports free-school trusts with the procurement and delivery of free school building works, including ensuring compliance with all relevant building regulations. Monitoring of compliance with building regulations is also a general duty that the relevant local authority would enforce.

All free schools are bound by both the statutory Independent School Standards and the Equality Act 2010. Before a free school can open, it is required to have an Ofsted pre-registration inspection; this looks at whether or not the free school is likely to meet the independent school standards once open. In looking at how the needs of pupils are

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<sup>26</sup> Policy statement – planning for schools development, [HDepartment for Communities and Local Government, August 2011](#)

going to be met, Ofsted may also ask to see the accessibility plan which all schools are required to produce under the Equality Act.<sup>27</sup>

## 9 The impact of free schools on neighbouring schools

The *Academies Act 2010* requires the Secretary of State to take account of what the impact of establishing an 'additional school' (i.e. a free school) would be likely to have on maintained schools, academies, and institutions within the further education sector in the area in which the additional school is to be situated.<sup>28</sup>

In April 2012, the NUT published a briefing paper, *Free Schools : A Cause For Concern – The Impact Of Free Schools On Neighbouring Schools*. This argued that there was 'ample evidence' to show that many of the existing 24 free schools or those that are due to open later this year will have a negative impact on existing good or outstanding local schools. It provided examples, and said that there was a 'lack of transparency regarding the extent to which the impact on existing schools in the area of a free school is being weighed by the Secretary of State.' It said that the views of local authorities were being ignored where they raise concerns about the negative impact of a new school. In particular, the NUT referred to evidence of the negative impact of new free schools in areas where there is already a surplus of school places or sufficient places to meet local need. The briefing paper said that the NUT's request for details of impact assessments made by the Education secretary had been turned down by the DFE on the grounds of exemptions under section 36 of the *Freedom of Information Act*.<sup>29</sup> An article in the *Guardian*, 9 April 2012, said that the NUT was considering a legal challenge.<sup>30</sup>

## 10 Appendix: Some frequently asked questions

The purpose of this section is to give information on free schools derived from Government sources; it is not intended to review any related controversies.

### 10.1 What is the admissions policy for free schools?

In a written answer to a PQ in March 2011 the Schools Minister stated:

**Nick Gibb:** Like academies, free schools will be expected to have inclusive admission arrangements. Groups proposing to set up free schools set out their proposed admissions arrangements in their business case and plan. The Secretary of State considers this information when taking a final decision on whether to enter into a funding agreement with the free school academy trust. Where a free school academy trust has determined the admission arrangements for the free school, any persons or bodies who have been consulted on the arrangements can object by making representations to the Secretary of State. No recent representations have been received on admissions policies for free schools.<sup>31</sup>

The DFE FAQs page, [Free Schools admissions](#), covers the main issues.

Like Academies, Free Schools will be expected to have inclusive admission arrangements.

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<sup>27</sup> HHL Deb 30 April 2012 cWA426

<sup>28</sup> H*Academies Act 2010*H, section 9

<sup>29</sup> H*Free Schools : A Cause For Concern – The Impact Of Free Schools On Neighbouring Schools*H, NUT, April 2012

<sup>30</sup> H"Teachers' union considers legal challenge over free school assessments", *Guardian*, 9 April 2012

<sup>31</sup> HC Deb 30 March 2011 c419W

### **What special requirements apply to faith Free Schools?**

The published oversubscription criteria must allow for 50 per cent of places to be allocated to children without reference to faith if the school is oversubscribed. This is to ensure that such schools not only add additional faith places but also add places for the broader local community. If a school is undersubscribed every child who has applied must be admitted, whether a faith or non faith applicant: it is not acceptable to keep places empty simply in order to balance the intake.

### **Will the children of the Free School applicants be guaranteed a place at the Free School?**

We are considering if we might be able to facilitate enabling the children of Free School applicants to attend, whilst still maintaining a set of fair admission arrangements.

### **Will Free Schools be permitted to prioritise applications from feeder schools/nurseries?**

Nurseries can be given priority but places must be applied for and cannot be guaranteed. Secondary Free Schools can also adopt feeder primary schools. These must be adopted on a fair basis.

### **What are the rules for post-16 admissions in mainstream Free Schools?**

Some academic selection, based on GCSE grades or other measures of attainment, can be applied to post-16 admissions as is already the case for sixth forms in existing maintained schools and Academies.

### **What are the rules on admissions to 16-19 Free Schools?**

Stand alone 16-19 Free Schools do not have to abide by the School Admissions Code and are able to select pupils, based on GCSE grades or other criteria. They will also be permitted to interview prospective students. We would expect any 16-19 Free School applicant to set out their proposed admissions arrangements as part of their application.

### **How will parents apply to Free Schools? Will Free Schools be part of local coordinated admission arrangements?**

Free Schools will be required to participate in coordinated admissions processes in their area. Parents will submit applications to the local authority and the local authority will offer places (once the Free School has informed the local authority who has priority for admission). This means Free Schools must abide by the deadlines within the local coordinated scheme for admissions.

However, it is recognised that not all Free Schools applications will move to the pre-opening stage to a timetable that will enable them to be included in co-ordination for their initial admissions round. Consequently, as a transitional measure, ministers have agreed that, in the first year they open only, Free Schools may be outside the coordinated process if it is necessary.

Local authorities are required to coordinate admissions for Free Schools and Academies as soon as they are established (by the signing and sealing of the funding agreement).

**Can selective Free Schools be set up or can independent schools moving into the state sector as a Free School continue selective admissions based on ability?**

No. Neither new Free Schools nor independent schools that enter the state system as Free Schools will be able to have academically selective admissions arrangements, apart from for their post-16 provision (see below).

Free Schools will be required to follow fair, transparent and inclusive admissions policies.

Any new selection by ability is ruled out by the combined effects of section 1(6)(c) and sections 6(3) and 6(4) of the *Academies Act 2010*. Taken together these provisions state that except for those schools that were previously designated as maintained grammar schools or where they were partially selective maintained schools, all academies must provide for children of different abilities (i.e. be 'comprehensive'). This means that selective independent schools wishing to become free schools will not be able to select by ability as free schools.

Based on information provided by the free schools that opened in September 2011, 19 of the 24 schools were oversubscribed for their places in 2011.<sup>32</sup>

**10.2 How is revenue funding calculated for free schools?**

The DFE website, [Advice on Free School revenue funding 2012/13](#) (updated 13 August 2012), states:

**Principle of funding**

The core principle is that Free Schools are funded on the basis of equivalence with the funding of maintained schools and Academies in the same local authority area.

**How is annual Free School revenue funding calculated?**

The annual revenue funding for Free Schools will be based on the average funding received by maintained schools and academies in the same local authority, using a simple and transparent formula. The key elements of funding are:

a basic local funding unit for each pupil attending the school

an additional local funding unit for each pupil attending the school who qualifies for free school meals

the national pupil premium for each pupil attending the school who qualifies for free school meals

a grant which compensates for the services that maintained schools receive free of charge from their local authority (known as local authority central spend equivalent grant or LACSEG)

funding for sixth-form pupils, for Free Schools providing post-16 education

a fixed sum of £95,000 for each primary or all-through school

a grant to cover the cost of insurance

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<sup>32</sup> HC Deb 17 October 2011 c575W

additional funding, from the local authority, for pupils with statements of special educational needs

The website provides a revised [ready reckoner tool](#) for 2012/13 to allow open mainstream free Schools, and those preparing to open in September 2012, to work out an indicative funding allocation.

The revenue funding allocated to each of the 24 open free schools for the academic year 2011/12 was given in a table in an answer to a PQ on 20 December 2011 (N.B. the table excludes site and start-up costs).<sup>33</sup>

### **10.3 What curriculum requirements apply to free schools?**

The DFE's [Free Schools FAQs – curriculum](#) website makes it clear that free schools do not have to follow the national curriculum:

#### **Do Free Schools have to follow the national curriculum?**

No.

One of the freedoms Academies and Free Schools enjoy is over what curriculum they deliver, providing it is a balanced and broadly based curriculum.

The new model funding agreement requires Academies and Free Schools to teach English, mathematics and science and to make provision for the teaching of religious education.

There is a FAQ in relation to religious education in free schools:

#### **What obligations will Free Schools be subject to regarding religious education and collective worship?**

Free Schools must teach religious education, and provide for a daily act of collective worship.

The type of religious education, and the nature of collective worship, is determined by its funding agreement and depend on its religious designation.

Requirements broadly reflect the provisions that apply to local authorities and schools in the maintained sector.

Free Schools with a religious designation must provide religious education, and a daily act of collective worship in accordance with the tenets of their faith.

Collective worship in a Free School without a religious designation should be of a broadly Christian nature.

### ***Teaching about creationism in free schools***

The website also has a FAQ on the issue of free schools and teaching about creationism.

#### **Are Free Schools permitted to teach creationism/intelligent design and obliged to teach evolution?**

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<sup>33</sup> HC Deb 20 December 2011 cc1217-1218W

We would expect to see evolution and its foundation topics fully included in any science curriculum.

We do not expect creationism, intelligent design and similar ideas to be taught as valid scientific theories in any state funded school.

In a written parliamentary answer on 22 March 2012, the Schools Minister, Nick Gibb, stated:

**Dr Huppert:** To ask the Secretary of State for Education what his policy is on (a) ensuring that free schools are not permitted to teach creationism outside the religious education curriculum and (b) requiring evolution to be taught as a science in such schools. [39598]

**Mr Gibb** [holding answer 10 February 2011]: Academies and free schools will benefit from having freedom over the curriculum they deliver. However, we have been clear that creationism should not form part of any science curriculum or be taught as a scientific alternative to accepted scientific theories. We expect to see evolution and its foundation topics fully included in any science curriculum. Under the Government's planned reforms to school inspection, there will be stronger focus on teaching. Teachers will be expected to demonstrate that their subject knowledge is secure. If creationism is being taught as a scientific fact in science or any other areas of the curriculum outside denominational RE and collective worship, this would be noted in the Ofsted report.<sup>34</sup>

In a letter published in the *Times Educational Supplement* (17 August 2012), Nick Gibb, the Schools Minister, clarified that free schools should not teach creationism as scientific fact in any lesson, including religious studies:

#### **Creationism causes a stir**

No free school can teach creationism as scientific fact in any lesson, including religious studies - and despite what James Williams says ("If you don't Adam and Eve it, say so", 10 August), there is no way around this. Free schools must demonstrate that they have a broad and balanced curriculum in order to be approved. The funding agreements for all free schools state that divine creationism must not be taught as a scientific theory. If a free school is found to be breaking the rules, it will be in breach of contract and subject to action, which can include stopping it from operating.

Nick Gibb, Schools minister.

#### **10.4 What qualifications are required for teachers in free schools?**

Free Schools do not have to employ teachers with Qualified Teacher Status (although certain specialist posts will still require QTS). This is explained on the DFE's [Free Schools FAQs - workforce](#) website.

##### **Does this mean that Free Schools can employ unqualified staff?**

Free Schools do not have to employ teachers with Qualified Teacher Status (although certain specialist posts will still require QTS). Instead, Free Schools have the freedom to appoint the people they believe are best equipped to deliver their unique educational vision, for example an experienced instructor or lecturer from a further education institution. Ensuring the highest quality of teaching is paramount to the success of each school.

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<sup>34</sup> [HHC Deb 22 March 2011 c1043W](#)

### **Which specialist posts require Qualified Teacher Status?**

Free Schools will be required to employ teachers with QTS for those who fulfil the role of the school's special educational needs coordinator and those who are the school's designated lead for Looked After Children. Both roles can be filled by the same person.

The website also notes that free school principals do not have to hold the National Professional Qualification for Headship:

### **Are Free School principals required to hold the National Professional Qualification for Headship?**

NPQH is only a mandatory requirement for those taking up a first time headteacher post in the maintained sector. It does not apply to Academies and therefore will not apply to Free Schools.

### **10.5 What happens if a free school becomes financially unviable?**

In a written answer to a question in the House of Lords, the Parliamentary Under-Secretary of State for Schools said:

#### **The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford):**

All academy and free school proposals are assessed to determine their viability before the Secretary of State decides whether to enter into a funding agreement. That agreement sets out the respective roles and responsibilities for all parties, including the Secretary of State. It allows for the agreement to be terminated in the event of insolvency and for the orderly transfer of business to a new provider. Should such circumstances arise, the primary concern of the Secretary of State would be to protect the interests of pupils and ensure continuity of education.

In practice the YPLA, on behalf of the Secretary of State, would work with any academy which was at risk of financial failure to ensure it had a remedial action plan in place well in advance of its financial situation becoming critical.<sup>35</sup>

(N.B. The YPLA was wound-up on 1 April 2012 and has been replaced by the new [Education Funding Agency](#).)

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<sup>35</sup> HL Deb 27 June 2011 ccWA378-9