
HOW TO OPPOSE NEW 100% SELECTIVE FAITH SCHOOLS IN YOUR AREA: A GUIDE FOR LOCAL ACTIVISTS

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In May 2018, the UK Government decided to maintain the 50% cap on religious selection in free schools, despite (disingenuous) claims by the Catholic Education Service (CES), among others, that the 50% cap effectively precluded them from opening new schools. However, to appease opponents of the 50% cap, the Government simultaneously announced that it would provide funding for the establishment of some new voluntary aided (VA) faith schools which, unlike free schools, would not be subject to a cap on faith-based admissions.

In November 2018, the DfE published guidance and criteria for those hoping to open new VA schools. The guide below sets out how the legal process of establishing these schools is supposed to work, as well as how you can help to oppose these proposals at a local level.

FREE SCHOOL PRESUMPTION

To understand how the process of establishing a VA school works, it is important to know a little more about the law relating to free schools and academies. Section 6A of the Education and Inspections Act 2006 (as amended by the Education Act 2011) is what's known as the 'free school presumption'. Very simply, it states:

(1) 'If a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy.'

In effect, therefore, where the need for a new school is identified by a local authority, that school ought to be a free school (which is what brand new academies are called).

It is the 'free school presumption', as well as the lack of central government funding for new VA schools, that have acted as the main barriers to new VA school proposals since 2011. However, while the presumption remains in place, most of the proposed new VA schools will open under a different section entirely.

OPENING NEW SCHOOLS UNDER SECTION 11 OF THE EDUCATION AND INSPECTIONS ACT 2006

As the Department for Education makes clear in its statutory guidance for proposers and decision makers:

It is possible to publish proposals for a new maintained school outside of the competitive arrangements at any time.¹

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756328/Opening_and_Closing_maintained_schools_Guidance.pdf

Up until now, however, there has been no funding available for such proposals, and this has meant that since the implementation of the 'free school presumption' there have been very few new VA schools. The new capital funding scheme changes this situation meaning that most of the new VA schools will be proposed and approved under section 11 of the Education and Inspections Act 2006. It states:

(1A) Where any persons ("proposers") propose to establish a new voluntary aided school in England, they may publish their proposals under this section.

Section 11 proposals may be permitted without the Secretary of State's consent (although see below for the process by which funding can now be accessed, which does require Secretary of State consent). Under this section VA schools will instead require the consent of the Local Authority (LA). The DfE also expects that bidders already own the proposed site for the school or have been offered the use of a site 'on a free of charge basis (for example, local authority or government owned)'. This means that both the requirements and views of local people will be pivotal in opposing the establishment of such schools.

BASIC NEED AND PARENTAL DEMAND

The criteria for VA proposals² funded by the capital scheme stipulates that the DfE is looking for bids which demonstrate **both** a 'basic need³ for a high proportion of the school places that the voluntary aided school will create' and 'parental demand for the **type** of school proposed' (emphasis added)⁴. Bidders will not only have to provide evidence that the school is desired by a sufficient number of parents, but that it will deliver a 'type of provision which is not currently available locally'. In addition, proposers must be able to demonstrate that they have 'engaged successfully with a cross-section of the community' and religious schools must 'explain how the school will attract applications from children from all parts of the local community'. Nevertheless, such families will only be in with a chance for a place 'in the event that there is insufficient demand from children of that faith'⁵ and, in its Equality Impact Assessment of the policy the Government freely admits that:

Where new VA schools established using this scheme are faith schools the fund will, in practice, benefit pupils of those faiths, and their parents, by making it easier for them to gain places at state-funded schools that are designated as

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756311/Voluntary_aided_school_establishment_-_Guidance_and_criteria.pdf

³ In the 'technical sense' stipulated in R v Richmond upon Thames (2012) where 'need' was judged to mean a current and quantifiable requirement for additional school places

(<https://humanism.org.uk/2012/12/14/full-judgement-published-in-richmond-catholic-schools-judicial-review/>).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756328/Opening_and_Closing_maintained_schools_Guidance.pdf, p.20

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756311/Voluntary_aided_school_establishment_-_Guidance_and_criteria.pdf, p.24

having the same religious character as their own faith. That benefit would not be experienced by children or parents of other faiths or non-religious convictions.⁶

Because of the lack of government funding for proposals outside of the scheme, new VA schools will therefore generally be proposed for areas with 'a projected shortfall of school places in the short to medium term.' The DfE has published a map⁷ of these areas on the capital funding scheme website and we suggest that those living in these places lobby their local MPs and councillors to suggest they must hold a section 6A competition for an inclusive school instead of risk (a) breaking the law with respect to section 6A, and (b) the possibility that a VA school is later proposed to meet this need. It is worth pointing out that VA schools can always (and frequently do) convert to academies after opening, whilst not being constrained by the cap.

PROPOSING AND ESTABLISHING A NEW VOLUNTARY AIDED SCHOOL

Broadly speaking, the process for proposing and consulting on a new VA school is as follows:

1. A 'pre-statutory consultation' by the proposer (typically six weeks long). This may happen before or after the official application deadline
2. DfE announces which bids have been approved in principle (spring 2019 in first cycle of applications)
3. Formal publication of proposals, followed by a four week 'representation' period (consultation). Site feasibility study also begins at this time.
4. Decision on the proposal by the local authority (within two months otherwise the proposal must be referred to Schools Adjudicator for decision)
5. Where permitted, appeals can be made within four weeks of the notification of the decision
6. Site feasibility study concludes whether site represents good value for money and determines 10% capital contribution from DfE
7. If the statutory decision maker (LA or Schools Adjudicator) agrees to the proposal and the feasibility study is approved, the project will progress and the amount of funding will be agreed⁸

In theory, therefore, there is plenty of opportunity for local residents to voice their opposition to new faith school proposals. These consultations are advisory rather than binding, but the decision maker (which in the case of the statutory consultation for VA schools is the local authority) must conscientiously take into account the response. If that response points overwhelmingly in one direction, and the council decides to take the other, it must identify good reasons for doing so.

Details of consultations for new VA schools will typically be posted on the relevant section of the council's website, and should also be advertised in the local area. Since the pre-consultation period may begin before the application is submitted, it will be important to keep your eyes peeled for any new proposals in your area.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765515/Equality_impact_assessment_-_VA_capital_scheme.pdf p.11

⁷ <https://www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme>

⁸ <https://www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme> p.5

ADVICE FOR LOCAL CAMPAIGNING

Local campaigning in favour of inclusive secular schools should begin as soon as a proposal for a new VA faith schools is announced. This campaigning can take a variety of forms

- **Write to your MP**
- **Contact your local councillors**
 - If you input your post code into [WriteToThem](#) then this will identify who they are and similarly allow you to contact them through the website.
- **Get letters/articles printed in your local newspaper**
 - You should be able to find details on where to send letters on their website and in the paper itself (along with any guidelines about length etc.). If your local school proposal has received coverage in a national newspaper, then try getting a letter printed there too.
- **Use social media**
- **Start a local authority petition**
 - This is a great way of drumming-up and quantifying local support for your campaign. Online petitions, shared on social media, tend to attract the most signatures nowadays.
- **Hold a demonstration**
 - Even with the array of online campaigning options above, a good old-fashioned demonstration can still have impact and may well attract media coverage too. If you can get enough people together (too few and it may damage the campaign), a demonstration outside a council building or in a town square is worth considering.

For more details, information, or advice, contact Humanists UK:

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