EXPLANATORY MEMORANDUM TO

THE SCHOOL ORGANISATION (ESTABLISHMENT AND DISCONTINUANCE OF SCHOOLS) (AMENDMENT) REGULATIONS 2026

2026 No. 528

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Georgia Gould MP, Minister for School Standards at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Matt Collins, Deputy Director for Admissions, School Organisation and Transport at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Peter Davey at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: schoolorganisation.notifications@education.gov.uk Alternatively, the department can be contacted by telephone: 0370 000 2288.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations amend the School Organisation (Establishment and Discontinuance) Regulations 2013 ('the 2013 Regulations'), which set out the details of the process by which schools can be opened or closed. The purpose of these amendments is to ensure that the details of the stages that must be followed when opening schools are compatible with the revised process set out in Part 2 of and Schedule 2 to the Education and Inspections Act 2006, as amended by the Children's Wellbeing and Schools Act 2026.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Amendments to Part 2 of and Schedule 2 to the Education and Inspections Act 2006 made by the Children's Wellbeing and Schools Act 2026 mean that when a local

authority thinks that a new school should be established, they are no longer required to seek proposals for the establishment of an academy. Instead, they must publish an invitation notice, inviting proposals for different types of new school (including academies), and may add their own proposals if they so wish. The local authority will normally be the decision-maker on proposals, unless the local authority has added their own proposals, in which case the decision on the proposals will be referred to the Secretary of State.

5.2 The regulations covered by this explanatory memorandum are essential so that the 2013 Regulations can be amended to describe the updated process for opening new schools. They include the details of what the local authority's invitation notice must contain, how it must be published and the process that must be followed when proposals are submitted, published for comment and ultimately decided upon.

5.3 These regulations also amend the details of how proposals for new schools can be published in specific circumstances outside of the invitation process (e.g. when a maintained school replaces another maintained school) and the details of how maintained schools may be closed. The principal purpose of these amendments is to require that proposals need only be published on a website, rather than in a newspaper as well, and to require proposers to notify the local authority of the location of this website so that the local authority can, in turn, publish that website address.

5.4 The specifics of the process set out in these regulations are based upon existing processes, which are well understood by local authorities and proposers of new schools such as academy trusts and religious organisations. Officials have engaged with these stakeholders to discuss how the processes described in regulations can be updated in light of the measures in the Children's Wellbeing and Schools Act 2026, to ensure that policy choices have been informed by stakeholders' real-world experience of opening schools (see section 7 of this explanatory memorandum).

What was the previous policy, how is this different?

5.5 The 2013 Regulations established the process for opening new schools prior to the changes in the Children's Wellbeing and Schools Bill 2026. As a result, they did not provide for situations in which a local authority submits proposals in response to its own invitation, nor for such proposals to be referred to the Secretary of State. The regulations will now describe how this can be done.

5.6 The 2013 Regulations set a minimum timeline of four weeks for the submission of proposals for new schools, which stakeholders indicated was too short and has been lengthened to six weeks. The 2013 Regulations did not set out, in detail, the information that a local authority's specification for a new school must contain when they are seeking proposals for a new school, and this has now been set out in a new schedule, to support proposers in developing proposals that include all the information that will be needed for an informed decision.

5.7 The detailed requirements for proposals made in special circumstances (outside of the main process by which the local authority invites proposals) have been streamlined, with explanations of requirements moved to guidance which will accompany the regulations. The conditions that may be placed upon approval of proposals have also been moved to guidance, to increase flexibility for decision-makers.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the School Organisation (Establishment and Discontinuance) Regulations 2013 to ensure it describes the process for opening new schools set out in Part 2 of and Schedule 2 to the Education and Inspections Act 2006, which has been amended by the Children's Wellbeing and Schools Act 2026.

6.2 As well as introducing the provisions above, this instrument corrects two minor errors in the 2013 Regulations. The first change corrects an error in regulation 17(2), which previously referred to regulation 15 instead of regulation 14 when requiring local authorities, in certain cases, to refer proposals to the Schools Adjudicator if they have taken more than two months to determine them.

6.3 The second correction is to paragraph 5 of Schedule 3 to the 2013 Regulations. That paragraph had modified Schedule 2 to the Education and Inspections Act 2006 in order to apply the requirement to refer revocation proposals to the Schools Adjudicator at the request of relevant persons, but in doing so had removed the definition of a 'relevant person'. This has been corrected to retain the definition.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Informal consultation was carried out with relevant stakeholder bodies who hold an interest in the process for opening new schools, including organisations covering local authorities, academy trusts and religious organisations. Meetings were held with these groups before the regulations were drafted, to ensure that changes were made that were deliverable and that we also took the opportunity to improve upon existing processes.

7.2 The most consistent comments focused on the importance of a fair and transparent process. Stakeholders noted that the regulations require any local authority proposals for new schools to be published after the local authority receives proposals from other proposers, and suggested that this could give local authorities an advantage in the process. This was noted, and the timeframe given in the regulations to local authorities to publish proposals was minimised to ensure they would need to develop any proposals of their own alongside, rather than after, receiving proposals from other proposers.

7.3 Statutory guidance will set out a firm expectation that local authorities should not seek to gain an advantage by reviewing other proposals that they have received before producing any of their own. The guidance will also make clear that local authorities should send completed proposals to the Department for Education by the same deadline as other proposers have been given.

7.4 Other comments focused on the length of the window for proposals to be submitted, and for decisions to be made, both of which stakeholders considered to be too short in existing processes. The minimum window for proposals to be submitted has been lengthened as a result, and the regulations do not set a time limit on decision-making for proposals received in response to an invitation from the local authority.

7.5 A draft version of the regulations was subsequently shared with the same stakeholder bodies for comment. Very few concerns were raised, although questions were asked about the need to set out high-level admission arrangements in proposals for new schools, and about local authorities' ability to express a desire for a particular religious character in an invitation notice. Officials met with the relevant stakeholders to explain that the aim is to increase transparency, both in relation to proposals themselves and in relation to what local authorities are looking for in a new school. It was agreed that these concerns could be managed through guidance.

7.6 The Welsh Government did not have any comments on the regulations.

8. Applicable Guidance

8.1 Guidance[1] has been published to accompany these regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because these regulations do not impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business. As a consequence of the 'opening new schools' provisions in the Children's Wellbeing and Schools Act 2026, charities and voluntary bodies may choose to put forward proposals for new schools in response to an invitation from a local authority, where currently they are unable to. These regulations set out the process they must follow if they choose to do so, including the information they must include in proposals. This represents a minimal impact on charities and voluntary bodies, and only when they have chosen to put forward proposals for a new school.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector of the new process for opening schools, set out in the Children's Wellbeing and Schools Act 2026 and detailed in these regulations, is not expected to be significant. Although the process set out in the Children's Wellbeing and Schools Act 2026 introduces some new steps, such as the publication of received proposals and collation of responses during the four-week representation period, the additional administration involved in this work is expected to be modest.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The legislation will be kept under review through engagement with local authority, academy trust and other stakeholder groups to ensure that the process remains workable, and amendments made should this be found not to be the case.

10.2 The instrument does not include a statutory review clause.

[1] https://www.gov.uk/government/publications/opening-new-schools

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects two minor errors in the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, as well as introducing new provisions, as set out in paragraphs 6.2 and 6.3. The procedure for free issue has not been applied due to the minor nature of the errors that are being corrected, compared to the greater significance of the other amendments that are being made to the 2013 Regulations through this instrument that any interested parties to the defective instrument will also wish to be aware of. The Department for Education has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar.

11.2 This instrument has not been published more than a school term before the next academic year. This is because this instrument primarily relates to the opening of new schools, rather than the operation of existing schools. It will predominantly impact the work of local authorities and proposers of new schools, rather than directly affecting schools themselves, and the convention of giving schools a term's notice before amending legislation that will affect them is therefore not considered to be relevant.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").