

# **A Guide to Becoming an Academy**

## **Introduction**

In May 2010 the Secretary of State for Education, Michael Gove, announced new legislation (The Academies Act 2010) which allows the Secretary of State to approve applications from schools that wish to become Academies. This is being achieved through a simplified, streamlined process. There is a wealth of information and support available to help your school become an Academy. This guide outlines the process and points to further sources of information and advice.

The Academies Act 2010 enables more schools to benefit from Academy freedoms and flexibilities. This will help schools to innovate, raise standards and help students achieve more.

Academies are publicly funded independent schools, free from local authority control. Other freedoms include setting their own pay and conditions for staff, freedom from following the National Curriculum, and the ability to change the lengths of their terms and school days. We have also provided further freedoms for Academies through a revised Funding Agreement (the contract between the Secretary of State and the Academy Trust that is signed before a school becomes an Academy) in such areas as target setting and the delivery of 14-19 education.

The Academies Act opens up the Academies programme, allowing primary, secondary and special schools to apply to become Academies to help them innovate and raise standards.

If the school has a faith designation then this will be retained on conversion, as will any selective or single sex status.

In the first instance, Governing Bodies of schools that have been rated 'outstanding' by Ofsted in their most recent judgement could apply to become Academies. This has been extended to schools which have been assessed as 'good' with one or more outstanding feature in their most recent Ofsted inspection. In the case of foundation schools with a foundation, and voluntary schools, the Governing Body may only apply for Academy status with the agreement of any existing trust and those entitled to appoint any foundation governors.

Unlike existing Academies, no additional external sponsor will be required where an 'outstanding' school, or a 'good' school with (one or more) outstanding features, converts to Academy status.

A requirement for schools wanting to convert is that they will be expected to commit formally to support another school to help raise that school's performance.

## **Purpose**

The purpose of this document is to give an overview of the steps that schools need to follow to become an Academy.

This document is intended for the Governing Bodies of schools that are eligible to apply, and, in particular, for those governors or staff who may be given responsibility for the work associated with becoming an Academy. The Department for Education (DfE) will provide every school that registers an interest in converting with a named contact, who will work with the school to help them follow the process. This will include providing advice on: completing the necessary documentation; claiming Academy conversion expenses; and procuring other advice and services as necessary.

The guide refers, throughout the text, to a number of documents and forms which are available from the DfE Academies website at this address: [www.education.gov.uk/academies](http://www.education.gov.uk/academies)

Named DfE contacts will also advise schools at which stage of the process the various documents and forms should be used and what actions should be taken in respect of them.

### **Federations and Groups of Schools**

If an 'outstanding' or 'good' school with one or more outstanding features that wishes to convert is in a hard federation with another school (or number of schools), then that Governing Body may submit an application to convert covering all the member schools of that federation, even where some or all of the other schools are not outstanding in their own right.

Any school, regardless of their individual Ofsted ratings, can apply to join an existing Academy Trust. In addition, any group of schools can apply in partnership, as long as at least one of the member schools is 'outstanding' or 'good' with one or more outstanding features. Each application will be considered on its merits, and the Secretary of State will only approve those where he is satisfied there are appropriate accountability mechanisms in place to support the weaker schools to improve. Each school applying in partnership would need to submit a separate application and their Governing Body would need to pass a resolution to convert to become an Academy.

## **How to become an Academy: summary**

Schools rated 'outstanding', or 'good' with one or more outstanding features, by Ofsted in their last inspection that want to convert to become an Academy will need to follow this process:

- 1. Registration.** Complete an on-line registration form. The Department will contact you directly with further guidance and documentation. The person who contacts you will be your named support throughout the process. The Governing Body may wish to start the statutory consultation with interested parties about becoming an Academy (the consultation can start later but must be completed before the Funding Agreement can be signed).
- 2. Application to convert/eligibility checks.** Submit a short application to convert form, including the confirmation of the Governing Body resolution; the agreement of your Foundation and Trustees and those entitled to appoint foundation governors (if applicable); and confirmation of your 'outstanding', or 'good' with outstanding features, rating from Ofsted. You will also discuss with your named contact your in-principle agreement to support another school to help raise standards. The Secretary of State will confirm whether he is content for your school to proceed to the next stage and, if he is, he will make an Academy Order. The current employer of the school staff starts the formal TUPE process at this stage, prior to the funding agreement being signed.
- 3. Obtaining funding agreement.** The Department will support the Governing Body and headteacher to ensure that all legal documents are completed relating to governance, land, property and staff transfer and company registration. The Governing Body must complete the statutory consultation with interested parties about becoming an Academy before they and the Secretary of State sign the Funding Agreement. This stage of the process is completed when the Academy Trust and the Secretary of State sign the Funding Agreement for the Academy. The Funding Agreement will stipulate the date when the Academy will open and the local authority will cease to maintain the school from that date. The current employer of the school staff will continue (and ideally complete) the TUPE process.

**Pre-opening.** The Governing Body will need to finalise matters in preparation for the Academy opening. This will include setting up new contractual arrangements as required and completing registrations.

### **Length of time to convert to an Academy**

Schools can complete the conversion process at their chosen pace. We expect the four steps to take a minimum of three months, but it may take longer if there are complicated issues to resolve.

Currently schools can convert on the 1<sup>st</sup> day of the month. From April 2011 schools will need to convert at the beginning of a school term.

***It is not necessary to follow these steps in sequence. Depending on how quickly schools wish to convert, they may need to undertake some steps in parallel to ensure that the necessary work is complete before a school converts to an Academy.***

## The process in more detail

### 1. Registration

At this stage the Headteacher or Chair of Governors will complete and submit an on-line registration form and the school will be assigned a named contact within DfE who will support you through the process of conversion.

There are also some early steps which can be taken as described below.

#### **Named Department for Education contact**

1.1 Once you have completed and submitted the on-line registration form you will be contacted by your named contact at the Department for Education (DfE). This person will provide contact details, have an initial discussion with you on the next steps and will be the person who supports you throughout the conversion process, should the Governing Body decide to proceed with an application.

#### **Consulting interested parties about becoming an Academy**

1.2 Governing bodies of schools that wish to convert to become Academies are required by the Academies Act 2010 to carry out a consultation on the conversion process with appropriate stakeholders before entering into a Funding Agreement with Secretary of State (see Stage 3 of the conversion process). The Secretary of State will therefore need to ensure that such consultation has been carried out by the Governing Body of the school before he can sign a Funding Agreement.

The question for the consultation ought to be: should the school become an Academy?

1.3 It will be for the Governing Body of the school to determine who should be consulted, although schools should consider involving local bodies or groups who have strong links with the school. We would also expect schools with a religious designation to consult their Diocesan Board or relevant religious authority.

1.4 There is no specified length of time for the consultation but it is important that interested groups, individuals or organisations have a fair chance to respond and ask questions.

1.5 Your school can consult in different ways. Some examples are:

- Information on the school's website about the application for Academy status, and a link to the Department's website, together with a contact address for enquiries
- A letter to all parents explaining the proposals
- A meeting with parents, or other opportunities to discuss the proposal
- A newsletter for parents answering questions or concerns, and explaining the latest position on the proposal
- Ask for views to be sent to the school in writing
- Discuss with students at an assembly (or form group activity) what becoming an Academy means
- Ask students to complete a questionnaire

1.6 Schools that are also the employer of their staff will additionally need to engage in consultation with staff and their representatives through the formal TUPE process as in 'Early discussions with staff' below, and in 'Informing staff and TUPE' which is discussed under the application stage.

1.7 You can discuss any issues about the consultation with your named DfE contact if you wish to do so.

1.8 You may wish to contact your local authority to notify them of your registration of interest in becoming an Academy.

### **Early discussions with staff**

1.9 As part of the process of setting up an Academy, staff will have to transfer to the employment of the Academy Trust. Staff and their representatives are entitled under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") to be provided with certain information by their current employer in relation to the transfer of their employment by their employer. For VA and Foundation schools this will be the existing Governing Body, and for community schools or VC schools, this will be the local authority. There may also be a duty to consult staff or representatives if the employer plans to make any changes to working conditions before the transfer (any changes would have to be implemented in accordance with employment law) or if local agreements provide for this consultation.

1.10 Although formal TUPE consultations cannot start until the Governing Body has formally approved the proposal to convert to Academy status (to do otherwise would pre-empt the Governing Body's decision), you and the local authority could start to hold informal discussions with staff and unions as soon as the conversion to Academy status is mooted.

1.11 There is no set period in law for how long the TUPE consultations should take but, where the employer is proposing changes before the transfer, they have to commence early enough for there to be time to make a genuine attempt to agree these changes with staff, and before any decisions as to the changes have been made. Therefore you should aim to maximise the opportunities for staff and unions to discuss the proposals.

1.12 Further guidance on your TUPE obligations can be found at section 2.7 and via the following link: <http://www.berr.gov.uk/files/file20761.pdf> (see in particular pages 22 and 23).

### **Some early steps for your school to take**

1.13 In parallel, the school can also take the following steps:

- Convene a meeting of the Governing Body (it is necessary to give 7 days notice) to agree the application to convert and, if appropriate, discuss your proposal with your Foundation and Trustees (**see stage 2**).

1.14 The Governing Body can also:

- Ask the local authority, or other relevant land owner(s) to gather land ownership and land registration documentation and information
- Begin compiling lists of contracts, assets and other property, service level agreements and licenses held by (a) the Governing Body of the school and (b) the local authority, which will need to be transferred or renegotiated
- If the Governing Body of the school employs the staff at the school, then you should also start preparing to conduct the TUPE process with staff and their representatives.

1.15 At this stage you should also consider whether you would need to procure any advice to inform you on aspects of the conversion process, such as legal advice. If you do require such support it would be wise to make plans for how you will procure this so arrangements can be firmed up as soon as you submit your application to convert. Information on funding you can draw

on to contribute to the costs of specialist advice is provided below (see 'Academy Conversion Expenses', paragraphs 2.28 to 2.31). When procuring goods and services you (and the Academy Trust when established) are required to comply with procurement law (the Public Contract Regulations 2006).

## 2. Application to convert and eligibility checks

The purpose of this stage is for the Governing Body of the school to make a firm commitment to the school becoming an Academy by submitting an application to convert and for the DfE to work with the school on a number of areas. This will culminate in the application being submitted to the Secretary of State who will decide whether to approve the application and make an Academy Order.

The Secretary of State expects to approve most applications although there may be some exceptional circumstances which have a bearing on whether and/or when he is able to do so (see below).

### Application to convert and supporting evidence

2.1 The Governing Body will need to complete an 'Application to convert' form (available as a downloadable Excel document from [www.education.gov.uk/academies](http://www.education.gov.uk/academies)) and e-mail it to your named DfE contact (details given to you when you register your interest in becoming an Academy). The application to convert should be sent to the Department at least three months before your proposed opening date (and preferably sooner).

2.2 It is important that the Governing Body meets to consider and - if they agree - to pass a resolution to convert as early as possible in this process. Depending on how soon your school would like to open as an Academy you will need to consider when to hold this governors' meeting.

2.3 Additionally, if you are a Foundation or Voluntary school with a Foundation, the Governing Body will need to have obtained support from the school's Trustees and those entitled to appoint foundation governors, as their consent is needed before you can submit your application. Applications for conversion from schools with a religious character will need the approval of the local Diocese. The application to convert and many steps in the process cannot begin until this confirmation is received.

2.4 If you are a Voluntary school (or a Foundation school with a foundation pre-dating the Education and Inspection Act 2006), you may need the Trustees, and those entitled to appoint foundation governors if they have an interest in the land, to agree the continued use of any not wholly public land and premises for the Academy's purposes. It is important for all schools wishing to convert to Academy status that they take steps early in the process to identify who holds the interest in the school's land.

2.5 When submitting the application to convert, you should attach signed copies of the minutes of the governors' meeting at which the resolution in favour of Academy status was passed and, where relevant, copies of the supporting letters from the Foundation and the Trustees.

2.6 Where prior agreement has been reached with the Local Authority for an increase in year groups which would now take place after the conversion, the application needs to include a letter from the Local Authority confirming this and confirming that they are content for the funding calculation to be based on the new numbers and for appropriate re-couplement to take place.

2.7 As stated above the Governing Body of schools may choose, once it has submitted its application to convert, to start the consultation required by legislation if they have not already begun this.

## Informing staff and TUPE

2.8 We strongly recommend that the employer (the local authority in Voluntary Controlled and community schools, the Governing Body in Voluntary Aided and Foundation schools) starts informal discussions with staff as soon as the proposal to convert to Academy status is mooted.

2.9 In all cases there will be an obligation to provide written information about the transfer to employee representatives, and in some cases there will also be a duty to consult representatives and individual staff. Substantial compensation can be awarded if an employer fails to comply with these obligations, and so it is important that Governing Bodies take specialist advice to ensure that they do comply.

2.10 As soon as the Governing Body of the school (and Trustees and those entitled to appoint foundation governors if appropriate) has approved the proposal to convert to Academy status, the employer can start the formal TUPE information and consultation process. We recommend that the TUPE process starts as soon as possible to allow the maximum amount of time to consult with staff.

2.11 If the local authority employs the staff at your school, you should formally notify the local authority that you have applied so that the TUPE process can be commenced. Once the Secretary of State has approved your application, the Secretary of State will write formally to the local authority – however, this will happen a few weeks after your application is received, so you may wish to make direct contact the local authority. This will allow a reasonable period of time for meetings to take place.

2.12 The information which the current employer must give in writing to employee representatives (which will be union representatives where a trade union is recognised in respect of the relevant category of staff) is as follows:

- (a) The fact that the transfer is to take place, when and why;
- (b) The "legal, economic and social implications" of the transfer for the affected employees;
- (c) The "measures" which the employer envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
- (d) Any measures which the employer envisages the Academy Trust taking in connection with the transfer in respect of the transferring employees or, if no measures are envisaged, that fact.

2.13 This information must be provided long enough before the transfer to enable consultation to take place, even if consultation is only voluntary because there is no legal obligation to consult in the particular circumstances

2.14 There is also an obligation on the Academy Trust to write to the current employer to inform them of any "measures" which the Trust envisages taking in relation to staff once the transfer has taken place. This information should be provided as soon as possible once the Trust has had the opportunity to consider what measures it envisages taking. "Measures" is a very broad term which encompasses any action, step or arrangement taken in connection with the transfer which affects staff or their working conditions.

2.15 As stated above, local authorities are encouraged to consult employees and union representatives throughout the conversion process. However, the legal obligation to consult under TUPE only arises where the current employer (and not the Academy Trust) envisages taking "measures" in relation to affected employees in connection with the transfer.



2.16 For most 'outstanding' and 'good' schools with one or more outstanding features converting to become Academies it is envisaged that the staffing structure and terms and conditions of employment will remain unchanged, at least initially. Any changes must be subject to consultation with unions and affected staff and implemented in accordance with employment law. Voluntary and foundation schools with a religious character will retain their right to appoint staff of their particular faith subject to the existing restrictions.

2.17 Where Governing Bodies are the employer of staff, they should obtain relevant legal advice and/or specialist HR support in conducting the TUPE process and may use part of their Academy Conversion Expenses grant for this purpose.

2.18 It is also necessary to carry out a due diligence exercise for all transferring staff, to verify information on contracts, terms and conditions, pension deficits etc. Particular care will be needed in respect of staff who are not based exclusively at the school and staff on fixed-term contracts.

### **Support to help another school raise standards**

2.19 'Outstanding' schools and 'good' schools with one or more outstanding features are in a strong position to help other schools raise standards by sharing good practice and expertise between staff and students, and acting in a support and/or advisory capacity in a number of other ways. The DfE therefore expects 'outstanding' schools and 'good' schools with one or more outstanding features who wish to convert to support at least one weaker school and for this support to be focused on having a measurable impact on standards.

2.20 It is for the school to decide which school to support and what arrangements to put in place to meet these aims. For some schools this may involve maintaining and improving existing links with schools they have been working with for some time. For others, this might involve establishing a new relationship and working towards helping one of the weaker schools become an Academy. Your named DfE contact will discuss with your school your plans to support another school to raise standards. We would expect your school to have identified a school to support and to have agreed what that support will involve prior to the funding agreement being signed. The support should commence within the first term after the conversion date.

2.21 Schools may also have the opportunity to sponsor an under-performing school to become an Academy. If your school would be interested in sponsoring a school you should discuss this with your DfE contact.

### **Approval of the application and next steps**

2.22 At the end of this stage the Secretary of State will confirm whether he approves the Governing Body's application. If he does, he will approve an Academy Order.

2.23 The purpose of an Academy Order is to enable the school to convert to become an Academy. However, the conversion of your school into an Academy is only legally assured when the Academy Trust and Secretary of State have both signed the Funding Agreement for the Academy. Up to the point when both parties sign the Funding Agreement, either the Governing Body of your school or the Secretary of State can decide not to proceed with the conversion of the school into an Academy, though we would expect any decision not to proceed to be the subject of discussion between the Governing Body and the DfE. See also section 3 'Obtaining Funding Agreement'.

2.24 Approval of the application will be the expected outcome for schools unless exceptional circumstances apply (see paragraphs 2.32 to 2.35 below).

2.25 If the application to convert is approved, the Secretary of State will write to your local authority to inform them of this decision.

2.26 There are some other steps your school should take once your application to convert has been approved by the Secretary of State. These are described in paragraphs 2.27 to 2.30 below.

### **Criminal Records Bureau checks**

2.27 The Independent School Standards place a statutory duty on Academies to ensure that all members of staff have received an enhanced CRB check prior to the confirmation of their appointment or as soon as practically possible thereafter, and that this check confirms their suitability to work with children. New disclosures should be sought unless the member of staff has worked in a relevant educational setting within the previous 3 months. Checks must also be undertaken on the Chair of the Board of Governors/Directors of the Academy Trust and all Governors/Directors, but if they have already had a CRB check carried out by the local authority there is no requirement for a further check to be undertaken. **It is important to note, where a check on the Chair of the Governing Body is required, it must be sought through the Department and countersigned by the Secretary of State.** Details of the procedure for CRB checks to be countersigned by the Secretary of State are on the Academies website.

### **Academy conversion expenses**

2.28 The school may incur costs on the processes involved in becoming an Academy, particularly for legal advice on documentation and staffing matters, HR advice for the TUPE process, plus the transfer of software licences and data transfer. There may also be re-branding costs (e.g. new signage and printing new stationery).

2.29 You can claim a grant of £25,000, as a contribution to the costs of conversion, which will be paid to the school's bank account. This is not intended to cover the whole costs involved, but to be a contribution. Where a school is involved in a PFI contract and needs additional legal advice, support above this level may be agreed.

2.30 Schools should complete the claim form available on the DfE Academies website and send it to your named DfE contact as soon as your application has been approved by the Secretary of State.

2.31 The Chair of Governors will additionally need to send the completed support grant certificate (also on the Academies website) to their DfE contact. The certificate provides a declaration of how much of the grant has been spent and whether any is being carried forward into the bank account of the Academy Trust.

### **Exceptional circumstances**

2.32 Once the Governing Body has submitted your application to convert, the DfE will need to undertake some checks to ensure that the school is in a position to become an Academy. This is important because Academies operate with a greater degree of autonomy than other schools and need to be in a secure position to do so.

2.33 There are a number of things the DfE will check:

- whether there has been any significant change since the school's last 'outstanding' or 'good' with one or more outstanding features Ofsted rating, including a drop in attainment levels;
- whether there are questions about whether the school is in a position to provide support to a weaker school;
- whether the school has a substantial budget deficit; whether there are PFI arrangements relating to the school;
- whether the school is already part of a wider re-organisation proposal.

2.34 If one or more of these circumstances apply your contact will discuss them with you and - where appropriate - the local authority, to gain a fuller understanding of the implications. Depending on the outcome, this may have a bearing on whether and when the Secretary of State can approve the school's progression to the next stage.

2.35 If your school is interested in converting to become an Academy and has a substantial deficit, it may be necessary for you to defer conversion until you can implement steps to reduce the deficit. You should also read section 4 and Annex A for more information on the handling of both budget deficits, as well as surpluses.

2.36 For schools wishing to convert that are already part of a local reorganisation, the Secretary of State will want to review the merits of each case before making a decision.

2.37 If the school is part of a PFI contract, it will remain part of the contract after conversion to Academy status. The obligations of the Academy and the local authority necessary for continued fulfilment of the PFI contract are contained in a new schools agreement made between the academy trust and the local authority. There is also a principal agreement made between the local authority, the academy trust and the Secretary of State which contains indemnification for the authority in relation to various obligations of the Academy. Please let your named contact at DfE know if your school is part of a PFI contract.

### 3. Obtaining Funding Agreement

The main objectives of this stage are to finalise the necessary constitutional documents to establish the Academy Trust; to identify the governors who will sit on its Governing Body; and to make and agree, with the local authority and other landowners as necessary, arrangements for the Academy Trust to be able to occupy the school land and buildings.

**The consultation the Governing Body is required to conduct must be completed before the Funding Agreement is signed.**

At the end of this process the Trust will sign a Funding Agreement with the Secretary of State which becomes the legal basis for opening the Academy (on the date specified in the Funding Agreement).

Your named DfE contact will advise you about the model documents to be completed and provide you with guidance on completing them. There will be only limited circumstances in which amendments to the model documents are possible and any discussions relating to amendments are likely to delay the conversion process. You should seek your own independent legal advice on these documents.

**Some of these documents must be approved by DfE before they are finalised; details are set out below.**

In addition to putting in place the necessary legal documentation there are also other important steps schools should take in readiness for conversion from their intended date.

#### Documents to complete and steps to take

3.1 Schools must fulfill the following before the Funding Agreement can be signed with the Secretary of State:

- set up the Academy Trust, completing the Memorandum and Articles of Association based on the Department's Model documents and have the Memorandum and Articles approved by the DfE;
- use these to register the Academy Trust with Companies House;
- complete and submit a draft Funding Agreement document for DfE approval and then a final version for the Secretary of State to sign;
- Ensure that a Report on Title has been completed, identifying all areas of land on which the schools sits, and who currently holds them and agree land and building leasing or transfer arrangements with the current landowners (local authority, Trust, diocese etc as applicable);
- conclude the consultation with interested parties;
- draw up an agreement with the local authority or Diocese if either has made a loan to the Governing Body;
- draw up any agreements required for completion of outstanding building work at the school, or the shared use of facilities on the school's site.

3.2 Schools should also:

- agree a Commercial Transfer Agreement with the Academy Trust and, where necessary, with the local authority (for the transfer of staff, assets and contracts to the Trust)
- set up a bank account for the newly-formed Academy Trust and provide details of the account to EFA
- appoint an Accounting Officer

- follow the necessary steps for pension registrations and insuring the Academy.
- continue (and ideally complete) the TUPE process (if the governing body is the employer of staff, or the local authority will take this action if it is the employer).

## **Legal documents for creating the Academy Trust and the Funding Agreement**

### **Memorandum and Articles of Association**

3.3 The first step will be to register the Academy Trust (see below) with Companies House. You will need to complete a 'Memorandum and Articles of Association' to achieve this. Model documents are available on the DfE Academies website. The Memorandum contains the names and signatures of the subscribers who wish to form the Academy Trust and is required to set up the Academy as a company limited by guarantee. The Articles give details of the company's internal management affairs; the running of the company and its liability.

3.4 Schools must submit the Memorandum and Articles in draft to the named contact at DfE for approval. Once approval is confirmed the documents should be filed with Companies House. This can be done on-line at:

[www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml](http://www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml)

3.5 **This must be done before the Funding Agreement is signed.**

### **The Academy Trust**

3.6 The Academy Trust (a charitable company limited by guarantee) will enter into a legally binding Funding Agreement (see below) with the Secretary of State, relating to the running of the Academy.

3.7 The Academy Trust will have at least three members (those people who establish the Trust) and they are responsible for appointing the Academy's Governors/Directors (who are also the Directors and Trustees of the Trust).

3.8 In practice it will be for the members of the converting school's Governing Body (in consultation with the converting school's Foundation, if you are a Foundation or Voluntary school with a Foundation) to decide who should be the members of the Academy Trust and who should be the governors. It is possible to be both a member and a governor, but we would recommend that the number of members is kept relatively small.

3.9 The exact composition of the Board of Governors/Directors of the Academy Trust is a matter for agreement between the Academy Trust and the Secretary of State and will be set out in the Articles of Association, which will be attached to the Funding Agreement for each Academy. There is scope for flexibility, to ensure the Board of Governors/Directors of the Academy Trust constitution meets the aims of all concerned, but there are certain minimum requirements concerning the number of parent governors and a restriction on the proportion of governors who can also be Academy employees. Full details can be found in the model Articles of Association available on the DfE Academies website.

3.10 Schools with a religious character would maintain their ability to teach denominational RE if Voluntary Aided and will be required to teach the locally agreed syllabus if Voluntary Controlled (unless parents request otherwise). Once Academies, they will be able to appoint staff taking account of faith subject to the same restrictions as applied to them as maintained schools prior to conversion. In terms of admissions, they would also be able to give preference to children of their particular faith when oversubscribed.

## **The Board of Governors/Directors of the Academy Trust**

3.11 The governors manage the Academy on behalf of the Academy Trust. Their key responsibilities are:

- to ensure the quality of educational provision;
- to challenge and monitor the performance of the Academy;
- to manage the Academy Trust's finances and property;
- to employ staff;
- to comply with (and ensure that the Academy Trust complies with) both charity and company law;
- to manage and comply with the obligations in the Funding Agreement;
- where the school has a religious designation, to maintain its faith ethos.

## **The Funding Agreement**

3.12 The Funding Agreement is the legal contract between the Academy Trust and the Secretary of State which both parties will enter into once they are satisfied that all the documents and arrangements are in place for this to happen.

3.13 The Funding Agreement is a standard document which is easy to complete (and a model version is available on the DfE Academies website). The Trust will be asked to sign this document to confirm that they are content with the terms and conditions within it and the Funding Agreement will at the end of this stage be put to the Secretary of State for his signature. Before the Funding Agreement is signed by the Trust and submitted to the Secretary of State for approval, the Governing Body of the school must satisfy itself that the consultation required by the legislation has been conducted and completed. This means that all the parties the Governors judged should be consulted have been given the chance to express their views and the Governing Body has had an opportunity to consider the views expressed on whether the school should convert into an Academy.

**You must submit a draft Funding Agreement to your named DfE contact for approval. Once this is confirmed the Academy Trust can sign a final version of the Funding Agreement and return it to their named contact.**

3.14 It is very important that both parties (the Academy Trust and the Secretary of State) are content before making a binding commitment through signing the Funding Agreement. At any point prior to signing the Funding Agreement the Trust could decide not to proceed if it believes that conversion would not, after all, be in the school's best interests. We would encourage schools to first discuss their concerns with their named DfE contact before making a final decision not to proceed with conversion.

## **Land and buildings for the Academy**

3.15 It will be necessary for the land and buildings occupied by the school to be available for use by the Academy. The exact arrangements for achieving this will depend on whether your school is a Community, Foundation, Foundation school with a Foundation ("Trust" school) or Trust School or a Voluntary School and whether the land used by the school is public land, private land or a combination of the two.

3.16 Schools will need to instruct their own lawyers to deal with the legal arrangements for the land transfer. The school's lawyers will need to conduct appropriate searches and title and covenant checks, taking into account the definitions of "publicly funded" land in Schedule 1 to the

Academies Act 2010 (paragraph 12) which refers to Schedule 22 to the Schools Standards and Framework Act 1998 (paragraph A13 in particular). They should also consider issues concerning facilities such as sure start centres; leisure centres and caretakers' houses which might be located on the school site. Some issues might require negotiation with the local authority or governors and will need to be considered on a case by case basis. In all cases, the lawyers for the current Governing Body and the Academy Trust should prepare a Report on Title for the Governing Body/Academy Trust, which should identify:

- all the land currently held for the purposes of the converting school;
- by whom that land is held (ie is it held by LA, GB, foundation, trustees or some other third party);
- whether the land is held freehold or leasehold;
- if there are different plots of land within the school's estate, each plot and who holds it should be separately identified;
- the key legal documents (land registry proprietor title number or conveyance) relating to that land; and
- which (if any) parts of the land are publicly funded

**The report on title must be sent to the named DfE contact and land arrangements to protect any publicly funded land agreed by DfE, before the Funding Agreement with the Secretary of State can be signed.**

3.17 The Academies Act 2010 contains specific powers for the Secretary of State in respect of the land of the schools when they were maintained schools. The aim is to provide some protection for the public element of any mixed-ownership and publicly funded land on the closure of the Academy or other disposal and will safeguard any investment made by the public purse in the fabric of buildings or in the land itself prior to conversion.

3.18 Nothing in the Act affects wholly private land (such as the land on which many voluntary schools sit) and where a school sits either wholly on private land, or on a mixture of public and private land (or has private land that has been publicly enhanced) it will be for the private land owner, the local authority, and the Academy Trust to reach their own agreement on the continued use of the land for the purpose of the Academy, subject to the satisfaction of the Secretary of State prior to entering into the Funding Agreement.

3.19 It is intended that the transfer of publicly funded land owned by the local authority to the Academy will usually be by way of a 125-year lease. Public land in the ownership of the governing bodies or trusts of foundation and voluntary schools will usually be transferred to the Academy Trust by way of transfer of the freehold. However, in the case of voluntary schools where an exiting trust holds either public or private land, if it is preferred and if there are no legal impediments, the existing trust may continue, retain its current freehold land ownership, and make its own arrangements with the Academy Trust for the Academy to occupy the site.

3.20 Your named contact will advise you and the other parties involved to ensure that the necessary leasing arrangements are made for the Academy to operate from the school's current premises. Model lease documents and more information on land are available on the DfE academies website. Appropriate clauses covering freehold and leasehold arrangements are included in the model.

3.21 In the case of a school that has a Foundation, as an important first step in the process you must be able to show, when you submit your application to convert, that the trustees of the school and, if different, the persons who appoint the foundation governors have given their consent for the governing body to apply for Academy status, and if necessary, for the land and buildings to be used by the proposed Academy.

3.22 If an existing foundation or voluntary school that holds public land has a preference for the Academy Trust to own the freehold on conversion, rather than the land returning to the local authority and being leased to the Academy, the Secretary of State can agree for the land to be transferred from the existing foundation or governing body directly to the Academy Trust, provided

there are no legal impediments to this arrangement. In these cases the Secretary of State will issue a Direction to transfer the land. He would then require the Funding Agreement to contain provisions protecting the public land from disposal (or being leased or mortgaged) without his consent, and requiring a restriction to be registered with the Land Registry to reflect these provisions (standard clauses are available on the DfE Academy website). The Funding Agreement would also oblige the Academy Trust to insure the land and buildings and keep them in good repair.

3.23 If the existing Trust wishes to use any publicly funded land for the purposes of an Academy without a direction from the Secretary of State, however (e.g. because they wish to enter into some less formal arrangement than leasing the land), then under the current provisions of Schedule 22 to the SSFA (paragraph A13(7)) the Local Authority has the power to object to the use of the land for anything other than a maintained school, and refer the matter to the Schools Adjudicator).

3.24 If any of these questions arise, please tell your DfE contact as soon as possible.

### **Completion of outstanding building work**

3.25 If there is any building work due to be completed after a school converts to Academy status, agreement needs to be obtained before the Funding Agreement is signed on responsibilities for completing the building work (for example with the local authority), to ensure that unfunded liabilities do not pass to the Academy Trust.

3.26 This agreement should be sent to the named DfE contact for approval prior to signing the Funding Agreement.

### **Shared use agreements**

3.27 Where there is shared use of facilities on the site of school, for example shared use of a sports centre, a shared use agreement will need to be drawn up or novated to the Academy Trust prior to achieving Funding Agreement. This will need to be done typically by negotiation and agreement with all the parties that sign up to the shared use agreement.

3.28 This agreement should be sent to the named DfE contact for approval prior to signing the Funding Agreement.

### **Loans from the LA**

3.29 If your school has received a loan from the local authority, the Department would expect that the liability to repay the loan would normally transfer from the current governing body of the school to the Academy Trust. After that repayments would continue using the General Annual Grant that the Academy will receive in line with the previously agreed schedule. The transfer of responsibility for the loan should be reflected in a legal agreement between the LA and the Trust. This could be done through either adding it to the Commercial Transfer Agreement (see below) or in a separate agreement

3.30 Before signing the Funding Agreement the Secretary of State would need to be assured that the Academy could afford repayments, and that the legal liability for the loan had been transferred and both parties had agreed to this.



## Loans from a Diocese

3.31 The Department's expectation is that if a school has a Diocesan loan the Academy Trust will sign an agreement with the Diocese to continue repayment on the previously agreed schedule. If your school has received a loan from the Diocese, the Department would expect that the liability to repay the loan would normally transfer from the current governing body of the school to the Academy Trust. The transfer of responsibility for the loan should be reflected in a legal agreement between the Diocese and the Trust.

3.32 If the Governing Body of your school has a loan you should discuss this with your DfE contact.

## Approval of the Funding Agreement

3.33 At the end of this process, once all the necessary legal arrangements are in place, and the consultation has been concluded, the Secretary of State will be asked to approve and sign the Funding Agreement. The Funding Agreement will specify when the Academy will open and the date of conversion; this being the date when the local authority will cease to maintain the converting school. The Secretary of State will then write to the local authority to confirm the signing of the Funding Agreement and request that the local authority cease to maintain the school.

## Commercial Transfer Agreement

3.34 This document should be discussed and agreed with the Academy Trust and, where appropriate, the local authority before the Academy opens. It is designed to ensure that all information on the staff who are transferring to the academy is recorded and transferred to the Academy Trust, so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. It also includes details of any assets or contracts that will transfer to the Academy Trust and of those that will not. A model agreement is available on the DfE Academies website. While it is not necessary for the Commercial Transfer Agreement to be signed prior to the Funding Agreement, it is desirable, and we expect it to be in place before conversion takes place. The finalised commercial transfer document needs to be sent to the DfE lead and, in turn, that information needs to be provided to the Education Funding Agency (EFA) on handover.

## Setting up a bank account

3.35 Although most schools converting to Academies will already have a bank account for their delegated budget, it will be necessary for the Academy Trust to open a new bank account. This is in order to facilitate the orderly run-down of the school's accounts by the local authority and because the Academy Trust will be a new legal entity. The new account must be in the Academy Trust's name. It will enable the Trust to receive General Annual Grant from the EFA which funds open Academies.

3.36 As soon as the Academy Trust has been established, the new bank account can be opened. **This is a relatively simple process but can take time for the forms to be processed so it is worth starting as early as possible.**

3.37 Once the Academy Trust has got a bank account, the school will need to complete a form providing bank account details and other information so that the EFA can make arrangements for the Academy to receive funding. This form is available on the DfE Academies website.

## Finance-related appointments

3.38 Schools wishing to convert must appoint an Accounting Officer who must be the Principal of the Academy. The Board of Governors/Directors of the Academy Trust must also appoint a Responsible Officer to monitor and check the academy's financial management. The EFA expects the Academy will appoint its Responsible Officer during its first term of operation. Alternatively, the governors may consider the provision of an internal audit service. More information about these appointments is in the 'Academies Financial Handbook'.

3.39 More information about the payment arrangements and the requirements for financial monitoring and assurance, along with the EFA's responsibilities, are contained in a letter which is accessible via the link below:

[http://readingroom.ypla.gov.uk/ypla/ypla-schools\\_voluntarily\\_converting\\_to\\_academies\\_information-le-oct10-v1.pdf](http://readingroom.ypla.gov.uk/ypla/ypla-schools_voluntarily_converting_to_academies_information-le-oct10-v1.pdf)

## Pension registrations

3.40 Once the Academy Trust has been established it will be responsible for the pension arrangements for staff employed by the Academy - even if the local authority is acting as the payroll provider for the Academy. The occupational pension schemes are the Local Government Pension Scheme (LGPS) for non-teaching staff and the Teachers' Pension Scheme (TPS) for teaching staff. Both schemes are statutory schemes.

### Teachers' Pensions Scheme

3.41 The TPS is administered on the DfE's behalf by Capita Teachers' Pensions (TP). The DfE notify TP about each Academy's approval and this will prompt TP to supply the Academy with information about the TPS. If you have not heard from TP within a week of receiving confirmation from the Secretary of State regarding approval of your application to convert to Academy status, please email: [chris.mcmaster@teacherspensions.co.uk](mailto:chris.mcmaster@teacherspensions.co.uk)

### Local Government Pensions Scheme

3.42 Academies' Funding Agreements require them to offer Local Government Pensions Scheme (LGPS) membership to all non-teaching staff. When a maintained school becomes an academy, existing staff who are already members of the LGPS will be unaffected and their membership of the LGPS will continue. After conversion, any new non-teaching staff will also be eligible to join the LGPS. Further information about the LGPS is available on the DfE Academies website. The first step will be for the school to contact the local authority to obtain the details of the relevant pension authority which presently administers the LGPS scheme.

## Insurances

3.43 Academy trusts are responsible for making arrangements for the insurance of the Academy. **It is imperative that a converting school is insured from midnight of the date of conversion so that there is continuity of cover.**

The main types of insurance cover to be arranged are:

- premises and contents. These should be insured at replacement cost against damage by subsidence, fire, lightning, explosion, storm, flood, riot, malicious damage, terrorism and similar risks;
- business interruption;
- employer's liability and public liability insurance;
- any statutory motor transport insurance.

3.44 Further detail on the types and levels of insurance required and guidance on how to obtain such insurance can be found under the supporting documents section of the DfE Academies website.

3.45 Schools can also start at this stage to follow the steps set out the next stage (Stage 4) of the guidance.

## 4. Pre-opening

This stage focuses on the final preparations for opening the Academy. Some of the steps should have been at least started at an earlier stage.

### Academy registrations

4.1 The Governors will need to complete the following to ensure that the Academy is registered with the appropriate organisations.

#### Data Protection Registration

4.2 The governors will need to notify the Information Commissioner's Office (ICO) in writing that the Academy is opening and will now be responsible for processing personnel and pupil data (failure to do so is a criminal offence). The information provided will be added to the Information Commissioner's register which is available to the public. A fee of £500 is payable to the ICO. Further guidance can be found here:

[www.ico.gov.uk/what we cover/data protection/notification.aspx](http://www.ico.gov.uk/what_we_cover/data_protection/notification.aspx)

#### Exam bodies

4.3 Academies can continue to use the same exam centre number as the former school. You will need to contact the National Centre Number Register<sup>1</sup>, which is run by Oxford, Cambridge & RSA examinations (OCR) on behalf of all the Joint Council for Qualifications (JCQ) awarding bodies, to let them know about your change of status to an Academy, and any change of name. This will ensure that all awarding bodies are aware of the change and it means you won't have to contact each awarding body you use separately.

#### Establishment Number and Unique Reference Number (URN)

4.4 Schools converting to become Academies retain their establishment number but need a new URN for use by EFA to calculate funding, and by Ofsted in carrying out inspections. Once your school's Funding Agreement has been signed DfE will liaise with EduBase and your named DfE contact working with you on the conversion will inform you of your URN.

#### Financial systems

4.5 It will be for the school to decide whether its existing financial systems are suitable for the requirements of an Academy. These include not only the day-to-day processing of income and expenditure items, but also the production of management accounts, cash flow reconciliations and balance sheets. If a school's systems do require upgrading, the Academy can use part of its General Annual Grant for this purpose, where this is affordable.

#### Transfer of contracts and licences

4.6 Schools will need to consider their position in relation to the contracts they (i.e. the Governing Body) may hold with external suppliers, for such services as catering, cleaning, security, and ICT products and services. If you wish to maintain a contract with an existing supplier, you will need to discuss with the supplier how it could be transferred to the Academy Trust. Contractors are unlikely to object to the transfer as it allows them to retain the business

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<sup>1</sup> National Centre Number Register  
1 Hills Road  
Cambridge  
CB1 2EU

and most contracts will, in any case, contain an assignment clause, permitting its transfer to a new entity.

4.7 Decisions will also need to be made about services currently provided by or bought from the local authority, which the Academy might wish to obtain elsewhere.

4.8 Decisions will also be needed about contracts, if applicable, between the local authority and external suppliers. Does the Academy Trust wish these to be transferred by the local authority to the Academy Trust? If so, then these should be mentioned in any agreement reached with the local authority relating to the transfer of assets/property of the local authority.

4.9 Software licenses will need to be renewed or transferred to the Academy Trust. This should be discussed with your software supplier(s). Some software suppliers may require Academies to purchase a new licence for management information systems with a further charge to transfer data from the school's old database to the Academy's new database. Schools can use the Academy Conversion Expenses grant towards these costs.

4.10 As stated in Section 2 the Chair of Governors will additionally need to send a completed support grant certificate to the DfE contact just before the conversion takes place. This is to confirm how much of the grant associated with conversion has been spent and whether any is being carried forward into the bank account of the Academy Trust.

### **Registration with the Charity Commission**

4.11 The Academies Act 2010 deems Academy Trusts to be charities and that they will become exempt charities from 1 January 2011. There is no necessity for Academy Trusts to register with the Commission in the interim. Any Academy Trusts which are already registered with the Charity Commission will stay on the register of charities until the end of 2010.

### **School Budgets at conversion date (Academy opening date)**

4.12 If a school has a budget deficit, at the point of conversion, the local authority will be asked to notify the Secretary of State of the amount of the deficit following the close down of the maintained school's accounts. The authority will be paid a sum equivalent to this by the Secretary of State, so that the authority can write off the deficit in its own accounts without any impact on other schools in the area. When the Academy opens an equivalent amount will be deducted from its General Annual Grant paid by the Young People's Learning Agency to recover the deficit. More details on deficits and arrangements where a budget surplus exists are in [Annex A](#).

## **Annex A**

### **School balances**

- i. The Academy will inherit the closing financial balance of the predecessor maintained school at the date the school ceases to be maintained by the local authority. This will apply whether the balance is a surplus or a deficit.

#### **Surpluses**

- ii. The local authority will be required to calculate the surplus at the date the maintained school closes and pay an amount equal to that to the Academy Trust. Regulations set out the detailed requirements for this process, including an opportunity for the Academy Trust to seek a review by the Secretary of State of the amount of the surplus as calculated by the local authority. However, since the surplus cannot be calculated until the maintained school's accounts are fully closed down, which may take several months, it is likely to be up to four months before the Trust receives payment. More information on surpluses is on the Academies website.

#### **Deficits**

- iii. A different procedure will be adopted where an Academy has a deficit. This procedure is not included in the Academies Act, because legislation is not necessary. The local authority will be asked to notify the Secretary of State of the amount of the deficit following the closure down of the maintained school's accounts. Once the amount is validated and agreed, the LA will be paid a sum equivalent to this by the Secretary of State, so that the deficit is dealt with without any impact on other schools. An equivalent amount will be abated from the Academy's General Annual Grant by the Education Funding Agency (EFA) so as to recover the deficit. The period over which the abatement will take place will be determined by EFA depending on the size of the deficit and the need to avoid a detrimental effect on pupils' education.