

# Academies

## The way forward?

### Introduction

The Academies Act received Royal Assent on 27 July 2010. This enables certain schools to opt out of Local Authority control to become academies and also to give power to the Secretary of State to impose academy status on schools 'eligible for intervention'.

All outstanding schools and good schools with outstanding features are automatically eligible to convert to academy status if they wish. In addition, all other primary and secondary schools can become academies provided they work in partnership with a school that is automatically eligible.

The Department for Education (DfE) website has some pages dedicated to the process of setting up an academy under the new rules and while this answers some of the questions, there are many concerns on the practical aspects of converting a maintained school to academy status.

### 1. How to become an academy – the process

The following process has been outlined for outstanding schools to become academies:

- Register interest online;
- DfE assigns named person to support process;
- DfE guidance and application form issued;
- The Governing Body (GB) passes resolution in favour of academy;
- GB consults with staff in accordance with TUPE requirements;

### Consultation

A late change to the draft legislation introduced a requirement for schools to consult with "such persons as they think appropriate". Although this is not defined, the expectation is that this will include staff (who will be consulted anyway in respect of TUPE negotiations), parents and pupils.

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- GB consults on proposal with trustees of the school and obtains formal consent (if appropriate);
- GB discusses plans (in principle) with DfE to support another school to raise standards;
- Secretary of State approves proposal and makes academy order;
- Prior to opening the following would be necessary:
  - Criminal Record Bureau checks;
  - New financial systems and contracts in place;
  - Complete academy registration, e.g. with exam bodies;
  - TUPE – In voluntary aided and foundation schools, Governing Body carries out consultation to transfer staff to new academy (the Local Authority would do this in a voluntary controlled school).

### Administrative procedures

A considerable number of further administrative procedures will need to be attended to, including legal issues concerning the ownership/leasing of school property, forming of the charitable company, preparation and approval of Articles of Association, agreement of governing body/committee structures, novation of supplier contracts etc.

Guidance on a number of these issues is provided on the DfE website and in the Academies Financial Handbook. If you have any specific queries in this area, please do not hesitate to contact us.

### 2. Finance and audit issues

- Academies are established as charitable companies limited by guarantee. The trustees of the academy or academy group are responsible for monitoring all aspects of governance of the charitable company, including financial management and accountability. The trustees may or may not be the same group of individuals as the governing body.

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- New bank accounts will need to be opened in the name of the academy. Any surplus funds from the school's delegated budget in existing bank accounts technically belong to the Local Authority even if there is an agreement to transfer these to the academy. They will need to be repaid to the Local Authority and then transferred over to the academy. Some schools maintain a separate "Governors' Account" which is independent of the delegated budget, but these also need to be closed and new accounts opened as the academy is a separate legal entity from the existing school.
- Financial systems and accounting procedures will need to be set up. The Academies Financial Handbook, published by the Department for Education, gives comprehensive information as to how these should be structured, and gives examples of model accounting processes and control procedures. The accounting systems will need to be able to produce management information and financial accounts in sufficient detail to enable the information to be incorporated into the statutory financial statements required under the Companies Act 2006 and the Statement of Recommended Practice on Accounting and Reporting by Charities (SORP 2005).
- The Academy's Headteacher/Principal is the designated Accounting Officer and has overall responsibility for administrative and financial matters. This does not mean that (s)he is responsible for preparing and maintaining the accounting records. Accounting officers are required by entities who receive government funding and may be summoned to answer questions before the Public Accounts Committee of Parliament.
- Academies are also required under the terms of their funding agreements, to appoint a Responsible Officer who is normally a trustee (but not the chairman) or governing body member with financial competency, to carry out specific verification work as suggested in the Academies Financial Handbook.

This is intended to provide the governing body with independent assurance that the financial responsibilities of the governing body are being properly discharged, and that appropriate financial controls are in place and operating effectively.

The detailed verification work can be undertaken by an independent accountant who reports to the Responsible Officer.

- The annual financial statements can be prepared in-house by the academy if appropriate expertise is available, or may be prepared by an independent firm of accountants. This can be the same firm as the Academy's auditor subject to certain safeguards concerning the extent of accounting work undertaken and the nature of any decisions made by the auditor concerning the accounting treatment of particular items. The auditor can advise in this area but may not make management decisions on behalf of the client.
- The financial statements will need to be audited by an independent registered auditor either under the Companies Act 2006, if the academy's total income exceeds £6.5million, total assets exceed £3.26million or total employees exceed 250 (two out of the three criteria), or under the Charities Act 2006 if the academy's total income exceeds £500,000. It is likely that all schools considering conversion will exceed this threshold and therefore a full independent audit will be required under International Auditing Standards.
- Auditors are normally appointed by way of competitive tender. Considerations for the Governing Body/Finance/Audit Committee to take into account when selecting an audit firm include:
  - Expertise of the auditor in advising charities, schools and academies;
  - Value for money of the proposal bearing in mind the experience of the auditor and level of service offered;
  - Extent of personal support provided by the audit team and nature of the relationship with the academy's finance officer to enable informal ad-hoc queries to be dealt with satisfactorily as they arise;

- Range of other services available, such as governor/trustee training, taxation e.g. PAYE and VAT advice, IT services, risk management consultancy.
- The auditor is appointed by the trustees and this is formalised by way of a letter of engagement which conforms to standard terms approved by the Consultative Committee of Accountancy Bodies.
- Under the Companies Act 2006 there is no longer a requirement for the auditor to be formally re-appointed on an annual basis unless this is stipulated in the Academy's Articles of Association.

### 3. Questions and answers for the governing body

#### Who determines whether a school applies for academy status?

The governing body – there is a statutory requirement to consult "appropriate persons", which might include parents, staff, pupils and the Local Authority in some circumstances, but in any event before an application is made the governing body of a church school must obtain the consent of its foundation.

#### Is the decision reversible?

No, once an academy, there is no going back to maintained/voluntary status.

#### Will a church school retain its religious character?

Yes, the religious character remains the same for an academy and cannot be changed through the process of acquiring of academy status. The academy would be deemed to be an independent school with a religious character. Model governance documents have now been developed to aid church schools wishing to become academies.



### Will the school have to work with other schools?

Outstanding schools are expected to enter into arrangements with at least one other school, working collaboratively, to help tackle underperformance in schools in challenging circumstances. Funding agreements will include a requirement to promote “community cohesion”.

### Will the governing body remain the same?

No, the governing body will be dissolved on acquiring academy status; a new governing body will be established by the academy trust. In most cases it is possible to replicate the existing governing body structure. It must have at least two parent governors, no more than a third of governors can be members of staff, and there can be no more than one Local Authority governor. At present the academy model of governance is dominated by the sponsor governors with minimal representation for staff and parents. Low performing schools wishing to convert to academy status will continue to require a sponsor who will have significant representation on the governing body.

### What happens to current foundation governors?

Governing body composition for Voluntary Aided, Voluntary Controlled and foundation church schools is in primary legislation. An act of parliament is required to revoke it. Academy governing bodies are set out in the Articles of Association of the academy trust and, subject to certain legal requirements and the agreement of the DfE, the trust may change the make up of the governing body at any time.

### What is an academy trust?

An academy trust is a charitable company limited by guarantee; it is responsible for running the academy and has control over the land and other assets.

### Who will be members of the trust?

Members of the current governing body will decide in discussion with the Secretary of State who among them wish to be members of the trust and who would be governors; there is nothing to prevent members fulfilling both roles. People outside the governing body can become members of the academy trust.

### Will staff transfer to the academy?

Staff will transfer under TUPE regulations.

### Will there be greater flexibility on staff pay and conditions?

Yes, the governing body can set its own pay and conditions, but staff who transfer do so with their existing terms and conditions.

### Will secondary schools be required to have a specialism?

Yes, all secondary academies will require a curriculum specialism in one or more subject areas.

### Will there be greater flexibility in the curriculum?

Yes, academies do not have to teach the National Curriculum, but greater freedoms and changes to the National Curriculum for all schools are currently being developed.

## 4. Questions and answers for the finance committee

### Will the Department for Education provide any start-up funding?

There are no plans to provide start-up funding to the new academies. Conversion costs will vary from school to school.

### Will academies still be funded per pupil?

Yes. They will still be funded on the same principles as before.

### How much extra funding would an academy expect to receive from money that would normally go to the local authority?

The funding will be based on the level of Local Authority funding already calculated for the school, plus additions for central services that would normally be provided by the Local Authority and to cover VAT. Grant payments to academies to replace Local Authority services depend on the level of central spend in the Local Authority, and can vary considerably from area to area.

### How will academies receive capital funding?

Academies will continue to be able to apply for government capital funding as previously, in the same way as maintained schools.

### Can academies access Local Authority centrally negotiated contracts, e.g. energy/ banking/ insurance?

If they wish to do so, academies are quite free to buy services and supplies in from the Local Authority or regional purchasing consortia, although some Local Authorities as may not feel able to offer insurance.

### Will my school be able to recover the VAT it pays on its costs?

The government has recently announced that it will introduce legislation in the Finance Bill 2011 to allow academies to reclaim VAT on all costs relating to their non-business activity of providing free education. This puts academies on the same footing as Local Authority schools whose VAT is recovered by the Local Authority.

### Will there be an insurance top-up grant? Approximately how much is this?

Insurance will be paid for as a reimbursement item, not as a formulaic grant. Costs vary widely depending on a school's location, claims experience and type of building. A typical premium is between £60,000 and £100,000.

### Schools need to produce accounts that comply with the Companies Act. How are these different from current DfE returns, can you say a bit more about them?

The accounts are completely different from CFR returns and need to follow charities and company law requirements. The accounts are normally for an accounting period ending at 31 August. The Academies Financial Handbook contains a model set of academy accounts and reference should be made to this. The software requirements really depend on the volume of transactions, and professional advice should be sought.

### Are there limits to running a deficit as an academy? Is there a legal limit to this?

Academies are not allowed to run a deficit without remedial action. Any that open with a transferred deficit will need to have an agreed plan with the Young People's Learning Agency (YPLA) to repay it from General Annual Grants instalments. Any which develop a deficit after opening will have to agree a restructuring plan with the YPLA.

### How we can help

Our schools team can help you on all financial aspects of becoming an academy. Please contact James Cross, Partner, charities and education sector.

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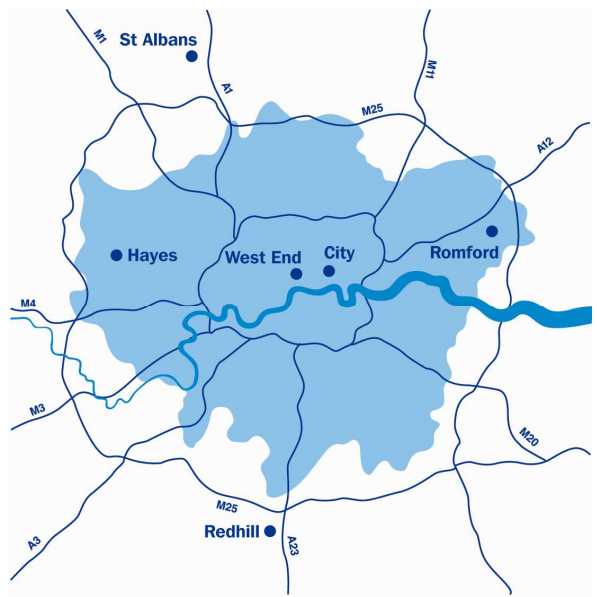
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