

# Academies

Updated 5<sup>th</sup> July 2010

This document is for governors of Wiltshire schools. It aims to explain the Coalition government's policy on the expansion of the Academies programme and provide easy access to FAQs from 3 different sources, commentary from some educational organisations and some useful websites for further information.

It does not profess to be completely comprehensive, since information on the subject is emerging all the time, but is an honest attempt to capture the issues that governors need to think about. Your views and suggestions for improvements are very welcome.

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## The Labour Government Model

Academies were introduced by the Labour government in 2002. Since then, the rules and regulations surrounding them have been amended several times. Originally, an Academy required significant financial sponsorship but this was reduced drastically over time. Most recently, Academy status was propounded as the main means of addressing the manifold problems of consistently failing secondary schools. All Academies are housed in brand new buildings. Their governors are largely appointed by the sponsor but must include one parent governor. See the *background detail* section at the end for details of regulations relating to Trust schools, within which Academies fall.

Nationally there are 203 academies, mainly in the secondary sector but 23 are all-through schools (ie incorporating primary and secondary age ranges).

Schools Minister Nick Gibb:

*For the academies with results in 2008 and 2009, the increase in the proportion of pupils achieving at least five A\* to C GCSEs including English and maths is 5 percentage points, an increase on last year's academy improvement rate of 4.3 percentage points, which is double the national average. In the last set (of results) that we have seen -that of 2009- the results of a third of all academies showed an increase of more than 15 percentage points compared with those of the schools they replaced, so the advantages of academy status are very clear.*

## The Coalition Government model

Initially, at least, Academy status is aimed at outstanding schools, at the opposite end of the performance spectrum from those in the Labour government model.

The Academies Bill, which, at the time of writing, is being debated in the House of Lords, sets out the legislative framework for the changed policy.

## Academies Bill

“Legislation will be introduced to enable more schools to achieve academy status and give them greater freedoms over the curriculum”

### ***The purpose of the Bill is to:***

The Academies Bill will enable more schools to become Academies and give them the freedoms and flexibilities they need to continue to drive up standards.

The Government's vision is to create a world beating school system in which every parent has access to a good school and all pupils achieve high standards. Our central aims are to raise standards for all children, while narrowing the gap between the attainment of the most and least advantaged.

### ***The main benefits of the Bill would:***

- Allow maintained schools to apply to become academies and power for the Secretary of State to issue an Academy Order requiring the local authority to cease to maintain the school;
- Remove the requirement to consult the local authority before opening an Academy, thus simplifying and accelerating the process;
- Require the consent of any existing (mainly church) foundations before a school applies to become an Academy.
- Deem Academy trusts to be exempt charities;
- Provide for secondary, primary and special schools to become Academies;
- Ensure there is no change of religious character in the conversion process (such changes can be made through separate existing provisions);
- There will be no expansion of selection but grammar schools and other schools which select or partially select pupils will be able to continue to do so; and
- Retain the existing legal requirement for funding agreements to last at least seven years (the agreement can still provide for intervention or termination, if the academy fails).

***The main elements of the Bill will:***

- provide schools with the freedoms to deliver an excellent education in the way they see fit, within a broad framework where they are clearly accountable for the outcomes they deliver;
- enable all maintained schools to apply to become an Academy. For the first wave of applications, the key test for approving an academy conversion will be that the school is currently rated outstanding by Ofsted. The Secretary of State normally expects he will approve applications from outstanding schools unless they have a substantial financial deficit or other exceptional circumstances apply.
- allow primary and special schools to apply to become an Academy in their own right for the first time and will benefit from the increased freedoms and flexibilities that this will offer;
- make the process of applying to become an Academy as simple as possible without a requirement for Local Authorities to be consulted;
- Allow schools which apply to become Academies to keep any surplus balance they hold; and
- The Bill will automatically make all new Academies charities.
- We expect standards across the education sector to rise through the creation of more Academies. We expect a significant number to open in September and for the number to continue to grow each year

NB. Academies will continue to be funded at a comparable level to maintained schools but will also get their share of the central funding that their LAs used to spend on their behalf. They will have freedom to allocate this funding in a way that focuses on the needs of their own pupils.

***Existing legislation in this area is:***

Section 482 of the Education Act 1996, as amended by Section 65 of the Education Act 2002, provides for the establishment of Academies and specifies the core characteristics of Academies.

**Additional freedoms from Ofsted inspection for Academies**

## Times Educational Supplement (TES) report 28 May 2010:

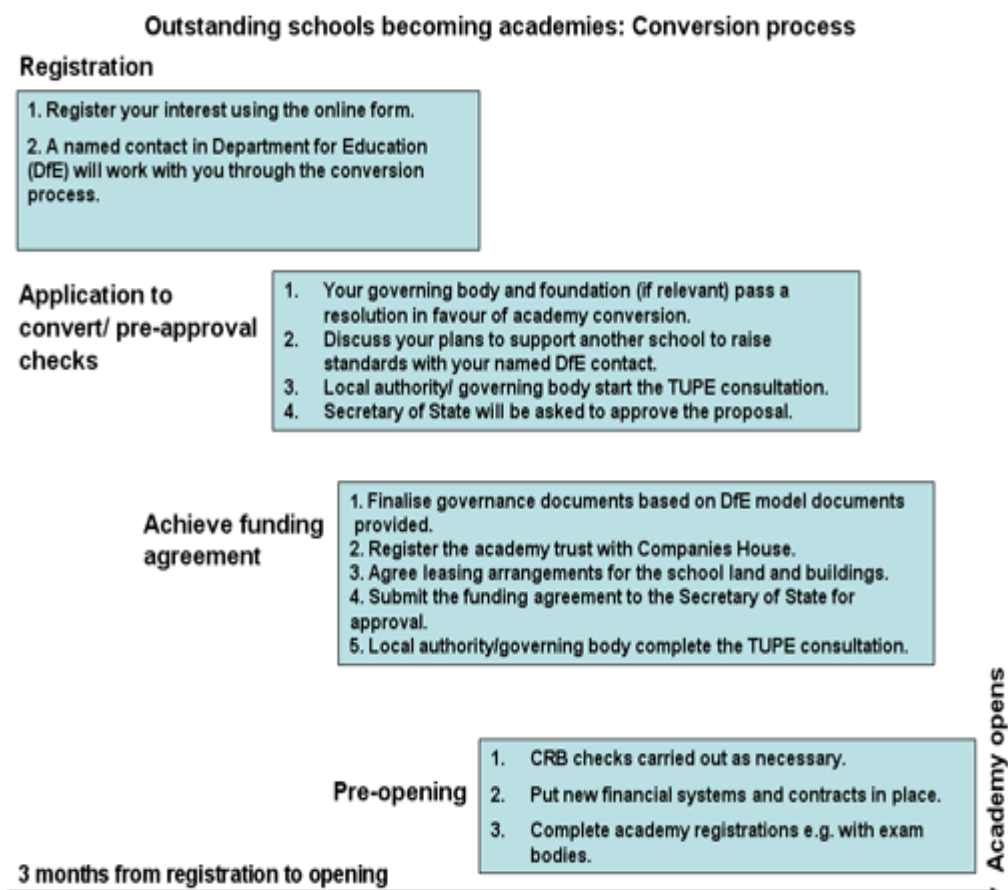
The new Education Secretary said:

*“Outstanding schools will be freed from inspection, (but) if there are certain indicators that flash ‘danger’ then it will be triggered and there is always the parental request for an inspection if there are problems as well...but broadly they will be free of that burden so that they (Ofsted) can more effectively focus the work of their inspectors.”*

The change will mean that the “outstanding” schools which choose to take up the Government’s parallel offer of academy freedoms this September will be cut loose from local authority support and control and Ofsted visits all at the same time. Mr Gove did not give details of how schools released from the inspection cycle will be monitored. But last year, the Conservatives set out plans for a series of traffic- light indicators covering data on achievement, teacher absences and turnover, the number of repeat temporary exclusions, and truancy. Schools that moved from green to red on a number of the indicators would be automatically inspected, and parents or teachers with concerns would still be able to trigger an inspection of any school.

## Department for Education (DfE) guidance on the process of becoming an Academy:

Schools wanting to become an academy will need to follow the steps outlined in this guidance document. (The steps are summarised below).



## **1 Registration**

Firstly fill out an online 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. All schools must register using the online form before they can start stage 2.

## **2 Application to convert/eligibility checks**

Submit a short application to convert form to your named DfE contact including the confirmation of a governing body resolution, the agreement of your foundation (if applicable) and confirmation of your outstanding rating from Ofsted. You will also discuss 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.

## **3 Funding agreement**

The Department will support your school to ensure all legal documents are completed relating to governance, land transfer and company registration. The Secretary of State will make an academy order and request the local authority to cease to maintain the school. This is subject to the successful passage of legislation. The current employer of the school staff will carry out a consultation on the transfer of staff under TUPE.

## **4 Pre-opening**

Your school will need to set up new financial systems and contractual arrangements, completing registrations and ensuring that all CRB checks are carried out as necessary.

For the first wave of applications, the key test for approving an academy conversion will be that the school is currently rated outstanding by Ofsted. The Secretary of State expects he will approve all applications from outstanding schools unless they have a substantial financial deficit or other exceptional circumstances apply.

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

We expect the four steps to take three months (it may take longer if there are complicated issues). It is not necessary to follow these steps in sequence - depending on how quickly schools wish to convert to academies, they may need to undertake some steps in parallel to ensure that the necessary work is complete before opening. We hope that many schools will be able to reopen as academies by September this year.

## **Next steps**

If you are an Ofsted-rated outstanding school you can start the process to convert to an academy at any time. If your school is interested in converting to an academy, your immediate next steps to begin this process should be to:

- Complete the online registration form.

- Convene a meeting of the governing body to agree the intention to convert.
- Notify your LA of your intention to become an academy.

You can also:

- Ask the LA to gather land ownership and land registration documentation and information.
- Begin compiling lists of contracts, service level agreements and licences held that will need to be transferred.
- Consider how you might wish to inform staff, pupils and parents of the intended conversion.

## TES commentary:

The whole notion of awarding academy status to the "best" schools would dramatically change the nature of the academies programme. To date it has been largely focused on disadvantaged areas as a means of turning round existing low performing schools. But changes to the Ofsted inspection framework, with a greater emphasis on exam results, unadjusted for pupil backgrounds, will make it increasingly difficult for schools from tougher areas to be given an outstanding rating. Instead, the immediate new influx of academies ...would be likely to come disproportionately from already successful schools, often in middle class areas. This new elite would also benefit from being exempted from further Ofsted inspections so long as the monitoring of data on indicators such as achievement, attendance and exclusions did not raise concerns. But even if they were re-inspected and deemed no longer outstanding, ...the schools would not lose their academy freedoms. The freedoms would be greater than those enjoyed by conventional state schools and those ...offered to academies under Labour. The new academies would not require external sponsors. But neither would they be given extra funding, apart from their slice of cash normally handed to the local authority. They would also be denied the prestige new buildings that were originally cornerstones of the scheme.

## The National Picture

Currently 14% (16,900) of primary schools and 19% (3,200) of secondary schools are "outstanding", according to Ofsted.

1,114 schools nationally have already registered to become academies including 626 judged outstanding at their last Ofsted inspection.

Total number of schools who have applied for academy freedoms: 1114

- non-outstanding schools: 488
- 'outstanding' schools: 626

Of the outstanding schools that have applied:

- primary schools: 273
- secondary schools: 299
- all-through schools: 2

- special schools: 52

The schools are listed on the DfE website.

DfE spokesman Ali Bushell has told the Council that there has been a 'slowing of interest' (nationally).

## The Local Picture

Wiltshire has 25 outstanding schools, 16 primaries, 8 secondary and 1 special school.

None of the Wiltshire schools who expressed an interest in becoming an Academy have indicated that they wish to move to academy status by September. All of the schools have also mentioned the very good working relationship with the LA in Wiltshire.

## FAQs:

**Here are three sets of FAQs for consideration, from the DfE, the National Governors' Association and the National Association of Head Teachers (NAHT)**

### 1. DfE FAQs

#### General

##### **My school wants to convert to an academy, where can I find out more?**

This website has the most up-to-date information available on how to become an academy.

You will need to register your interest via an [online form](#) and provide contact details. The Department will contact you with guidance and information on the next steps. You will be assigned a named person to support you throughout the conversion process.

##### **What is the role of the academy trust?**

An academy trust is a charitable company responsible for the running of the academy and has control over the land and other assets. It has a strategic role in running the academy, but delegates day-to-day management of the school to the governors.

##### **As an academy, will I still work with the local authority?**

Academies are independent schools and not maintained by the local authority. However, being at the centre of your community, you will want to work with other schools and local partners.

##### **Does a school need to change its name to include 'academy'?**

Many current academies do include the word 'academy' in their title. If they choose to do so, schools can keep broadly the same name replacing 'school' with 'academy' in their title to maintain a clear link to their former name. Schools can also keep the same uniform / school

badge / colours etc.

## Requirements

### **Which schools can apply to become academies?**

Only schools (primary, secondary and special schools) that have been rated outstanding overall in their most recent Ofsted inspection are eligible to convert to academies through this process. Register your interest on the online form.

### **We are not an outstanding school but want to become an academy - can we apply?**

Not yet. All schools will eventually be eligible to apply to be considered for academy status but the applications for all other schools will open at a later date in the year. There will be a further announcement on this process. However all schools are encouraged to register their interest in becoming an academy and we will ensure they are kept informed and provided with any help that is needed.

### **We are a primary or secondary school - when can we open as an academy?**

We expect that the process could take a minimum of three months so (subject to the successful passage of the Academies Bill) some schools could open as academies from September 2010. Schools can also choose when they would like to open to suit their needs, but for most schools this will be at the beginning of the autumn or spring term.

### **We are a special school - when can we open as an academy?**

The process for special schools to become academies will take a little longer to develop, but we expect they could open as academies from September 2011. If your school is rated outstanding you can still register your interest in becoming an academy.

### **My school has a religious designation - will we be able to retain it?**

Yes. A school with religious designation will be able to retain it.

### **Do you expect my school to support another school to raise attainment?**

Outstanding schools will be expected to sign up in principle to support another school to raise attainment. However, arrangements do not have to be in place before opening as an academy. This will be discussed with you in detail once you are assigned a named contact.

### **Academies currently have at least one specialism in a curriculum area - will that still be the case for schools converting?**

This will be the case for secondary schools - those converting to an academy will be required to have an emphasis in one or more subject areas.

### **My school currently has a deficit balance - can it still become an academy?**

Schools with a budget deficit that wish to convert to academy status may still do so, although if they have a significant deficit their application may be postponed until they have managed this down to a reasonable level. When a school with a deficit is approved to convert, the Department will pay the local authority an equivalent amount, and recoup this through a

reduction in the recurrent funding paid to the academy. Detailed guidance will be provided on the procedure to be followed by the LA and the implications for its own position.

### **Can nursery schools convert to academy status?**

The announcement set out how the Government plans to open up the Academies programme to allow all maintained schools to seek academy status. According to the law, academies are independent schools that are state funded. To qualify as an independent school, a school must have at least five pupils of compulsory school age. As nurseries cater for pupils below compulsory school age, this new policy will not be applicable in their circumstances.

### **Why can't short-stay schools (pupil referral units) apply for academy status?**

The Department is currently considering the legal framework covering PRUs. They will be discussing this with all PRUs and alternative providers in the next month.

## **Decision to become an academy**

### **Does my school need agreement from the local authority?**

Your school will be free to discuss its plans with any local partners, including the local authority; however, the proposed legislation will remove the need for the LA to approve your plans. All that will be required is a resolution passed by the governing body. Once the Secretary of State has confirmed that your school will become an academy, subject to the successful passage of the Academies Bill, he will direct the local authority to cease to maintain it.

### **Does my school have to hold a consultation with students, parents and the local community?**

In converting to an academy, we expect all schools to discuss this intention with students, parents and the local community to ensure they understand the change proposed. However, no statutory consultation is required.

### **Does my school have to hold a consultation with staff?**

The current employer of school staff (either the local authority or governing body depending on the type of school) will need to conduct a TUPE consultation with all staff (teaching and non teaching) and the unions as part of the staff transfer process.

### **I am a parent/teacher and don't want my school to become an academy - what can I do?**

All schools have a staff and parent governing body representative. We suggest that you contact them in the first instance, because to become an academy the governing body will be required to pass a resolution. As best practice, schools converting will be encouraged to keep staff, students and parents informed as proposals develop.

## **Process**

## **What is the process for becoming an academy and how long will it take?**

More information on the process and timetable is available on the website.

## **Support funding**

### **What funding will be available to help schools become academies and how can schools claim the money?**

We recognise that schools may incur costs such as obtaining legal advice on the documents necessary for setting up the academy, advice on the process for transferring staff, and new signage and stationery. As a contribution to these costs a flat-rate grant, normally £25,000, will be payable to the school's bank account.

When DfE receives notification of a school's intention to convert, a claim form will be provided to enable a claim - supported by a brief case for the claim - to be made.

### **Why aren't you funding the whole cost of the conversion process?**

We believe that it is fair that schools which intend to acquire academy status should devote some of their own resources to the process. This gives them an incentive to keep costs to the necessary minimum over and above the DfE support and also minimises the impact on the education budget for all schools.

### **What happens if the school does not spend the whole £25,000? Does the unspent balance have to be returned?**

No. The balance can be spent by the academy as part of its overall income, once open.

### **Can the school make a later claim for additional support if it finds, well into the conversion process, that costs are much higher than initially expected, for example if there are legal difficulties?**

Yes, although the school will be expected so far as possible to have absorbed the extra costs itself, and any late claim will be assessed in the light of that.

### **What is the legal basis of the grant?**

The grant will be paid by the Secretary of State under s.14 of the Education Act 2002.

## **Admissions**

### **What are the admission requirements for schools converting to become academies?**

Outstanding schools converting to become an academy will be able to retain the admission criteria they currently use. These arrangements and related processes should at all times comply with the School Admissions Code.

When a school becomes an academy, the academy trust will become the admission authority. For some schools, such as foundation and voluntary aided schools, this will mean little change, but for community schools and voluntary controlled schools the academy will need to manage its own admissions process. This will involve periodic consultation, and

regularly publishing the academy's admission arrangements.

**My school is an outstanding grammar school - can I remain selective as an academy?**

Any outstanding school which is currently a maintained grammar school or uses partial selection (such as for aptitude in a specialist subject) will be able to retain its selective arrangements.

**My school is a faith school - can we continue to give priority to children on the basis of religious affiliation?**

Any outstanding school which currently admits pupils, or a portion of pupils based on faith will be able to retain those arrangements.

**If a school reopens as an academy in September, what impact will that have on secondary transfers/places already allocated?**

All existing maintained schools and academies will have finalised their admission arrangements for September 2010 by April 2009. Moreover, offers for entry in September 2010 will have been made on 1 March 2010. New academies will therefore be required to honour any offers for their predecessor maintained schools.

**What happens to existing admissions appeals when we convert?**

These will still need to be heard by an independent appeals panel. For community schools, we advise that the local authority continues to arrange this process immediately after the school converts to academy status to hear outstanding appeals whilst the academy trust is establishing its own independent panel. Voluntary-aided and foundation schools will already be responsible for setting up an independent appeals panel and so the situation remains the same on conversion.

**Will existing all-ability academies be able to bring in academic selection?**

No. The Bill will allow schools that already select all or some of their pupils on the basis of ability to continue to do so. It does not provide for existing academies to become selective.

## **Finance**

**Will the Department provide any start-up funding?**

There are no plans to provide start-up funding to the new academies.

**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 LA and to cover VAT. Grant payments to academies to replace local authority services depend on the level of central spend in the LA, and can vary considerably from area to area. Please see the [ready reckoner](#) which will give schools an estimate on the funding they might receive.

**Given that September will be part-way through the financial year, and LAs have already allocated budgets to schools and top-sliced the budgets for the full year – will schools converting in September get any further resource for the remainder of the year (a pro rata top-slice allocation from September)?**

Yes. Further details will soon be available.

**Will schools be worse off financially if they convert to academies?**

There are currently more than 200 open academies and the Department is not aware of cases where a school has been worse off financially after converting to an academy. The general principle is that schools are no worse off as Academies than they would have been as maintained schools. Academies are funded on a like-for-like basis with LA maintained schools, with the addition of funding for services that the LA would normally provide and additional grant to cover VAT.

**Will my school get a VAT grant?**

Yes. Academies get a VAT grant. We are expecting that a formulaic VAT grant would be paid to the new converters as for existing academies.

**Will there be a VAT top-up grant based on historic spend information? Will it be adjusted to take into account changes from 15% to 17.5% to possibly 20% in the future? Does this top-up grant cover all capital expenditure costs too?**

The grant is based on historic spend information and covers recurrent funding; it does reflect the 17.5% VAT rate.

**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.

**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 YPLA to repay it from GAG instalments. Any which develop a deficit after opening will have to agree a restructuring plan with the YPLA.

**Who will schools hold discussions with concerning projected future pupil numbers?**

The academy lead officer contact point in the YPLA.

**Can a foundation school just keep its existing accounts and change the names of them, given that they already run their finances autonomously?**

No. The money in the existing delegated budget account belongs to the LA even if arrangements are made to pay over any surplus. The academy trust must open a new account to receive YPLA funding.

**Is the 'general' Local Authority Central Spending Equivalent Grant given for pupils in Years 7 to 11 or Years 7 to 13?**

It is given for all pupils at an academy. There are separate rates for primary (up to Year 6) and secondary (up to Year 13) pupils.

**Can academies access LA 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 LA or regional purchasing consortia, although some LAs may not feel able to offer insurance.

**Schools need to produce accounts that comply with the Companies Act. How are these different from current DfE returns via county, 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. They can be completed by the school bursar but the school may need to buy in expertise if there is insufficient experience of doing such accounts. The software requirements really depend on the volume of transactions, and professional advice should be sought. Academies' accounts have to be audited by an external auditor appointed and paid for by the academy; this takes place in autumn each year.

**Will academies get their funding level agreed for three year periods?**

At this stage, we will only be able to tell academies about their funding level for the first year. There are two reasons for this: (a) future funding levels for schools across the board will be dependent on the Spending Review in the autumn, so we can't say anything in advance of that, and (b) the Government will be consulting on changes to the school funding system – including the introduction of the pupil premium – shortly; again, it's not possible to commit to funding levels in advance of that. In terms of multi-year budgets in the future, this is one of the things the Government will need to consider as part of its review of school funding.

**Will academies still be funded per pupil?**

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

**What kind of financial records would we expect academies to have?**

There is a finance handbook which has references to the type of records existing academies are required to keep. We expect a similar level of financial accountability would be required of new converters.

**We already have our own bank account, do we need to set up a new one?**

Yes. The funds in the current bank account belong to the LA, even though there will be provision to pay over the surplus. The academy trust needs to set up its own new bank account to receive YPLA grant payments

## **Governance**

**What will the responsibilities of the governing body be?**

The governing body will be responsible for establishing the academy trust. The academy trust (a charitable company limited by guarantee) will then enter into a funding agreement

with the Secretary of State for the running of the academy. The academy trust (made up of members) has a strategic role in running the academy and will be responsible for appointing the governors (also known as directors or trustees) to the governing body of the academy. It is the governing body that manages the academy on behalf of the members of the academy trust. The key responsibilities are to

- ensure the quality of educational provision
- challenge and monitor the performance of the academy
- manage the academy trust's finances and property
- employ staff.

It will be for the members of the governing body of the school to decide and agree, in discussion with the Secretary of State, who among them would wish to be members of the academy trust and which of them would wish to be governors of the academy trust (note that it is possible to be both a member and governor).

### **What is the role of the academy trust?**

An academy trust is a charitable company responsible for the running of the academy and has control over the land and other assets. It has a strategic role in running the academy, but delegates management of the school to the governors.

### **What are the rules around membership of an academy trust, if a school already has a foundation, can all governors of that become academy trust governors?**

Ministers have not yet decided on the arrangements for governance.

### **What are the governing body's and the sponsor's respective roles in an academy?**

Outstanding schools converting to academy status will not have an external sponsor. The current governing body will therefore establish an academy trust, which is responsible for the strategic running of the academy and has control over the land and other assets. The management of the academy is delegated to the governing body.

### **Academies used to have outside organisations sponsoring them – is that still the case?**

Not where an outstanding school is converting to academy status. A school's governing body can establish the academy trust. However, it will be free to work with any external organisation.

### **Do these new academies still have to set up an endowment trust and seek contributions from others?**

There is no requirement for outstanding schools converting to academy status to have an external sponsor, and no contributions are expected. It does have to have an academy trust, but the governors can set this up themselves. There is no barrier to such a school working with a sponsor if it wishes, but there is no requirement to do so.

### **Will becoming an academy increase burdens on volunteer school governors as they take on functions previously discharged by the local authority? Will this make it harder to find school governors?**

There are many similarities between the governing bodies of maintained schools and academies. We believe that volunteer school governors will still be able to fulfil their role in academies and that this will not make it harder to find governors. We would also expect academies, as with all schools, to provide the necessary training and support to governors to ensure they are able to fulfil their duties.

**Will academy governing bodies continue in their current form? Academies have replaced governors, particularly parents, with unelected corporate and business sponsors.**

There is no requirement for outstanding schools converting to an academy to have an external sponsor. We value the role of parental engagement in schools. The current model articles of association say that academies must have one local authority governor and at least one parent governor; however, no decisions have yet been taken on the composition of future academy governing bodies.

**Will the new Bill mean that in the future there will be a range of academies, each with a different legal basis?**

All academies will have the same legal basis (clause 1 of the Bill), irrespective of whether they're sponsor-free academies, academies with a grant rather than a funding agreement, grammar school academies, SEN academies, or primary academies.

**Do 'converter' academies still need to register with the Charity Commission?**

No, subject to Parliament passing the Academies Bill. Under the charitable status clause of the Academies Bill, academies will be exempt from registration. Instead a Principal Regulator will be appointed to ensure that academies comply with charity law.

## **Capital**

**Will I get a new build?**

Academy status does not automatically mean capital investment.

The Department has not taken any decisions on future capital programmes but the Government is determined to make sure that any capital expenditure achieves the best value for money and the greatest impact at the front line. For this reason, the Government is committed to a full comprehensive spending review in the autumn.

**How would we go about getting capital funding for recurrent capital costs or major refurbishment such as a new roof, sports hall?**

Capital funding programmes for academies for any work beyond the initial construction for 2010 converters are still under consideration (except that academies, like maintained schools, receive Devolved Formula Capital). The academy is entirely responsible for all its capital requirements, including health and safety, although it may seek grant aid.

**What will happen to existing capital maintenance schemes such as Local Authority Coordinated Voluntary Aided Programme (LCVAP) Devolved Formula Capital DFC?**

Up to the end of March 2011, existing capital programmes will be unaffected by any switch to academy status. No decisions have been taken about any capital programmes from April

2011, but we expect that capital will be at least as readily available to academies as to other schools.

## **Local authorities**

### **What will the financial impact of having academies be on local authorities?**

It is right that academies receive funding to recognise the responsibilities they take from local authorities and that local authorities funding also reflects this. We will be talking with CLG and local authorities about how to manage the impact on local authorities to ensure they are equipped to carry out their functions.

### **What can LAs do to support academies?**

Local authorities have a considerable pool of expertise available to help academies with driving up standards. They can also support schools which want to work together to share expertise and promote the spread of effective innovation. Academies will have the freedom to buy back services from the LA where they are high quality.

### **Will schools which continue to be maintained by local authorities be disadvantaged compared to academies, particularly with regard to funding?**

Funding of academies will be broadly comparable with that of maintained schools, taking into account their additional responsibilities. While converting to academy status will give schools additional freedoms, those who opt to stay within local authority control will not be financially disadvantaged.

## **Staffing**

### **Can the school alter teachers' pay and conditions?**

When a school converts from a local authority maintained school to a new academy, staff are entitled to transfer under the same employment terms and conditions. As an outstanding school, immediate changes to the staff structure and operation are not anticipated. However, once open, the academy trust may consult with staff and their union representatives on changes to these terms and conditions, for example to enable the academy to operate over different term times or change the length of the school day.

### **If we become an academy do we have to take responsibility for teachers' pensions as their employer, as opposed to the LA?**

Once the academy trust has been established it will need to be registered with the local government and the Independent Teachers' Pensions Scheme. Teachers' Pensions, who administer the scheme on behalf of the Department, can be contacted direct on 0845 6066166 or at <http://www.teacherspensions.co.uk>. They will provide the academy trust with full information about the role and responsibility of employers in relation to Scheme administration.

### **Who can provide advice on the TUPE process for schools?**

We expect that HR teams within local authorities will have the necessary expertise to advise on the TUPE process in general. There will be further detailed guidance on how schools

converting to academy status should follow this process on the DfE website shortly.

### **Is it possible to comply with the statutory consultation period on TUPE in time for September 2010?**

There isn't any definite period prescribed by statute for consultation under TUPE, but the period must be generally sufficient to give time for an agreement to be reached with the staff. How long this will take will vary from school to school and case to case. There is no minimum 10 week period as some have suggested.

However, we are advising schools wishing to convert by September, and who will have made a formal conversion request by the end of June, to start the relevant consultation as soon as possible.

## **Special educational needs and exclusions**

### **If a school that is applying contains a key part of a local SEN provision, will it be expected to continue to provide that service if it becomes an academy?**

It is our expectation that existing educational provision in the school will transfer to the academy. The local authority will need to agree the transfer of land and assets (if applicable, for example in the case of separate SEN Units) with the school and to carry out TUPE negotiations. The LA will therefore be part of the conversion process and will have the ability to influence the outcome of that process.

### **Can a child with a statement nominate an academy as their school of choice?**

Yes. Outstanding schools converting to become academies will be able to retain the admissions criteria they currently use. These arrangements and related processes should at all times comply with the Schools Admissions Code.

### **Does becoming an academy change the way in which exclusions are dealt with?**

Academies are required by their funding agreement to follow the law and guidance on exclusions as if they were maintained schools. This includes reporting exclusions to the LA. However, academies do not have to consult the LA before deciding to exclude a pupil and they can arrange their own independent appeals panel.

## **Land and premises**

### **How do I acquire the land for my academy?**

This will depend on the type of school that you are and the nature of the land. Further guidance will be available shortly and your named contact in the Department will support you through this process.

### **Will the land and buildings transfer be freehold or will it be a long lease as is currently the case with most academies?**

The intention is that the transfer will be on a 125-year lease from the LA as at present, but there may be special circumstances in individual cases. We hope that the terms of transfer will continue to be arrived at by negotiation, but, as at present, the Secretary of State will

have the power to direct the transfer of public land if necessary. Nothing in the Bill affects wholly private land, such as that held by the trusts of most voluntary aided schools. In such cases the existing trust will negotiate the terms of transfer to any academy trust. This could involve leasing the land directly to the academy trust or leasing it to the local authority, who would then sublease it to the academy trust.

### **Will the land and buildings transfer be freehold or will it be a long lease as is currently the case with most academies?**

No. In advance of entering a legally binding agreement to deliver an academy, we would want a clear agreement on leases and land issues.

## **Ofsted inspections**

### **Will academies be free from the Ofsted inspection regime?**

The Secretary of State has announced that schools previously judged outstanding will no longer be subject to routine school inspection. However, that does not necessarily mean that they will never be inspected. The performance of all schools will continue to be monitored and if there are signs of deterioration or other factors are a cause for concern, these could trigger an inspection. Further details will be available in due course.

Other than outstanding schools which convert to academies, we expect that other academies will continue to be inspected in the normal way, except where they have already undergone a full inspection and have been judged outstanding.

## **General**

### **My school wants to convert to an academy, where can I find out more?**

The DfE website has the most up-to-date information available on how to become an academy. You will need to register your interest via an online form and provide contact details. The Department will contact you with guidance and information on the next steps. You will be assigned a named person to support you throughout the conversion process.

### **What will the responsibilities of the governing body be?**

The individual members of the governing body will be responsible for establishing the academy trust. The academy trust (a charitable company limited by guarantee) will then enter into a funding agreement with the Secretary of State for the running of the academy. The academy trust will have members (those who set up the academy trust) who are responsible for appointing the governors (also known as directors or trustees) to the governing body of the academy trust. It is the governing body that manages the academy on behalf of the members of the academy trust. The key responsibilities are to

- ensure the quality of educational provision
- challenge and monitor the performance of the academy
- manage the academy trust's finances and property
- employ staff.

It will be for the members of the governing body of the school to decide and agree, in discussion with the Secretary of State, who among them would wish to be members of the academy trust, and which of them would wish to be governors of the academy trust (note

that it is possible to be both a member and governor).

### **What is the role of the academy trust?**

An academy trust is a charitable company responsible for the running of the academy and has control over the land and other assets. It has a strategic role in running the academy, but delegates day-to-day management of the school to the governors.

### **As an academy, will I still work with the local authority?**

Academies are independent schools and not maintained by the local authority. However, being at the centre of your community, you will want to work with other schools and local partners.

### **Academies used to have outside organisations sponsoring them - is that still the case?**

Not where an outstanding school is converting to academy status. A school's governing body can establish the academy trust. However, it will be free to work with any external organisation.

## **Requirements**

### **Which schools can apply to become academies?**

Only schools (primary, secondary and special schools) that have been rated outstanding overall in their most recent Ofsted inspection are eligible to convert to academies through this process. Register your interest on the online form.

### **We are not an outstanding school but want to become an academy - can we apply?**

Not yet. All schools will eventually be eligible to apply to be considered for academy status but the applications for all other schools will open at a later date in the year. There will be a further announcement on this process. However all schools are encouraged to register their interest in becoming an academy and we will ensure they are kept informed and provided with any help that is needed.

### **We are a primary or secondary school - when can we open as an academy?**

We expect that the process could take a minimum of three months so (subject to the successful passage of the Academies Bill) some schools could open as academies from September 2010. Schools can also choose when they would like to open to suit their needs, but for most schools this will be at the beginning of the autumn or spring term.

### **We are a special school - when can we open as an academy?**

The process for special schools to become academies will take a little longer to develop, but we expect they could open as academies from September 2011. If your school is rated outstanding you can still register your interest in becoming an academy.

### **My school has a religious designation - will we be able to retain it?**

Yes. A school with religious designation will be able to retain it.

### **Do you expect my school to support another school to raise attainment?**

Outstanding schools will be expected to sign up in principle to support another school to raise attainment. However, arrangements do not have to be in place before opening as an academy. This will be discussed with you in detail once you are assigned a named contact.

### **Academies currently have at least one specialism in a curriculum area - will that still be the case for schools converting?**

This will be the case for secondary schools - those converting to an academy will be

required to have an emphasis in one or more subject areas.

### **My school currently has a deficit balance - can it still become an academy?**

The key test for approving an academy conversion will be that the school is currently rated outstanding by Ofsted. The Secretary of State expects he will approve all applications from outstanding schools unless they have a substantial financial deficit (or other exceptional circumstances apply). If your school is interested in converting to become an academy and has a substantial deficit, we will work with you on the handling of the deficit.

### **Do these new academies still have to set up an endowment trust and seek contributions from others?**

No. There is no requirement for outstanding schools converting to academy status to have an external sponsor, and no contributions are expected. Every new academy does have to have an academy trust, but the governors can set this up themselves. There is no barrier to such a school working with a sponsor if it wishes, but there is no requirement to do so.

## **Decision to become an academy**

### **Does my school need agreement from the local authority?**

Your school will be free to discuss its plans with any local partners, including the local authority; however, the proposed legislation will remove the need for the LA to approve your plans. All that will be required is a resolution passed by the governing body. Once the Secretary of State has confirmed that your school will become an academy, subject to the successful passage of the Academies Bill, he will direct the local authority to cease to maintain it.

### **Does my school have to hold a consultation with students and parents?**

In converting to an academy it will be important for you to discuss this intention with students and parents to ensure they understand the change proposed. However, no statutory consultation is required.

### **Does my school have to hold a consultation with staff?**

The current employer of school staff (either the local authority or governing body depending on the type of school) will need to conduct a TUPE consultation with all staff (teaching and non teaching) and the unions as part of the staff transfer process.

### **I am a parent/teacher and don't want my school to become an academy - what can I do?**

All schools have a staff and parent governing body representative. We suggest that you contact them in the first instance, because to become an academy the governing body will be required to pass a resolution. As best practice, schools converting will be encouraged to keep staff, students and parents informed as proposals develop.

## **Process**

### **What is the process for becoming an academy and how long will it take?**

More information on the process and timetable is available on the website.

## **Support funding**

### **What funding will be available to help schools become academies and how can schools claim the money?**

We recognise that schools may incur costs such as obtaining legal advice on the documents necessary for setting up the academy, advice on the process for transferring staff, and new signage and stationery. As a contribution to these costs a flat-rate grant, normally £25,000, will be payable to the school's bank account. When DfE receives notification of a school's intention to convert, a claim form will be provided to enable a claim - supported by a brief case for the claim - to be made.

**Why aren't you funding the whole cost of the conversion process?**

We believe that it is fair that schools which intend to acquire academy status should devote some of their own resources to the process. This gives them an incentive to keep costs to the necessary minimum over and above the DfE support and also minimises the impact on the education budget for all schools.

**What happens if the school does not spend the whole £25,000? Does the unspent balance have to be returned?**

No. The balance can be spent by the academy as part of its overall income, once open.

**Can the school make a later claim for additional support if it finds, well into the conversion process, that costs are much higher than initially expected, for example if there are legal difficulties?**

Yes, although the school will be expected so far as possible to have absorbed the extra costs itself, and any late claim will be assessed in the light of that.

**What is the legal basis of the grant?**

The grant will be paid by the Secretary of State under s.14 of the Education Act 2002.

## **Admissions**

**What are the admission requirements for schools converting to become academies?**

Outstanding schools converting to become an academy will be able to retain the admission criteria they currently use. These arrangements and related processes should at all times comply with the School Admissions Code. When a school becomes an academy, the academy trust will become the admission authority. For some schools, such as foundation and voluntary aided schools, this will mean little change, but for community schools and voluntary controlled schools the academy will need to manage its own admissions process. This will involve periodic consultation, and regularly publishing the academy's admission arrangements.

**My school is an outstanding grammar school - can I remain selective as an academy?**

Any outstanding school which is currently a maintained grammar school or uses partial selection (such as for aptitude in a specialist subject) will be able to retain its selective arrangements.

**My school is a faith school - can we continue to give priority to children on the basis of religious affiliation?**

Any outstanding school which currently admits pupils, or a portion of pupils based on faith will be able to retain those arrangements.

## **Staffing**

**Can the school alter teachers' pay and conditions?**

When a school converts from a local authority maintained school to a new academy, staff are entitled to transfer under the same employment terms and conditions. As an outstanding

school, immediate changes to the staff structure and operation are not anticipated. However, once open, the academy trust may consult with staff and their union representatives on changes to these terms and conditions, for example to enable the academy to operate over different term times or change the length of the school day.

**If we become an academy do we have to take responsibility for teachers' pensions as their employer, as opposed to the LA?**

Yes. As an academy you would be responsible for remitting contributions to the Teachers' Pension Scheme and for all other administrative responsibilities that fall to employers who employ teachers who are subject to the teachers' pensions regulations.

## **Land**

**How do I acquire the land for my academy?**

This will depend on the type of school that you are and the nature of the land. Further guidance will be available shortly and your named contact in the Department will support you through this process.

## **2. NGA FAQs**

### **Answers to our members' questions on the Academies Bill**

#### **Version 4: 01 July 2010**

On Friday 25 June the DfE published more information on how the funding levels will be calculated and a ready reckoner so that schools can estimate how much funding they would receive as an academy. However, the DfE has not yet published their draft funding agreement.

This Q&A aims to include advice and guidance for governing bodies considering undertaking the process with particular emphasis on the issues a governing body needs to consider before making a decision; whereas the DfE guidance in effect starts from the point of the governing body having made that decision. We are not going to repeat all that is contained in the DfE guidance and therefore those considering converting should read both documents.

#### **Question 1: What is an academy and how is it different to other state schools?**

**Answer:** Academies are classed as 'independent' state schools; they are charitable companies limited by guarantee. This means that, rather than being directly funded and accountable to the local authority, they are funded and accountable to the Secretary of State.

Academies have an Academy Trust which is responsible for the land and assets of an academy and is directly responsible for appointing the governing body. It is possible for the members of the Trust Body and the governing body to be the same.

Academy governing bodies are not subject to the same Governance Regulations (constitution, procedures, staffing) as maintained\* schools. The make-up of an academy governing body is determined by its Articles of Association and the majority of the governing body is appointed by the Academy Trust.

*\*Maintained schools are those funded by the local authority, that is, community, foundation, voluntary aided and voluntary controlled schools.*

## **Question 2: What process do I have to follow to become an academy?**

**Answer:** The DfE has published information on the academy conversion process and the steps involved. This can be viewed via the attached link – [DfE Academies Application Process](#)

**Registering an interest:** The first step is to register an interest with the Department for Education (DfE). Nearly 2000 schools have already registered an interest. The DfE has published a list of those who have done so – which can be viewed via the attached link - [Schools which have registered an interest in academy status](#).

Registering an interest does not commit the school to becoming an Academy. It does mean that the DfE will provide the school with a named contact which will enable access to the information the governing body will need in order to make an informed decision as to whether to apply for academy status.

**Making an application:** It is only once the school has applied that it is 'committed' to seeking Academy status. There is no rush to do this. Schools can apply for Academy status when and if they are ready to do so. There is no advantage (i.e. there are no additional benefits on offer) to being the first school to convert.

Whether or not to apply is **a governing body decision**. Although the headteacher may have registered the initial interest in becoming an academy, no application can be made unless the governing body has taken a resolution at a meeting. (See Question 7 for further NGA recommendations on the process the governing body should follow)

Once schools have applied the DfE has indicated that the process of conversion will take approximately three months – this is to enable the school to set up a Trust Body, negotiate its Funding Agreement with the DfE, put a bank account in place and consult its employees in accordance with the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) (see Question 4c). This latter process may mean proceedings take longer than three months, especially if it coincides with school holidays, as this will delay TUPE consultations.

If the school was built under a PFI contract or is part of a federation the conversion process is also likely to take longer than three months because of the additional complexities involved, especially if only one school within the federation is outstanding.

Although any school is eligible to register an interest, the DfE will first consider applications from those schools judged to be 'outstanding' by Ofsted. These schools are classed as 'pre-approved' whereas additional criteria for conversion may apply to other schools. These criteria have not yet been published.

Special Schools – The DfE is still considering the process for special schools (whether outstanding or not) and as a result although schools can register an interest, they cannot yet submit a formal application.

The NGA believes that converting to an academy is a significant step which requires considerable thought and consultation (see Question 4) and schools should ensure they are clear what academy status entails **before** they apply.

### **Question 3: What should the governing body be doing?**

**Answer:** Firstly, there is no requirement for the governing body to do anything. Academy status is optional; there is no legal requirement for the governing body to consider an application.

If the governing body decides to consider academy status then it should ensure that it has all the relevant information it needs to make an informed decision. This Q&A covers some of the issues which will be pertinent to all schools, but individual governing bodies will need to make sure they have information specific to their own circumstances.

In particular, but not exclusively, the governing body should make sure it has the answers to and has considered the implications of the following questions before deciding whether to consider making an application.

#### **Key Questions**

- What difference would converting make to children in the classroom and their opportunities?
- What freedoms would the school want to use and how? And are we sure that this cannot be done as a maintained school? (see question 10)
- What additional responsibilities would the governing body take on (see question 9)
- What local authority services would the school lose and how would the school commission replacements?
- What additional potential liabilities would the governing body have if they took on Academy Status? (see question 19)
- What would the Trust Body look like?
- How would the governing body be made up?
- What are the financial implications of academy status, including the approximate costs of the additional services the governing body would have to provide for the school? (see question 11)
- Does the school currently have the capacity and capabilities within the staff group to commission and manage services effectively (for example, the DfE is recommending that staff should include a qualified accountant), and if not, how is this to be rectified and what would be the cost?
- What other school or schools would we support and in what way (see questions 6 & 28)?
- What were the results of the consultations carried out with the key stakeholders? (Or if this is the first time the governing body has met to discuss the issue: who are we consulting and how?)

### **Question 4: Should the governing body consult, and if so who?**

**Answer:** The DfE have said in correspondence with the NGA that “we expect schools to consult parents”. However, the Academies Bill only requires governing bodies to consult their foundation body (if they have one); it does not require any consultation with other key stakeholders, although there is a requirement to consult staff about their conditions of employment.

The DfE’s website still says that “In converting to an academy, we expect all schools to discuss this intention with students, parents and the local community to ensure they understand the change proposed.” The NGA’s view is that ‘discuss’ and ‘consult’ are not the same thing and this lack of clarity in the guidance may mean that some stakeholders will

be told about what the change to academy status will mean, but will not be asked for their view on whether the governing body should take such a step.

**The NGA's view is that no governing body should submit an application to the DfE unless and until they have consulted their key stakeholders** (parents, pupils, staff, local authorities, or other local schools).

Conversion to academy status is a significant step; it means moving accountability away from the local authority to the Secretary of State and potentially fundamentally changing the structure of the governing body. It should not be done without those likely to be affected being consulted.

#### **4a - Foundation Bodies and Trustees**

If the school has a foundation body (some foundation and voluntary schools), the governing body must consult that body before it makes an application for Academy status. The governing body could still register an interest, but it could not proceed to a formal application unless this consultation has occurred. The consent of the Trustees and the person or persons who appoint the foundation governors is required before any application is made.

#### **4b - Do we need to consult parents and students?**

**Answer:** The NGA would strongly recommend as good practice that the governing body carries out a formal consultation process as it would need to do for any other change in a school's status. This is a fundamental change in the designation of the school and will be difficult (if not impossible) to reverse.

We suggest you consult parents, students, staff and local partners. In order for the consultation to be meaningful, full information on the implications would need to be provided. Information could include:

- details of the proposed academy arrangements;
- details of the proposed governance arrangements including details of the directors of the company which will enter into the Academy arrangements and details of the composition of the governing body;
- any proposed changes in the arrangements for the curriculum, for special educational needs, for pupil discipline, exclusion and for complaints, and confirmation that there will be no change in the admissions arrangements;
- details of the additional money which would be available to the school (either as capital or revenue funding) if it became an academy;
- details of any additional obligations which fall on the school if it became an academy; and
- details of the support that is proposed to be given to other schools and any other possible effect on other schools.

It is for the school to decide how to carry out the consultation process, but the following should be considered:

- Make sure information is readily available – if you have a website post it there, if not make sure information is sent out to parents and available to pick up at the school
- Hold meetings for parents/pupils and staff – to provide information, but also to enable them to give their views and ask questions. Make sure the answers to those questions are published
- You may wish to consider issuing a consultation questionnaire

- You may wish to consider holding a ballot of parents to determine whether to go ahead.

We also suggest that the governing body should enable supporters and opponents of the proposal to circulate relevant materials to other consultees.

#### **4c - Do we need to consult staff?**

**Answer:** There is no requirement to consult staff about the decision to apply for Academy status – but see the NGA’s recommendation in the answer to Question 4 above.

However, there will be a requirement to consult staff about the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

TUPE says that all employees who could be affected by a change of employer have the right to be informed in advance of what is happening. This includes both employees working for the old employer and those working for the new employer. The legal requirements on information and consultation are to be found in of the TUPE Regulations 2006.

The Department cover this requirement in its guidance which can be found via this link - <http://www.education.gov.uk/academies/becomeanacademy>

#### **Question 5 - Should we be discussing this with the local authority?**

**Answer:** You do not have to consult the local authority. However the NGA believes that the governing body should invite views from the Local Authority (LA) and should in particular seek information about the cost of services currently provided by the authority which the school would have to meet as an academy.

In addition, at a community or voluntary controlled school the LA is the employer of staff at the school and as such will be responsible for conducting TUPE consultations (see question 4c).

#### **Question 6: Should we be discussing this with other local schools?**

**Answer:** The NGA believes that as a matter of good practice the governing body should discuss its plans with local schools, particularly those it currently works closely with, is a feeder school for, or receives pupils from.

All outstanding schools seeking to convert to academy status will be required to set out in their application what arrangements they have in place to support another school. This will require consultation and discussion. (See also Question 28)

#### **Question 7: Should we hold an additional governing body meeting?**

**Answer:** There are a number of steps that we think the governing body should go through.

Registering an interest does not commit the governing body to conversion, so the NGA does not believe it is necessary to hold a special meeting to decide whether to register an interest or not. However, since there is no rush to take any action, the governing body could decide to look at the issues in some detail, before even registering an interest. The advantage of

registering an interest first is that the DfE will provide a named contact to whom the governing body can direct its questions.

Whichever route the governing body follows, the NGA believes it would be sensible to set up a small working group to gather together the information that the governing body will need to decide whether to apply for academy status, and to arrange consultation with stakeholders. The members of the working group should be determined at a meeting of the full governing body, this does not need to be a special meeting and could be an item on the next scheduled meeting.

The NGA **would** recommend that a special single issue meeting of the governing body is held to discuss whether to apply for academy status. This is a significant step for the governing body and the NGA does not think that adding it to the agenda of a scheduled meeting will provide sufficient time for the detailed discussion needed. The discussion should take into account the views of your stakeholders.

No application for academy status can be made unless the governing body has taken a resolution to do so. The minutes of the meeting at which the resolution were taken are required by the DfE as evidence. (See Question 18 in relation to the composition of the academy governing body)

**Question 8: We are a primary school; are there additional issues we should be considering?**

**Answer:** The principles are the same. However there are the issues of staff skills and capacity and the lack of cost-effectiveness, especially for smaller primaries and those without a bursar or school business manager. You need to consider carefully whether you have the ability to procure the services you will no longer receive from the local authority.

**Question 9: What additional responsibilities does the governing body of an academy have?**

**Answer:** To some extent this will depend on the type of school . Academy governing bodies are the direct employer of staff, have direct health and safety responsibilities, are the school's admission authority and responsible for ensuring the school undergoes an annual external financial audit. The governors of foundation and voluntary aided schools already have the first three of these responsibilities, but they would be new for governors of community and voluntary controlled schools and the external audit would be new for all maintained schools.

All academies become responsible for providing some services that would previously have been provided by the local authority. The school receives additional funding to cover the provision of these services. It is for the school to decide where to buy these services from.

**Question 10: What new freedoms does being an academy bring?**

**Answer:** The DfE academies website sets out the main freedoms as follows:

- freedom from local authority control
  - Many NGA members welcome the support and advice they receive from their local authorities, and although we have come across some instances of

heavy-handed approaches by local authorities, schools already have considerable autonomy.

- ability to set your own pay and conditions for staff
  - The NGA is concerned about the proposals that schools will be able to act outside the provisions of the School Teachers' Pay and Conditions Document (STPCD) regardless of whether they have Academy status. The NGA recommends that governing bodies changing to Academy status should continue to work within the STPCD and the NGA understands that a number of existing academies still use the STPCD.
- freedom from following the National Curriculum
  - The Government has already announced plans to review the National Curriculum for all schools and reduce the levels of prescription in it. Indeed some headteachers have said that they are able to innovate within the existing National Curriculum. The governing body will, therefore, need to take into account proposed changes in the curriculum for maintained schools and decide whether what the school wants to achieve can be done without changing status.
- ability to change the lengths of terms and school days.
  - Schools already have the power to change the length of the school day, providing they follow the appropriate Regulations. Some schools (specifically foundation and voluntary aided schools) have the ability to change the school term. The NGA supports the idea of a standard school year and if there is a free for all on term dates it will make it even harder than at present for parents with children in different schools.

**Question 11: Finance – What are the financial implications of converting to academy status?**

**Answer:** Academies are funded directly by Central Government rather than through the local authority. This will be calculated and paid by the Young People's Learning Agency (YPLA). The main element of funding is known as the General Annual Grant.

The Government has stated that becoming an academy will not provide more money for a school – the school will receive the equivalent per-pupil amount that the local authority would have spent. The school will receive the following sources of funds.

- **General Annual Grant (GAG)** This is made up of:
  - An amount equivalent to the school's current budget share known as its delegated budget share. This will be the same as the school's current budget share received from the local authority. It is adjusted to take account of the reduced business rates an academy will pay (as result of its charitable status) and for insurance which is paid separately
  - Local authority central spend equivalent grant (LACSEG): This is the additional money to cover those central services that the local authority no longer provides. It is calculated using a formula based on an academy's pupil numbers and the amount that the relevant local authority spends on the services and costs.

- VAT Grant – to take account of the fact that academies are not VAT exempt.
- Insurance – paid at the actual cost of insurance for the school.

It is the LACSEG, the central services grant, which has occasioned most speculation about how much 'more' money a school would receive as an academy. The amount will be different for every single school as it is calculated using each school's pupil numbers and will depend how much money your local authority holds back for these services. Schools will be free to decide where to purchase these services from, including buying them in from the local authority.

The DfE has posted a ready reckoner on its website to provide schools with an indicative funding figure. The school will need to input some basic financial information – which your bursar/business manager should easily be able to provide (pupils numbers, funding for pupils with SEN, budget share etc) and the ready reckoner will then provide a budget figure.

The ready reckoner can be found at the bottom of the DfE's page on academy funding via the attached link - <http://www.education.gov.uk/academies/academy-funding>.

#### **Question 12: Will there be any help with the cost of academy conversion**

**Answer:** Yes. The DfE is providing a grant of £25,000 to support the costs of conversion to academy status.

If you decide to apply for academy status, you will require legal advice in relation to setting up the Trust Body, negotiating the Funding Agreement (although there is a standard template available) and transferring land. Governing bodies will not necessarily need legal advice to decide whether or not to apply, but should ensure that they have considered the full implications of the change in status.

#### **Question 13: What happens if the school is carrying a surplus?**

**Answer:** The school will be able to carry its surplus forward to its new status.

#### **Question 14: We have a deficit, can we still become an Academy?**

**Answer:** Schools with deficits will still be able to apply to convert to academy status, although if the school has a significant deficit, approval may be postponed until the school has reduced the deficit. If the school was allowed to convert with a deficit then it would need to agree a repayment plan with the YPLA.

#### **Question 15: Our local authority is currently one of the worst funded local authorities? Will the school be better off if it adopts Academy status?**

**Answer:** Funding for individual academies is based on the level of funding provided by their current local authority. Academies receive additional funding to take account of the central services previously provided by the LA, but which as an academy they would be responsible for and also take account of the fact that academies have to pay VAT.

The Department for Education has been consulting about changes to the distribution of the Dedicated School Grant (DSG). The DSG is the grant that local authorities receive to fund

schools. The consultation was carried out as it is recognised that the current mechanism is not objective, transparent or equitable. That consultation has only just closed and no decisions have yet been announced.

**Question 16: How will the school's governance change?**

**Answer:** The principles of governance are the same at an academy as at a maintained school. However the difference is that all academies are charitable companies and as such have a trust body. The trust body is the over-arching accountable body and may have the ability to appoint the majority of the governing body. The respective responsibilities of the trust body and the governing body will be set out in the Articles of Association. In the majority of academies the governors are also trustees and directors of the company, but the NGA has come across an academy where the Trustees are separate to the governing body and retain the power to approve the budget and appoint the headteacher/principal.

Where existing schools are converting to become academies, it will be possible for the existing governing body to become members of the trust body and indeed to also be members of the new academy governing body.

It is the newly created academy trust body that will sign the formal funding agreement with the Secretary of State.

**Question 17: How will the Trust Body be made up?**

**Answer:** The NGA welcomes the fact that existing schools can now convert to academy status without the need for a sponsor. The Trust Body could be made up of some or all of the members of the existing governing body. If the governing body wishes it will be possible to set up a Trust Body in partnership with another body. (See Question 16 above).

**Question 18: Will the make-up of our governing body be different if we convert to academy status?**

**Answer:** Academies are not subject to the same governance regulations as maintained schools. The make-up of the governing body of an academy is determined by its Articles of Association. The NGA would recommend that schools choosing to convert to academy status should ensure that there is proper representation for all current stakeholders on the academy governing body and trust body. The Articles of Association will have to be agreed by both the Secretary of State and the Charity Commission – while the Secretary of State will almost certainly publish model articles setting guidelines for the composition of the governing body. These are open to negotiation. The NGA recommends that if the governing body decides to apply for academy status it should as part of the meeting to determine that (see Question 7) also decide and record in its minutes what the make-up of the academy governing body should look like. This should be included as a proviso to the application.

The governing body is subject to the trust body which will have the power to seek amendments to the composition of the governing body by seeking amendments to the Articles of Association.

**Question 19: I've heard that as a governor of an academy I could be held personally liable if things go wrong, is this true?**

**Answer:** Academies are charitable companies limited by guarantee. This means that if the academy were to go bankrupt (an admittedly unlikely event) the members of the Trust Body could be held liable to the amount set out in the Articles of Association. The most common level of liability is set out as £10 per trustee.

However, anyone acting as a director of the company (in most cases the governors will be both trustees and directors) have unlimited liability for their own defaults. For example, if a director breaches fiduciary duties her/his liability to the company is for the entire loss caused. A director is also, in some instances largely related to health and safety and personally liable for fines imposed for breaches of regulations.

A director is not liable for any debts or liabilities providing s/he acts properly and within the powers and authority conferred on her/him. If s/he acts outside those parameters then a director can be made liable, without limit, for loss caused to the company and potentially to third parties.

Most companies will take out liability insurance to protect its trustees against inadvertent breaches of regulations. The NGA strongly recommends that any governing body converting to academy status should take out such insurance.

**Question 20: If after the governing body submits an application and it changes its mind, can it withdraw?**

**Answer:** The final part of the conversion process is for the Trust Body to sign the Funding Agreement with the Secretary of State. If schools do not agree with the provisions in the Funding Agreement then you should not sign it.

**Question 21: If the school converts to academy status and then changes its mind can it convert back again?**

**Answer:** No, as the Bill currently stands, you would sign an agreement for seven years, and the Secretary of State is unlikely to undo it.

## **Admissions Issues**

**Question 21: If we become an academy can we change our admissions arrangements?**

**Answer:** Academies become their own admissions authority. Schools converting to academy status will be able to retain their existing admission arrangements. Once converted as the admission authority, the governing body would be able to consult about changes to its admission arrangements. The DfE's guidance makes clear that academy admission arrangements must comply with the Admissions Code.

The Academies Bill specifically states that with the exception of schools which were selective before they converted to academy status, academies must provide 'education for pupils of different abilities'. It will not, therefore, be possible for an existing non-selective school to become selective after converting to academy status.

**Question 22: As a selective grammar school, under Academy status will we be able to change either the selection criteria currently laid down by our Local Authority or the catchment areas also laid down by the LA?**

**Answer:** Outstanding grammar schools will be able to apply for Academy status in the same way as any other school and retain their selection arrangements. Academies become their own admission authority which in effect means that the governing body set the admission criteria for the school. The Department's own FAQs say that schools converting to academy status '...will be able to retain the admission criteria they currently use.' this suggests that schools will in fact be able to change those criteria. The Department's FAQs go on to say that admissions criteria should comply with the Admissions Code.

The National Grammar School Association has cautioned grammar schools against seeking academy status on the grounds that current legislation which requires a parental ballot to abolish the selective admissions of a school may not apply to academies. This is because the legislation applies to 'maintained' schools and academies do not usually fall under this definition.

**Question 23: Can we change our status in other ways? – for example we would like to change from 11-16 to 11-19.**

**Answer:** The application process does not appear to allow a school to change its age range at the same time as moving to Academy status. The guidance for application is based on the premise that the Academy would be the same institution as the existing maintained school. Schools seeking to change their age range currently have to consult stakeholders and publish statutory proposals. The NGA is, however, seeking confirmation from the Department on this issue.

**Question 24: What is going to be the effect on other local authority responsibilities, such as SEN?**

**Answer:** The Bill does not change local authorities' statutory responsibilities for children with SEN.

Concerns have been expressed that a significant increase in the number of academies in an area will have a detrimental impact upon local authorities and their abilities to provide services to remaining schools and fulfil their statutory responsibilities for pupils with SEN.

**Question 25: Who will measure the performance of academies and by what mechanism?**

**Answer:** This is not entirely clear yet, but we understand this will be similar for academies and maintained schools. The Government has already announced that it is seeking to reform the Ofsted regime, so as to reduce the inspection burden on outstanding schools.

**Question 26: Do Academies have School Improvement Partners (SIPs)? If so, who appoints and manages the SIP and who is responsible for the quality assurance of Academy SIPs?**

**Answer:** Currently SIPs for Academies are contracted to the Department for Education and are accredited by the National College. The Academy Principal's handbook – DfE Standards Site states that:

“the main challenge and support [for Academies] will come from the School Improvement Partner (SIP)...

The role of Academy SIPs is to:

- “Support, monitor and challenge the Academy
- Provide high quality support and challenge proportionate to each Academy's growth rate and rate of progress
- Conduct a termly visit during the first three years of the Academy's life, depending on the progress of the Academy
- Promote an awareness of the Academies context and the challenges Academies face. “

There is one key difference in that Academy SIPs do not have any responsibility for the performance management of the headteacher, which is deemed to be solely the responsibility of the Academy governing body.

“SIP reports are quality assured by the DCSF (now DfE) and sent to the Principal and the Academy's Chair of Governors.”

The Academy Principal's handbook can be found on the DfE Standards site via the attached link - <http://www.standards.dfes.gov.uk/academies/publications/?version=1>

It is not yet clear whether the Government intends to make any changes to the role of School Improvement Partners.

#### **Question 27: How will the 'failing school to work with' be chosen?**

**Answer:** The NGA understands that the DfE expects schools seeking to convert will, as part of their application, submit plans detailing which school(s) they intend to work with. The governing body will need to discuss this with local schools (see Question 6). This is something that the school should discuss with its named DfE contact.

#### **Question 28: What is the NGA doing to influence the process?**

**Answer:** The NGA is in contact with the Department for Education and we are putting additional questions to them. The NGA is also working with our President, Baroness Howe and she has submitted a number of amendments and spoken in the House of Lords on the Bill. The Bill is still in the House of Lords and will continue to receive scrutiny during the Report Stage on 7 July. It will then have its third reading in the Lords before moving to the House of Commons. The House of Commons is due to rise for the summer recess on 29 July (although this may change).

## NAHT FAQs

*Susan Young answers your questions on academies.*

Procedures for special schools are still being established and the first of these is not expected to open as an academy until September 2011. Schools in special measures may also be turned into academies by direction of the Secretary of State. Work is ongoing to create mechanisms for allowing schools which are neither outstanding nor in special measures to apply for academy status later. It seems, though, that these schools will have to sign up a sponsor before proceeding, as existing academies have had to do. Interested schools are being urged to register their interest on the DfE website.

### **Why is the Government so keen on this?**

According to its Impact Assessment, it assumes that each pupil in a school which converts to an academy will improve their exam performance by 1.5 percentage points. This, it suggests, translates into a lifetime earning increase for each of £92,500, a total of £1072m for all these pupils.

### **What is the cost of converting schools to academies in this way?**

The Impact Assessment document suggests that 200 schools will convert in each of the next four years. It suggests that one-off pre-opening costs and capacity funding – perhaps enabling it to create systems to help a weaker school -- will cost a total of £17m for each of the next four years.

The DfE assumes it will cost each school £78k to convert, exclusive of VAT. It will provide a grant, usually £25,000, to each school to help meet these costs, which will include new signage and legal work. Schools spending less than this may keep the balance.

### **Who decides whether a school can apply for Academy status?**

The governing body of a school has to vote in favour of the process, and in the case of a foundation or voluntary school the foundation must agree as well.

There is no requirement to consult the local authority.

A TUPE consultation must be carried out with all members of staff and their unions as part of the staff transfer process. This is done by their current employer, which will either be the LA or the governors.

It is recommended that schools should consult parents.

### **Do new academies need to have a sponsor?**

Outstanding schools can proceed without a sponsor; however other schools becoming an academy will still need a sponsor. The school's governing body establishes an academy trust (which is a charitable company limited by guarantee). The trust enters into a funding agreement with the Secretary of State for education for the academy's running.

The trust for each school will have member who appoint the governors. The governors manage the academy on behalf of the trust. Their major responsibilities are to ensure the quality of educational provision, challenge and monitor performance, manage the trust's finances and property, and employ staff. It is possible to be both a trust member and a governor.

The trust can work with any external organisation.

### **Do academies work with the local authority?**

The DfE is strongly encouraging schools to work with neighbours and local partners.

### **What about other schools?**

Outstanding schools which become academies will be expected to agree to help another school to raise attainment, although these arrangements can be made later in the process.

### **What happens when a school applies for academy status?**

It will fill out a business plan as part of its application on the DfE website. It will then be allocated a "handler" who will negotiate precise terms and conditions and advise through the process. It is not clear whether it is this handler who will continue to have regular contact with the school if it does become an academy.

### **What about money?**

Academy agreements can include capital as well as current expenditure costs, although it sounds as though some of the capital money could be in the form of a loan, as the relevant clause allows for repayments.

Existing legislation which means a school's budget surplus reverts to the local authority if it closes or becomes an academy is being revised. This means that local authorities must hand over any surplus to the school, which means both any unspent portion of its budget share and any unspent portion of any other funding, including government grants. The Bill will let the Secretary of State issue regulations about this procedure and give him the right to ask for a review of the amount of money the LA says is owed to the school.

### **Does a school have to have another inspection before it becomes an Academy?**

No, the legislation specifically removes this requirement. However, it does not say what happens if a previously outstanding school is inspected again after applying to become an Academy, and is no longer rated outstanding.

### **What happens if an academy wants to lengthen the working day or alter school terms?**

Staff are entitled to transfer to a new academy under the same employment conditions. The academy trust can later consult with staff and union representatives on changes to terms and conditions. Guidance on the DfE website says that as an outstanding school, immediate changes to staff structure and operation are not anticipated.

### **What about the curriculum?**

Secondary schools must continue to have a specialism. This does not apply to primary schools.

### **What about admissions?**

Outstanding schools which become academies can retain their current criteria. This includes selection if they already select all or some of their pupils.

However, academies are their own admissions authority and will need to manage this process themselves. This will mean consultation from time to time and regular publication of the arrangements, which must comply with the School Admissions Code.

### **What if a school developed an extremist character?**

Michael Gove, interviewed on the Today programme, was adamant that academies would not be able to use their new freedoms to teach creationism or in other controversial ways. He said: "It's up to the department to ensure that groups that are either extremist, or religiously fundamentalist, do not use the opportunities that we are creating in order to establish a school which is responsible for spreading that agenda."

## What some other educational organisations say

### Briefing for school governors on Academies Bill from ATL, NASUWT and NUT

Michael Gove, the Secretary of State for Education, has written to all headteachers in England inviting them to register their interest in transferring their school to academy status.

Some headteachers and schools may believe that becoming an academy would provide them with greater freedom, less bureaucracy and more financial advantages. However, the reality is very different.

For individual schools, whilst initially there may be an increase in the school's budgetary allocation, the reality is that any additional money would need to be offset against the additional cost to schools of paying for services no longer provided by local authorities because of the reallocation of funding to the school. As an academy school, the local authority would be under no obligation to provide you with the support services currently available to you, including governor information and support, financial services, audit, school improvement, advice on health and safety regulations, legal advice, representation and employment support. Your school would need to consider how it would access such support in future and contend with having to access such services at a much higher cost.

The Government claims that becoming an academy school will lead to reduced bureaucratic burdens on headteachers and teachers. This is a fallacy. Moreover, the reality for already hard pressed governing bodies is that becoming an academy school will drastically increase the bureaucratic burdens on volunteer school governors as they undertake a raft of statutory functions that previously were discharged on behalf of the school by the local authority or other relevant body. Independence for academy schools, therefore, comes at a price and could add to and compound the existing difficulties faced by schools in finding people to serve on the governing body.

There is also no evidence of a public clamour for the creation of new academy schools. Schools that choose to become an academy could find they come into conflict with parents and the local community, the vast majority of whom do not support the creation of academy schools. Indeed, a recent public opinion survey conducted by Ipsos MORI found that 96% of parents did not want state-funded schools to be run as academies.

A decision to become an academy school would also mean:

- no certainty that your governing body in its current form would continue. Previous experience from the existing 200 academies has shown that the majority of members of the governing body before the school became an academy (particularly parent governors) have been replaced by unelected corporate and business sponsors;
- your school having to raise additional money in order to enable future investment in developing or expanding your school site and for any other capital projects. You should be aware that the Government has not given any assurances about how recurrent capital costs of any new academy schools would be paid for;
- no guarantee on future revenue funding. No guarantee has been given to any school beyond March 2011. In a harsher public spending context, a new academy school would need to ensure that it could remain financially solvent and self-sufficient. Your school, if it became an academy, would not be able to rely on support from the local authority if circumstances beyond your control were to change (e.g. changing demographic trends);

- there would be no protection for the governing body if your school encountered a future financial overspend or budget deficit. Currently, all local authorities have statutory powers that enable them to provide financial support to schools in financial difficulty. Such support would no longer be available and, moreover, individual governors might not be fully indemnified against any financial liability or loss arising from a failure of the schools provision.

We believe that these are major risks that no governing body should take lightly. We also believe that schools work best when they work together, collaboratively, rather than in competition with each other. Indeed, thousands of schools judged by Ofsted as good and outstanding have achieved this high status without the need to become an academy. We hope that you will agree that the Government's invitation to all primary, special and secondary schools to transfer to academy status is a complete distraction at a time when schools want to focus on delivering high educational standards and when the future financial position of schools, local authorities and other public services is so uncertain. If you would like further information about any of the issues raised in this briefing or would like someone from our organisations to meet with you or your governing body, please contact us on the e-mail addresses below.

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**The Association of School and College Lecturers' (ASCL) General Secretary Dr John Dunford said:**

“The government must set out very clearly how the new academies will be funded so that the schools that remain in the local authority are not disadvantaged. A clear view of the role of the local authority will be required and they need to be given the funds to carry out that role properly.”

“A substantial number of secondary schools are likely to have a governing body vote in favour of fast-track academy status. Some will make the move in recognition of the greater freedom from the local authority, but many more will want to take advantage of the additional funding – probably around ten per cent – that will be seen as a cushion against the difficult fiscal climate for schools in the next few years.”

“For the academy expansion programme to be successful, procedures and checks should be put in place to ensure that governing bodies and headteachers know the full implications of taking on academy status, as happened when schools attained grant-maintained status in the 1990s.”

“One of the very positive trends to raise standards in schools has been the move away from competition between schools and towards collaboration and partnership. Many successful schools now support schools in difficulties and groups of schools working in federation or partnership are starting to emerge. This trend needs to continue if improvement right across the school system is to be maintained.”

“Measures need to be put in place to ensure that the school system is not polarized by schools voting for fast-track academy status and gaining at the expense of their neighbouring schools. Unless these measures are introduced, the job of many schools serving challenging communities will be made immeasurably more difficult.”

“As I said in my open letter to Michael Gove earlier in May: “Pass fewer education laws. Do not over-regulate schools and colleges. Put in place just enough regulation to ensure that one school’s success is not at the expense of another.” Without that amount of regulation, polarization is certain to take place.”

## **Message from NUT General Secretary, Christine Blower**

### **The Academies Bill**

Two weeks in and the tone has been set by Michael Gove at DFE. He has decided that the break-up of state education is the way forward.

The indecent haste to rush all “outstanding schools” into academies is predictable but nonetheless disturbing for that.

In the Government’s impact assessment document there is a claim that the “monetised benefits by the main affected groups” amounts to £1072 million. And how are these benefits to be achieved? The answer is “Benefits are in terms of the increase in estimated lifetime earnings of the additional number of pupils attending academies and obtaining improved GCSE results”. But isn’t Mr Gove inviting outstanding schools to become academies in this legislation? Aren’t they the schools which will already have Ofsted levels of “good” GCSE passes? Interestingly the figures used to achieve this estimate are “an increase in lifetime productivity of £100,000 for men and £85,000 for women”. The pay gap is not about to close.

This Academies Bill is without a doubt the most serious threat to state education as we know it that we have faced. I’m very pleased that in such serious circumstances the Union has moved swiftly to work closely with our sister unions ATL and NASUWT (NAHT are taking a somewhat neutral stance at this stage).

I have been made aware that some “outstanding schools” are already rebuffing the approach from the Secretary of State. Governing Bodies, far from voting to become academies, are voting to make public their opposition to the idea.

Private companies eager to turn a quick buck are already contacting schools to peddle their wares to assist in the transfer to academy status. These should equally be rebuffed.

The timescales envisaged by the Secretary of State are very tight. If we are to have an impact in holding back what the Government would like to be a flood-tide of conversions to academies, we need to work together with other unions and at all levels of our own Union to get out the message that this proposed wholesale academisation of primary, special and secondary schools is unacceptable and must be stopped. Both jointly with ATL and

NASUWT and separately, the Union will be producing materials and briefings to help members campaign locally. FAQs have been posted on teachers.org and Hearth.

Given that this is the biggest fight we have faced in twenty years, here are some key messages:

- a) The “outstanding schools” being targeted are not at risk of closure as many previous schools were, so there is no argument that taking the academy route is necessary to save jobs or schools.
- b) We know that the so-called freedoms bring with them additional financial responsibilities for governors which many of them won’t want if they realise the implications.
- c) If all the “outstanding schools” take the academy route that will be the end of Local Authorities.
- d) The “outstanding schools” got to be outstanding from within a Local Authority, sometimes with considerable assistance from them.

And finally, an academy can, of course, change pay and conditions, although TUPE would apply in the first instance.

We want to stop as many of these academies as we can. It will need effort at all levels of the Union. But we can make a real difference.

We will, of course, continue to work with and support members in existing academies and any new ones.

*Christine Blower  
General Secretary  
28 May 2010*

## Sources of information

<a href="http://www.parliament.uk">www.parliament.uk</a>	information on the Academies bill and its progress
<a href="http://www.education.gov.uk">www.education.gov.uk</a>	government information about Academies
<a href="http://www.ssatrust.org.uk">www.ssatrust.org.uk</a>	guidance and training on becoming an Academy
<a href="http://www.tes.co.uk">www.tes.co.uk</a>	archive of articles on Academies and Ofsted, amongst many other topics
<a href="http://www.thewellingtonacademy.org.uk">www.thewellingtonacademy.org.uk</a>	website of Wiltshire's Academy
<a href="http://www.dfe.gov.uk">www.dfe.gov.uk</a>	information on Academies
<a href="http://www.governornet.co.uk">www.governornet.co.uk</a>	Guide to the Law
<a href="http://www.nga.org.uk">www.nga.org.uk</a>	National Governors' Association FAQs and more
<a href="http://www.naht.org.uk">www.naht.org.uk</a>	National Association of Head Teachers FAQ and more
<a href="http://www.ascl.org.uk">www.ascl.org.uk</a>	Association of School and College Lecturers website
<a href="http://www.teachers.org.uk">www.teachers.org.uk</a>	National Union of Teachers website

### NB

**There are, of course, many other relevant websites, especially those of other education professionals' unions and associations. I have included above those with the most easily accessed commentaries on the Academies policy.**

## Background information

This information is taken from the latest version of A Guide to the Law for School Governors and provides detailed information about school Trusts, which will be essential in the setting up and running of the new Academies, unless further legislation invalidates anything that follows.

### WHAT IS A TRUST SCHOOL?

1. A Trust school is defined as a foundation school with a foundation. Foundations are defined in **Section 21 of the School Standards and Framework Act 1998**. The statutory purpose of a foundation is to hold land on trust for one or more schools. It may also appoint foundation governors to those schools where the school's instrument of government so provides.
2. A Trust school, as a foundation school, will set its own admission arrangements, have control over its land and buildings and employ its own staff.
3. A Trust school operates within the same frameworks as other maintained schools: it will teach the national curriculum, follow the **School Admissions Code**, employ teaching staff under the terms of the School Teachers' Pay and Conditions Document and be inspected by Ofsted. The Local Authority (LA) will fund the school on the same basis as all other LA schools and will retain its intervention powers if there are problems at the school.
4. There is no single blueprint for how Trust schools work. Trusts can involve one or more partners and can support an individual school or groups of two or more schools. Acquiring a Trust is a way for schools to raise standards through strengthening collaboration and drawing on the expertise and energy of their partners to support their strategic leadership. It is for each school's governing body to decide whether to adopt Trust status and, if it does, to decide who it wants to work with – and how – in order to support the school's particular needs and aspirations.
5. The governing body of a Trust school (which retains the stake-holder model involving parents, staff, community and LA governors, as with any other maintained school) remains responsible for all major decisions about the school and its future. However, Trust schools benefit from a long-term relationship with external partners and their involvement in the school's governance and leadership. The skills and experience of Trust-appointed governors will strengthen the whole governing body and make a contribution to the school's ethos.

### ACQUISITION OF A TRUST/ACQUIRING A MAJORITY OF FOUNDATION GOVERNORS

6. The **Education and Inspections Act 2006** introduced a statutory process for schools that wish to become Trust schools by acquiring a Trust, and defined particular characteristics required of such Trusts. It also provides that governing bodies, having completed a statutory process, may have an instrument of government that allows for the Trust to appoint a majority of governors to the governing body (otherwise the Trust will appoint a minority of the governing body).
7. Governing bodies of existing foundation schools that wish to acquire a Trust, or provide for their Trust to appoint a majority of the governing body, must follow a statutory process outlined below. The governing bodies of other types of school will also need to

publish proposals to change category to foundation (see chapter 18, Organisational changes to the school) but these statutory processes may all be run concurrently. Full guidance on these processes can be found on the **DCSF website** and in the Trust schools' toolkit on the **TFSP website**.

8. Although it is legally possible for any category of school to publish proposals to become a foundation school with a Trust under the 2006 Act, there are practical difficulties in the case of schools which already have a Trust, such as voluntary schools (and some foundation schools). A school may not have more than one Trust, so such a school would have to divest itself of its existing Trust (or the existing Trust would have to re-configure itself) to meet the requirements of the Act. The consent of the existing trustees of the school and whoever appoints the foundation governors would need to be secured before the governing body could publish the proposals. In addition, if the existing Trust continued in existence it would probably continue to own the land, and unless it was willing to make this available to the new Trust (and its Trust deed allowed it to do so), it would not be possible for the school to continue on that site.

9. Even if it would not be possible (or desirable) for a school with an existing Trust to acquire a Trust under the 2006 Act, such schools could become involved in the Trusts of other schools, if all the parties were in agreement, through representation on that Trust.

10. No school can acquire, lose or change its religious character through the acquisition of a Trust or through a change of category. A voluntary school which has a religious character ("faith" schools) would retain this character as a Trust school.

#### The statutory process

11. The process by which a governing body may acquire a Trust is given below.

- i) The governing body considers the acquisition of a Trust, and/or the acquisition of a foundation majority; initiation of statutory process.
- ii) The governing body undertakes a period of statutory consultation on the plans.
- iii) The governing body publishes proposals (having obtained consent where required).
- iv) Statutory four-week period for representations (including opportunity for the LA to refer proposals to the Schools Adjudicator).
- v) Proposals are determined by the decision-maker (usually the governing body; the Adjudicator if the LA has referred proposals during the period for representations).
- vi) Implementation.

#### Additional points to note

12. The **School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007** specify both the information to be contained in proposals and the procedures for publishing proposals.

13. The duration of the governing body's consultation is not specified. However, the governing body must comply with the Regulations and must have regard to statutory guidance issued by the Secretary of State for Children, Schools and Families.

14. The governing bodies of voluntary aided and voluntary controlled schools, where the school already has a foundation, will require the consent of trustees or whoever appoints foundation governors before publishing proposals to change category to foundation. Foundation schools which acquired foundations before 25 May 2007 will require the consent of their existing trustees, or whoever appoints foundation governors, before publishing proposals to allow the Trust (foundation) to appoint a majority of the governing body.

15. LAs may, having regard to statutory guidance issued by the Secretary of State in **Trust School Proposals: A Guide for Local Authorities and Governing Bodies**, refer proposals to acquire a Trust or allow a Trust to appoint a majority of governors to the Schools Adjudicator for decision. Regulations provide that LAs may refer proposals to the Adjudicator if they consider that:

consultation has been inadequate, i.e. the governing body has failed to meet the requirements set out in the regulations or has failed to have regard to the relevant guidance; or

the governing body has failed to have regard to responses to the consultation; or

the Trust will have a negative impact on standards.

16. Whether the proposals are determined by the governing body or the Schools Adjudicator, the decision-maker must have regard to the statutory guidance issued by the Secretary of State contained within the following documents:

**Changing School Category to Foundation: A Guide for Governing Bodies;**

**Trust School Proposals: A Guide for Local Authorities and Governing Bodies.**

17. Governing bodies are under a duty to implement proposals that they have approved, or that have been approved by the Schools Adjudicator (though modifications that do not constitute a significant change may be made). However, if circumstances change and it is difficult, or is no longer appropriate, to carry out approved proposals, governing bodies can publish new proposals which, if approved, would remove the duty to carry out the original proposals.

18. Trust schools which have a majority of governors appointed by the Trust must establish a Parent Council in accordance with the **School Governance (Parent Councils) (England) Regulations 2007**. (See chapter 20, Parent councils.)

#### TRUSTS, LEGAL REQUIREMENTS

19. Legislation makes a number of requirements as to the form and function of Trusts and foundations. Trusts must be incorporated either as:

a company registered under the Companies Act 1985 as a company limited by shares or by guarantee; or

a body incorporated by Royal Charter.

20. All Trusts must:

be charitable;

have exclusively charitable objects, including the particular charitable object of advancing the education of all pupils at the school(s) for which the Trust acts as foundation;

have aims which are, demonstrably, for the public benefit; and

promote community cohesion.

21. Certain categories of persons are disqualified from being trustees under the **School Organisation (Requirements as to Foundations) (England) Regulations 2007**. This includes a person who has not obtained a criminal records certificate under Section **113A of the Police Act 1997** – this certificate may only be obtained from the Criminal Records Bureau.

22. An individual subject to an Individual Voluntary Arrangement (IVA) is also precluded from being a trustee under **Section 72(1) of the Charities Act 1993**. Under this legislation, disqualification applies to those who:

have been convicted of any offence involving deception or dishonesty; or

are undischarged bankrupts; or

have made compositions or arrangements with their creditors from which they have not been discharged; or

have at any time been removed by the Charity Commissioners or a Court from being a trustee because of misconduct or mismanagement; or

are disqualified from being company directors; or

are subject to a disqualification order or disqualification undertaking.

For further details go to the **Charity Commission's website**.

23. The Secretary of State has the power to remove and replace individual trustees in certain prescribed circumstances.

#### REMOVAL OF A TRUST/REDUCTION IN THE NUMBER OF FOUNDATION GOVERNORS

24. Though a relationship with a Trust is designed to be lasting, a mechanism exists as a safeguard for the governing body of a school to remove the Trust or to alter the school's instrument of government so that the Trust no longer appoints the majority of governors where they believe this would be in the best interests of the school. This applies only to Trust schools that have been established or have acquired their Trust under the Education and Inspections Act 2006.

The process

25. The removal of a Trust or reduction in a Trust majority is a statutory process similar to that of Trust acquisition (publication of proposals, representations and decision by the governing body). **The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007** specify both the information to be contained in proposals and the procedures for publishing proposals.

26. Statutory guidance on the removal of a school's Trust and a reduction in the number of governors appointed by the Trust is available from the **DCSF website**.

Points to note

27. The governing body may at any time decide to publish proposals to remove the Trust or move to a minority of foundation governors, except in the case of a majority foundation governance model where at least a third of the governors initiate the process. In these circumstances, the governing body must consult in the area before publishing their proposals.

28. In the case of a majority foundation governing body, the governing body is not obliged to publish proposals to remove the Trust, or reduce the number of governors appointed by the Trust, in response to the request from at least a third of governors:

at any time within five years beginning with the date of implementation of the most recent proposals for:

the establishment of the school

a change of category to foundation or foundation special school

the acquisition of a Trust

the acquisition of a majority of governors appointed by the Trust.

or

at any time within five years after the rejection of proposals, published by the governing body in response to a request by a minority of governors, to remove the Trust or reduce the number of governors appointed by the Trust.

29. There are different arrangements for the decision-making, depending on how the process is triggered.

If the majority of governors voted to publish proposals, then they may be determined by a majority vote of those governors present and voting. If the governing body was required to publish proposals by a minority (of one-third or more) of the governors, then, unless more than two-thirds of the governors vote in favour of retaining the Trust/Trust majority, the proposals will be approved and the Trust/Trust majority will be removed.

30. Proposals to remove the Trust or to reduce the number of foundation governors are always determined by the governing body. There is a period for representations during which any person may object to the proposals (six weeks from the date of their publication). However, unlike the process to acquire a Trust, there is no power of referral to the Schools Adjudicator.

31. When a Trust is removed, the school becomes a foundation school without a foundation.

## THE LAW

The Education and Inspections Act 2006 Sections **18–22**; **24–27**; **33–34**; and **Schedule 2**

**The School Organisation (Establishment and Discontinuance of Maintained Schools) (England) Regulations 2007: SI 2007/1288**

**The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007: SI2007/1289**

**The School Organisation (Requirements as to Foundations) (England) Regulations 2007: SI 2007/1287**

**The School Organisation (Foundation Special Schools) (Application of Provisions Relating to Foundations) (England) Regulations 2007: SI 2007/1329**

**The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007: SI 2007/3475**

**The School Governance (Parent Councils) (England) Regulations 2007: SI 2007/1330**