

Answers to our members' questions on the Academies Act

Version 11: 2 September 2011

This is the eleventh edition of our Q&As on the Academies Act 2010, the first edition of which was published in May 2010. This edition has been updated to include, amongst other things a question on multi-academies and a question on other options, such as foundation status or federation, which could be a precursor to conversion. It has also been amended to reflect the fact that the Academy conversion process is now over a year old and some of the original questions have been removed, but older versions are still available on the website.

We will continue to update the Q&A as more information is available. If you are not a member of NGA, and wish to be kept up to-date, do join NGA by clicking on [Join NGA](#). Our members have funded this resource.

The full text of the Act and its associated Explanatory Note can be found via the attached link - [Academies Act](#) and [Academies Act Explanatory Notes](#)

The Department for Education has a dedicated section on its website relating to academies - [DfE Academies Information](#). They have produced Q&As [DfE Academies Q&A](#) and guidance for schools wishing to convert [DfE How to become an Academy](#). The DfE continue to update their information which can be found via the attached link - [Supporting Documents](#).

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.

NGA has contributed to a Local Government Information Unit publication on the Academies Act 2010: for further details about this booklet or to purchase copy: [NGA Publications](#)

If you are a member of NGA and have further questions you would like answered, please feel free to telephone us or e-mail:

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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. 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. 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 may be 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](#)

There are three key stages: registering an interest, making an application and signing the Funding Agreement. The governing body can withdraw from the process at any point before it signs the Funding Agreement. Over a 1000 schools have already converted. The DfE publishes a monthly list of the schools at the various stages of the process. This can be viewed via the attached link - [Academy Status DfE Statistics](#)

Registering an interest: The first step is to register an interest with the Department for Education (DfE)..

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 in theory 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. Given the number of schools that have joined the process the DfE Academies conversion teams are extremely busy and it is likely that those who have made applications will be given priority for information.

Making an application: Although the governing body can withdraw at any point before it signs the Funding Agreement making an application should not be taken lightly.

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). 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.

Schools can apply for Academy status when and if they are ready to do so. This opportunity is highly unlikely to be removed by the current Government as they are hoping that all schools will opt to become academies.

Once schools have applied, the process of conversion will take a minimum of three months – the school has 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). However the process can take longer if there are legal complexities. For example, if the school was built under a PFI contract or is part of a federation (see question x) the conversion process is likely to take longer than three months. The DfE has published a timeline for schools seeking to convert between October and December 2011 – this can be viewed via the attached link - [DfE Academy Conversion Timeline Autumn 2011](#)

Question 2a What are the eligibility criteria?

Answer: Any school is eligible to register an interest, but only those which meet the DfE's criteria are able to submit applications. The criteria have changed several times over the past year. From April 2011 all schools which are high performing are eligible to submit individual applications. Other schools may apply as part of a formal partnership (see question 2c).

Question 2b: What does 'performing well' mean?

To decide if a school is performing well and so eligible to convert to academy status, the DfE will consider the following:

- The school's three year exam trajectory (5 A* - C including English and maths for secondary schools and Key Stage 2 results for primary schools): these should be stable or improving taking account of the starting point;
- Comparison with local and national exam performance (percentage of pupils making expected progress in English and maths within KS2 for primary schools and from KS2 to KS4 for secondary schools): the DfE will be looking at whether results are above or moving rapidly toward national averages in absolute attainment and progression and assessing performance against the floor standard;
- Latest Ofsted report with a specific focus on capacity to improve, outcomes and leadership and management;
- Any other matters that the school may rely on in order to demonstrate that it is performing well.

All decisions will be taken on a case by case basis, and as before, DfE will also take the financial management of the school into consideration. Although mention is made by the DfE of considering any deficits, the existence of a deficit on its own does not preclude a school from converting.

For schools, such as infant schools, where national comparisons are not published, the DfE will use Ofsted reports and other available evidence to build a view of a school's performance.

Question 2c – We do not meet the ‘high-performing’ criteria; can we still apply?

Answer: Not individually. You can make an application as part of a formal partnership with a high performing school, or you could apply to join an existing Academy Trust that the DfE considers has a proven track record of school improvement.

Question 2d Can Special Schools apply?

Answer: Special school which are ‘performing well’ may apply individually. Other special schools can apply as part of a formal partnership which includes at least one school ‘performing well’ or may join an existing Academy Trust with a proven track record of school improvement. There is a section on the DfE’s Academy information which applies specifically to Special Schools. This can be found via the attached link - [DfE Special Schools Q&As](#)

Question 2e – How is ‘performing well’ defined for special schools?

Answer: The DfE will decide each application on its merits, but will specifically take into account:

- the current and most recent Ofsted inspection judgements, with a specific focus on capacity to improve outcomes, and leadership and management
- evidence of strong and improving pupil attainment and progress
- evidence of other achievements that support the learning of pupils with special educational needs, such as behaviour, attendance and exclusions
- any other evidence which the school puts forward in order to demonstrate that it is performing well.

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. The NGA recommends that governing bodies should set up a working party to gather all the relevant information (see question 7).

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 school take on (see question 9) – and how would this impact on schools staff and the governing body?

- What local authority services would the school lose and how would the school commission replacements?
- Does the school currently have the capacity and capabilities within the staff group to commission and manage services effectively (for example, the DfE Academies Financial Handbook strongly recommends that Academies appoint a Finance Director with professional accountancy qualification), and if not, how is this to be rectified and what would be the cost?
- Does the school have the financial expertise to meet the accounting requirements for Academies (see above) these are very different to the accounting requirements for maintained schools.
- 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)
- What other school or schools would we support and in what way (see questions 6 & 28)?
- What would the Trust Body look like?
- How would the governing body be made up?
- What additional potential liabilities would the governing body have if they took on Academy Status? (see question 19)
- 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?)

The DfE website also carries a great deal of information and supporting documents which will be of help to the governing body - [DfE Academies Information](#)

Question 3a: We know the NGA does not advise governing bodies whether it is in their best interests to convert, but are there any occasions when you think it is not a sensible option?

Answer: Conversion should always be about whether it will mean the school can offer better educational opportunities to its pupils. Academy status is different and it will bring extra operational responsibilities, particularly in relation to finance. The school will need to ensure that it has appropriate staff in place to deal with these extra responsibilities and if it hasn't got those staff, or hasn't put plans in place to ensure they will be in place then it would be unwise to convert. The NGA suggests that a school does need a business manager (or a share of one) in order to function effectively as an academy.

Question 4: Who should the governing body consult?

Answer: The Act includes a requirement that governing bodies must consult before they convert to academy status and that the consultation must be about whether the school should convert. The Act does not specify who the governing body should consult, merely stating that it should be 'such persons as they think appropriate'. In addition, the Act requires governing bodies to consult their foundation body (if they have one) and to consult staff about their conditions of employment.

The NGA is of the view that consultation should take place at an early stage of the process before governing bodies have applied for academy status, and 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. A decision on such a step should not be done without considering the views of those likely to be affected.

The NGA has produced guidance on who and when to consult and this can be found at **Annex A**.

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 Act requires governing bodies to consult before they can sign the Funding Agreement with the Secretary of State. The latest version of the DfE guidance can be viewed via the attached link - [DfE Academies Guidance](#)

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. The NGA has developed an Academy consultation guide which is attached at Annex A to this Q&A.

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:

- The key reasons the governing body thinks conversion is the best option
- 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 –post it on your website (if you don't have a website, you may want to sort that out first!),
- send information out to parents using your usual routes, and offer to provide more information on request 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: The Act requires governing bodies to consult ‘such persons as they think appropriate’ before they sign the Funding Agreement – the NGA believes that this should include the school staff (see Question 4b).

In addition, there is 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 - [DfE Academies Guidance](#)

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). However if the LA is slow at undertaking the TUPE consultations, your solicitor can advise you how to proceed.

In community and voluntary controlled schools the LA will be the owner of the land and in many cases the transfer of the land will be one of the more time-consuming aspects of the conversion process. It is recommended that school start early discussions with their LA about the land the school uses.

If the school’s land is currently owned by the LA then on conversion it will be leased to the Academy Trust on a long term lease (see question 12).

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 high-performing 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 simply to decide whether to register an interest or not. 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. This working party should include the school business manager and the headteacher.

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 and to comply with the regulations which come with being a limited company and a charity.

If your school is small, you may want to consider joining an existing Academy Trust rather than converting as a stand-alone academy (see questions 18a&b).

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 is likely to 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.

The additional services that the school will become responsible for may include: behaviour support services, school meals and milk and the assessment of free school meals eligibility, kitchen maintenance and repair, museum and library services, licences and subscriptions, central staff costs (e.g. maternity cover, trade union cover, long term sickness), cost of terminating employment, school improvement services, education welfare services, pupil support (e.g. clothing grants), music services, visual and performing arts services, outdoor education services, monitoring of national curriculum assessments).

In addition, Academies are exempt charities and companies limited by guarantee which require different financial accounting and accountability mechanisms. Converting schools need to be clear about the regulatory requirements for Academies and ensure that they have appropriate mechanisms in place to meet them.

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

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

- Greater control over the budget
 - Academies are free to spend their budget as they see fit. This means that all elements of the Academy's funding can be pooled and apportioned where the Academy deems it will be most effective.
- 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 School Teachers' Pay and Conditions Document does provide a clear framework for governing bodies to work to and the NGA is concerned about the wisdom of opting out of the document. We understand many converter Academies have adopted the STPCD. However even if a school does not adopt the STPCD on conversion, the terms and conditions of existing staff will be protected under the TUPE Regulations (see Question 4c). Initially variations in pay and conditions were rare, but they are now being talked about as a possibility more often. In traditional academies, generally only the principal was rewarded with higher pay, however we do know of some academies where staff have agreed to changes in pay and conditions after conversion as they are preferable.
- freedom from following the National Curriculum

- The Government has set up an independent panel to review the National Curriculum with a view to reducing the levels of prescription ([DfE Curriculum Announcement](#)). 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. We have found it difficult to find academies that have used this freedom: please let us know if you have or plan to use the curriculum freedom.
- 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, which have recently been relaxed. 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. However although by no means common this appears to be one of the more frequently used freedoms with academies more likely than maintained schools to have a longer school day. The NGA is aware that some converter schools are seriously considering making significant changes.

The DfE is building up a number of case studies on its website to demonstrate how schools which have already converted are making best use of their new status - [DfE Converter Academy Case Studies](#).

The NGA would like to hear from any member schools who have converted about how they have used the freedoms that Academy status has given them.

Question 11: 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 has been calculated and paid by the Young People's Learning Agency (YPLA), but there is provision in the Education Bill for the YPLA to be replaced by an executive agency, the Education Funding Agency. It should also be noted that Academies are funded on the basis of academic years rather than financial years.

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. It appears from information provided by early converters that the amount of money received for central services previously provided by the LA (this is known as LACSEG - see below for definition) was a significant factor in the decision to convert. This has been altered to a certain extent for 2011/12, although those who converted before September 2011 will receive a protected amount.

The school will receive the following 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 the Finance Act 2011 which received Royal Assent in July enables Academies to reclaim some VAT. Her Majesty's Revenue & Customs (HMRC) have produced a guidance leaflet for Academies - [HMRC Academies VAT Guide](#)

- 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. It is this element of funding which some schools have found gives them much greater flexibility. This is because the school is now free to determine how to spend this funding whereas previously this money was held back and spent by the LA. In addition, as the schools which have converted so far have been outstanding schools in many cases they have not needed high levels of intervention from the local authority, consequently they probably receive more funding through LACSEG for support services than they were receiving in kind.

The DfE has posted a ready reckoner on its website to provide schools with an indicative funding figure. The ready reckoner can be found at the top right-hand side of the DfE's page on academy funding via the attached link - [DfE Academy Funding](#). 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 provides a calculation of what the school can expect to receive in its first year of funding. Just as with maintained schools, budgets can go up and down in subsequent years. Schools also need to be aware that the LACSEG can and will change year on year (upwards or downwards) as it is based on local authority expenditure which does not remain the same from one year to another - schools do need to take this into account when making decision. In addition there are very likely to be changes in how school funding is allocated from 2012/13.

Special Schools' LACSEG is calculated more or less in the same way as that for other converting schools, but with some adjustments to take account of the additional responsibilities special schools have. The Special Schools Ready Reckoner can be downloaded from the DfE website [Special Schools Ready Reckoner](#)

LACSEG Protection

The DfE announced in December 2010 that changes would be made to improve the methodology used to calculate the LACSEG for 2011/12. The DfE's view is that these changes will make the system fairer and ensure that sponsored and converting Academies are treated equally. The changes will mean a significant difference (decrease) in the LACSEG funding for some Academies and so the DfE has put in place protection mechanisms. All Academies open before 1st September 2011 (the new Financial Year for Academies) will receive at least 90% of the grant they would have received under the old methodology.

Any Academy which opened before 30 March 2011 will receive additional protection which will limit any loss on the per pupil amount of LACSEG to 30%, when comparing their full year 2010/11 and 2011/12 allocations.

The protection only applies to schools which applied for Academy status before 7 April and converted before 1 September 2011.

Question 11a: What services would we have to buy as an Academy which we currently receive for free from the local authority.

Services and costs funded from a local authority's Schools Budget

- Special educational needs (SEN) support services (see next section)
- Behaviour support services
- 14-16 practical learning options
- School meals and milk
- Assessment of free school meals eligibility
- Repair and maintenance of kitchens
- Museum and library services
- Licences and subscriptions
- Central staff costs (maternity, long term sickness and trade union duties)
- Costs of certain employment terminations.

Services and costs funded from other local authority sources

- Costs of a local authority's statutory/regulatory duties
- Asset management costs
- School improvement services
- Monitoring national curriculum assessment
- Education welfare service
- Pupils support (e.g. clothing grants)
- Music services
- Visual and performing arts services
- Outdoor education services
- Certain redundancy and early retirement costs.

Academies need to consider how they will obtain these services using the additional funding they receive. They are free to buy back the services from the LA or find them elsewhere. Depending on which LA the academy is in, it might be the case that the school is already responsible for some services, and will already receive money rather than services from their LA.

The following items do not become the responsibility of the academy and continue to rest with the LA. These are:

- home to school transport (including SEN)
- education psychology, SEN statementing and assessment
- monitoring of SEN provision, parent partnerships, etc.
- prosecution of parents for non-attendance

- individually assigned SEN resources for pupils with rare conditions needing expensive tailored provision (this is usually a top-up to formula funding)
- provision of pupil referral units or education otherwise for a pupil who is no longer registered at an academy.

The DfE is currently consulting about changes to school funding which will affect the LACSEG calculation for Academies. Schools planning to convert in the next twelve months should monitor the progress of the consultation.

Question 11b: What about pensions liabilities?

Teaching Staff

Answer: Teachers with qualified teacher status in Academies are still covered by the Teachers' Pension Scheme (TPS). For staff transferring from the maintained predecessor their membership of the Scheme would continue unchanged. The Academy Trust as the employer of the staff becomes responsible for making the employers' contributions to the TPS.

Non-Teaching Staff

Answer: Non-teaching staff at schools fall within the Local Government Pension Scheme (LGPS). The LGPS is different to the TPS in that it is a funded scheme and can be in surplus or deficit, and any deficit relating to pensionable service transfers from the existing employer (usually the Local Authority) to the Academy – that is the Academy becomes liable for the deficit. In addition the Academy's employer contribution to the LGPS may be higher than that currently being paid by the LA because the contribution is based on the staffing profile of the Academy – not the whole of an LA.

11c is it legal for us to convert knowing we are taking on a pensions deficit?

Answer: Guidance from the Charity Commission is that the any pensions deficit will need to be shown as a liability in the Academy's balance sheet. It also states in its document [Charity Reserves and Defined Pension Benefit Schemes](#) that "In the view of the Pensions Regulator, and consistent with that of the Audit and Assurance faculty, an FRS17 deficit does not of itself automatically raise an issue over the going concern of the charity.". The DfE have also produced a short guidance paper for converting schools about pensions liabilities. [Local Government Pensions Scheme - DfE Briefing Note](#)

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

Answer: Yes. 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, along with model Articles of Association and Memorandum of Understanding) and transferring land. The model documents can be found on the DfE's website via the attached link - [DfE Model Documents](#) 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.

The DfE is providing a grant of £25,000 to support the costs of conversion to academy status. This grant does not become available until the Secretary of State

has signed an Academy Order. This only happens after the school has formally applied for Academy status (i.e. after the governing body has taken a resolution to do so). If you do not spend the full £25k on legal costs, you are entitled to keep the remainder of the grant. We understand that the legal costs of converter schools tend to be between £10-15k, although in some cases the cost could be higher. We have heard of one school spending over £50k, but that was at central London rates. As with any large item of expenditure you should 'shop around' and get quotes from a number of firms to ensure you get the best deal.

It is not clear whether the school would be required to pay back the legal grant if it ultimately chose not to sign the Funding Agreement. The NGA recommends that schools do not apply for Academy status until they have assessed all the available information and made a considered decision.

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 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 is allowed to convert with a deficit then it will 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. (See also Question 11)

The DfE is reviewing the system for calculating school funding, and is considering introducing a national formula. One consultation has closed on the principles behind the funding formula, and a further consultation on what the new formula might look like was published in late July for response by 11 October.

Question 16: How will the school's governance change as an Academy?

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. The model DfE Articles of Association assumes that in single converter schools the members of the governing body will also be the directors of the company and the charity trustees. This is not the same for 'old style' sponsored Academies, or in chain Academies (see Questions 18a&b below).

The model articles can be found on the DfE's page containing supporting documents via the attached link – [DfE Supporting Documents](#). The model Articles set out the minimum requirements for the governing body, but there is flexibility in terms of maximum size (see question 18).

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. This appears to be the most common route converter academies are taking.

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: It is up to the governing body of the predecessor school to determine what the membership of the Academy Trust will look like. The DfE's model Articles for converter schools envision that the Trust Body will be a relatively small body comprising of the three signatories to the Funding Agreement, the Chair of Governors of the new Academy and any members appointed by a foundation which is entitled to do so. It is possible to have other members. Some converter schools have stipulated that the governing body of the Academy will also be allowed to appoint members to the Academy Trust. The NGA believes it is extremely important for the existing governing body to ensure that key stakeholders are represented on the Academy Trust 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 have to be different if we convert to academy status?

Answer: It does not have to be. DfE officials have said that there is considerable flexibility in the Academy model and that early converters have been able to keep their existing governing body if that is what they wanted. On the other hand the guidance on the DfE website states that "There will be only limited circumstances in which amendments to the model documents are possible and any discussions relating to amendments are likely to delay the conversion process". But converting schools have reported that if you are persistent in your requests, they will be granted. For example, the model Articles do not refer to community governors, but these can be included in an Academy governing body.

We have anecdotally come across examples of schools' appointed lawyers trying to dissuade them from making changes to the Model Articles by saying DfE will not allow them. DfE has allowed changes to the Model Articles; it is for you to instruct your lawyer to make the Articles as you want them.

The DfE's model Articles of Association set a minimum number of governors (3) but not a maximum. The basic governance model as envisioned in the model articles is:

- 'x' governors appointed by the Academy Trust,
- 1 LA governor (optional),
- a minimum of 2 elected parent governors,

- optional staff governors (appointed by the Trust – staff governors may not comprise more than one third of the total governing body),
- Headteachers (or Principals as they are generally known in academies), will be ex-officio governors and
- up to three co-opted governors (appointed by the governing body).

There is also provision for the Secretary of State to appoint additional governors in certain circumstances.

The NGA is aware of some converter schools that do not have provision for the Academy Trust to appoint any members of the governing body. They have replaced this provision in the model articles with community governors appointed by the governing body.

The NGA would recommend that schools choosing to convert to academy status should take the opportunity to review the make-up of its governing body, but ensure that there is proper representation for all current stakeholders on the academy trust. The NGA recommends that if the governing body decides to apply for academy status (see Question 7) it should record in its minutes what the make-up of the academy governing body should look like. This could in effect be included as a proviso to the application. The Secretary of State has said that although it is the new Academy Trust which signs the funding agreement, he will accept that the original governing body can withdraw from the process, if they are not happy with the results of the negotiation.

Once the new Academy governing body is in place, it 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, but any such amendments would also have to be approved by the Secretary of State.

Question 18a – What are chain academies?

Answer: The term Academy chain is being used by the DfE to describe schools converting together as part of a partnership – although they do not necessarily have to be part of the same Academy Trust. When applying schools need to say which other schools they are converting with. Only one school in the group need be ‘performing well’, but the DfE will only approve those where it is clear there are appropriate mechanisms in place to ensure that any weaker schools can improve. This is not a very helpful term as these partnerships of converting schools can be very different in ethos and structure from the chains of traditional academies that have been in existence for some years.

Question 18b – How is governance different if schools come together under one Academy Trust (the multi-Academy model)?

Answer: Where a number of Academies come together under one Academy Trust (known as a multi-academy model) the governance arrangements will be different to a single Academy model. Even within existing ‘multi-academies’ there are different models of governance, for example:

- There is a single Academy Trust which has a Funding Agreement with the Secretary of State, each Academy within the Trust is subject to a supplementary agreement to the main agreement. The Academy Trust has a board of directors and may decide to appoint local governing bodies to each

Academy. It is for the board of directors to determine what delegated powers these local governing bodies would have.

- There is an 'umbrella trust (which is a separate charitable trust rather than an Academy Trust) – its members are likely to be comprised from predecessor schools – each Academy within the umbrella trust will have its own Funding Agreement with the Secretary of State and its own Academy Trust. The umbrella trust will have power to appoint members of the Academy Trust. The governance of these Academies is likely to be same as in single converter Academies.
- Collaborative multi-academies – in these situations the Academies are all stand alone Academies with no joint trust arrangements. They do have a 'partnership agreement' to ensure collaboration to raise standards but the individual Funding Agreements will require that the Academies collaborate in line with the written agreements.

In multi-academies where there is an over-arching Academy Trust the Funding Agreement requires that for each Academy an Advisory Body must be set up to provide advice to the Company (the Academy Trust) in relation to the functioning of the Academy. It is for the Company to decide the make-up of the Advisory Board within certain parameters set out in the Funding Agreement and what role it should have. The Directors could choose to constitute the Advisory Body as the Academy governing body”.

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, , personally liable for fines imposed for breaches of regulations, most commonly this relates to health and safety matters, but may also be related to late filing of documents with Companies House.

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.

The Academies Financial Handbook requires that Academies have adequate insurance to support its activities and meet statutory requirements. The DfE recommended minimum employer's and public liability cover against the governors' responsibility for injury or illness of staff of third parties, or damage to third party property is £10m.

Question 20: Who holds the assets of the Academy?

Answer: The Academy Trust holds the assets of the Academy. When a school converts to an Academy the DfE request that the LA and the Academy Trust sign a Commercial Transfer Agreement (CTA) which sets out how the predecessor school's assets and liabilities should be disposed.

Question 21: If after the governing body submits an application and it changes its mind, can it withdraw?

Answer: The governing body can withdraw from the process up until the point that the Funding Agreement is signed.

Question 22: If the school converts to academy status and then changes its mind can it convert back again?

Answer: No, the Act stipulates that you sign an agreement for seven years. Although there are mechanisms to allow for early termination of the Funding Agreement this would not result in the school reverting to its original status.

Question 23: If we become an academy can we change our admissions arrangements?

Answer: Academies become their own admissions authority. 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 and admissions law. The Admissions Code sets out the timetable and consultations procedure Admission Authorities must go through if they wish to change their admission procedures. The DfE consulted over summer 2011 on changes to the Admissions Code, with a new Code expected to come into effect for Admissions to schools in September 2013.

The Academies Act 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 24: 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: Grammar schools can 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. Specific provisions will be included in the Funding Agreement of grammar schools to ensure that the same provisions relating to parental ballots or governing body decisions to propose removal of selection apply to Academies as to maintained schools.

Question 25: Can we change our status in other ways? – for example we would like to change from 11-16 to 11-19.

Answer: No – the Academy must be the same as the pre-converter school. Once converted, Academies would need the approval of the Secretary of State to make any change to its age range. Schools seeking to make such changes will need to make a business case to the Young People’s Learning Agency (YPLA), or its successor organisation, in the first instance. However the partnership/chain arrangements discussed above do allow for more collaborations between different phases of schools.

Question 26: What is going to be the effect on other local authority responsibilities, such as SEN?

Answer: The Act does not change local authorities’ statutory responsibilities for children with statements of Special Educational Needs (SEN). There is concern that with all Academies receiving a share of local authorities’ non-statemented SEN funding, local authorities will not have sufficient funding to meet the SEN needs of the remaining maintained schools.

Question 27: What responsibilities do Academies have for pupils with SEN?

Academies have the same responsibilities as maintained schools for pupils with SEN. They are required to inform parents if their child has SEN and what provision is being made for the child, they are required to accept children where the Academy is named on the child’s statement and they must appoint a Special Educational Needs Coordinator (SENCO) in accordance with the Regulations which govern maintained schools.

Question 28: We are in a federation in which only one of the schools is currently outstanding – can the whole federation apply via the fastrack route?

Answer: The criteria for applying have now changed (see question 2b), as long as at least one school in the federation is classed as ‘high-performing’ the others can convert as part of the same trust.

Question 29: Who will measure the performance of academies and by what mechanism?

Answer: Academies are subject to inspection by Ofsted in the same way that maintained schools are inspected. The presumption is that outstanding schools are only subject to inspection if data suggests that their performance has deteriorated. A review of the Ofsted framework took place in early 2011 with the final version of the new framework expected to be published in September 2011.

Question 30: Who is responsible for supporting and ensuring school improvement in Academies?

The Government’s view is that all schools (maintained and Academies) should take more responsibility for their own improvement. Academies will still be subject to Ofsted inspection and the Secretary of State has powers of intervention if an

Academy is deemed be performing poorly. Academies need to ensure that they have appropriate systems in place for monitoring pupil progress.

Question 31: Who decides which other school we support to raise standards?

Answer: The application process requires that converting schools commit to supporting another school. It is for individual schools to decide how to do this.

Question 32: What rules apply to Academies and excluded pupils?

Academies' Funding Agreements require them to follow the law on exclusions as though they were a maintained school. Academies are responsible for setting up their own independent exclusions panels in accordance with any guidance issued by the Secretary of State. The Academy must inform the local authority of all permanent exclusions.

Question 33: Do we need a company secretary?

Answer: No, the Companies Act does not require private companies (which is how Academies are classified in Company law) to have a Company Secretary. There are specific returns relating to companies which have to be submitted annually to Companies House and the Directors will need to ensure that there are systems in place for the submission of these returns. Directors can be held personally liable if these returns are not submitted.

Question 34: Do we have to appoint a clerk to the governors?

Answer: No, but you do have to appoint a Secretary who fulfils a similar function.

If you are not a member of NGA, we hope you will consider joining us; our ability to issue independent guidance for governors is paid for by our members. Please e-mail membership@nga.org.uk for more information.

National Governors' Association

Consultation on Academy Status

1. This document sets out the NGA's views on what good practice in relation to non-compulsory consultation on the decision to convert to Academy status. We have put together this document as a result of number of queries received by members about how best to undertake the consultation.
2. The statutory requirements are laid down in Regulation 5 of the Academies Act 2010, this states:

“5 Consultation on conversion

1. Before a maintained school in England is converted into an Academy, the school's governing body must consult such persons as they think appropriate.
 2. The consultation must be on the question of whether the school should be converted into an Academy.
 3. The consultation may take place before or after an Academy order, or an application for an Academy order, has been made in respect of the school.”
3. In effect this means that is entirely a matter for the governing body who it consults and how. The NGA firmly believes that governing bodies should keep all those involved with the school (parents, pupils, staff, local authority, local community, neighbouring & feeder schools and diocese (if appropriate)) informed of their plans throughout the process and that consultation should take place **before** the governing body take formal resolution to apply for Academy status. This is a key Government policy and the option to apply for Academy status is not going to be withdrawn, schools can take their time and ensure that they have carried out the process thoroughly and with due diligence.
 4. There has been at least one reported case of a school temporarily withdrawing its application for Academy status following a solicitor's letter which, amongst other things, challenged the way in which the school had sought parental views.
 5. It is worth at this point considering the judgement in R v Northumberland County Council, Ex Parte Parents for Legal Action Ltd – 18 May 2006 – which revolved about what constituted proper consultation. The Judge commented that:

“The whole purpose of consultation is to inform the process *before* the public body formulates and publishes its final processes.”

Although this judgement refers to statutory proposals in relation to a maintained school, as opposed to an application to convert to Academy status, it is the NGA's view that governing bodies will not go too far wrong if they bear it in mind when considering Academy status.

Stage 1

6. The first stage may well be for the governing body to have an item on the Agenda for a full governing body meeting – whether to consider Academy

status. If the answer to this question is, yes, we would like to consider it but need further information, then the NGA recommends that the governing body sets up a working group to gather relevant information (for further information on this see the NGA's Q&A on Academies).

7. At this stage it is worth alerting key stakeholders (see paragraph 3 for a list) to the fact that the governing body is discussing the issue. Many schools have regular newsletters and indeed website. The NGA recommends the following

“At its meeting on xx the governing body discussed the issue of Academy status. The governing body has made no firm decision as to whether to apply for Academy status as it does not feel it has sufficient information to make an informed decision. The governing body has, therefore, set up a working party to gather all the relevant information. Once that information is collected the governing body will hold a separate meeting to decide whether we think that Academy status is in the best interests of the school. At that point we will carry out a full and open consultation and make available all the relevant information.

In the meantime any parents/pupils/members of staff or the local community who would like to comment on the idea should please write to xx at the school or send an email to. If there are any particular questions you would like the Working Party to find the answer to, please also use these communication channels.”

Stage 2

8. Having gathered the relevant information the governing body should convene a single issue governing body meeting. The sole item on the Agenda will be whether the governing body thinks the school should convert to Academy Status.
9. If the governing body decides not to convert then in the interests of transparency it should inform stakeholders of the reason(s) why.
10. If on the other hand the governing body decides that it does wish to convert then it should undertake a formal consultation with key stakeholders – to obtain their views on whether it should convert. If the governing body is convinced this is the right move and has the evidence to back that decision up then it should be able to put together a strong case to stakeholders.
11. The consultation should include details of: finance, staffing, services and governance. As the governing body has not yet applied for Academy status, it will not have formally established an Academy Trust, but this does not prevent the governing body from putting forward a model for stakeholders to consider and comment on.
12. Stakeholders should be given sufficient time to respond to a consultation (at least 4 weeks, not including school holidays). The NGA would recommend a variety of methods for consultation:
 - A letter to parents setting out the proposal –
 - Website - if the school has a website then the detailed background papers could be placed on this.

- Public meetings – where interested parties can raise question and make comments – these should be properly minuted.
- Governing bodies should allow a variety of means for response – email, written, face to face.

13. Once the consultation period has ended and the responses collated, then the governing body should consider all the evidence and take the final decision about whether to apply to convert.