

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

### Version 3: Friday 18th June 2010

This is the second edition of these Q&As on the Academies Bill; we will update the Q&A regularly over the coming weeks as more information is available. If you are a member of NGA you will receive these with your weekly e-newsletter. If you are not a member of NGA, and wish to be kept up to-date, do join NGA by clicking on [Join NGA](#)

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

The Department for Education has also produced a Q&A – [DfE Q&A](#) and some [guidance](#) – which sets out the process for outstanding schools wanting to undertake fast-track conversion to academy status. However, the DfE has not yet published any explanatory information on the additional responsibilities, freedoms or the details of the 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: I am the chair of governing body at an outstanding school; what should we do? Should we be registering an interest now with the DfE?**

**Answer:** You do not need to do anything in a hurry, and NGA advises that you should not do anything without due consideration. Good governance requires decisions to be made on the basis of full information and this is unlikely to be immediately available. As the chair of governors you should have a conversation with the headteacher and decide how you want to proceed.

The NGA is concerned that initial registration can apparently be completed by the headteacher without the need for any approval by the governing body. While registering an interest with the DfE doesn't commit you to anything, it might be interpreted as an intention to convert by other stakeholders and the local press. We would prefer if an interest was registered once the governing body had agreed that this should happen; this is not the same as passing the resolution in favour of converting to an academy. However, before an interest is registered at the very least a discussion should be had between the headteacher and chair of governors, and the rest of the governing body informed. In order to get some of the information you will need in order to make a decision about conversion, you will have to register an interest.

**Question 2: But won't we miss out if we delay registering an interest?**

**Answer:** There is no deadline; this is an ongoing process and schools will be able to register an interest or indeed take the next step and declare an intention to become an academy at any time. You need to take the time to consider the implications of such a change. However, in order to seek answers from the DfE, you may have to registering your interest with them.

**Question 3: But I have heard we have to make a decision by the end of this month (June).**

**Answer:** The DfE has stated that the process for conversion will take 3 months, and therefore that if schools want to convert to academy status by September, the governing body must agree the resolution by the end of June. However NGA believes this level of haste would not represent a thorough process and we strongly advise you not to attempt to meet this deadline. The DfE have not yet published the template funding agreement, so you cannot yet see what you would be joining up to. There is absolutely no need to rush this, and if you make the wrong decision, you cannot undo it.

**Question 4: So is there no way back to maintained status if we convert and then find procuring services is more hassle than benefit.**

**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.

**Question 5: What should we do if our headteacher has already registered an interest?**

**Answer:** Registering an interest doesn't commit the school to becoming an academy; nonetheless the NGA does not believe it is good practice for a headteacher to register an interest before they have discussed the matter, preferably with the full governing body, but certainly with the chair of governors.

**Question 6: Do we need to hold an additional governing body meeting?**

**Answer:** It would be advisable to hold a special meeting and have this as the only agenda item. If you add it to the agenda of the next scheduled meeting, you would not be able to do justice to any of the business. The additional meeting does not have to be held this term, but could be set for September so that informative papers can be prepared considering all the issues involved in detail.

The process requires a resolution by the governing body for a 'declaration of intent'. The NGA's view is this resolution must be made at a meeting of the full governing body as it is such a fundamental change. However, ideally this resolution should not be made on first occasion that a governing body discusses the issue; we hope you will want to consult partners and therefore you will need to decide how you are undertaking consultation, and then meet again to consider the outcome of that consultation.

## **Question 7a,b & c Who should we be consulting?**

### **Question 7a: Do we need to consult Foundation Bodies and Trustees**

**Answer:** If the school has a foundation body (some foundation and voluntary schools) then 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.

### **Question 7c: Do we need to consult parents?**

**Answer:** The Bill (as it is currently drafted) does not require the governing body to consult any other body, in particular it makes no mention of parents or of the Local Authority. However, even if the Bill is enacted without the requirement to consult, 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 and 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.

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

### **Question 7c: Do we need to consult staff?**

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 7b 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 - <http://www.education.gov.uk/academies/becomeanacademy>

**Question 8: 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, if you are a community or voluntary controlled school then the LA is the employer of staff at the school and as such will be responsible for conducting TUPE consultations (see question 7)

**Question 9: How much more money will we get by becoming an academy?**

**Answer:** The DfE has made it clear that schools which convert will not receive more money than maintained schools; they will simply receive the amount that the local authority would have spent on services for the school and will then have to purchase those services. You will receive a 'local authority central spend equivalent grant', but this will vary from school to school, and can vary considerably from LA to LA. You will need to ask the DfE for the exact amount which would be due to you. You will also have some costs of changing status. You will get a grant of £25,000 as a contribution towards these costs. The DfE guidance includes information on the position with surpluses and deficits.

**Question 10: Some headteachers have been saying their school will get large additional amounts, but our local authority says it does not keep very much back for central services?**

**Answer:** We have also heard a wide variety of figures; you need to get the exact amount due to your particular school from the DfE by registering an interest.

**Question 11: What is going to be the effect on other local authority responsibilities, such as SEN?**

**Answer:** The Bill does not change any other local authority responsibilities.

**Question 12: What are the extra responsibilities the school will have if it converts to an academy?**

**Answer:** If you are currently a community or voluntary controlled school, becoming an academy means that you will become the direct employer of staff and directly responsible for all aspects of the school (including admissions and health and safety). We will explore the responsibilities further in the next version of the Q&A. However in fact it is not so much the responsibilities which are altered, but the line of accountability and control which are changing.

**Question 13: So what are the freedoms we would be given as an academy?**

**Answer:** We will attempt to produce more information on this issue in the next edition of this Q&A. However it is difficult to produce an objective list; we have sought information from a number of sources over the past fortnight and have received very different opinions. For example some secondary school headteachers welcome additional freedoms on the curriculum and others say that they already have sufficient freedoms as a maintained school.

Although a number of freedoms have been touched upon in the press coverage, some of these will make little difference in practice. For example, maintained schools can already alter the length of the school day providing they follow the appropriate regulations. And other freedoms may not be terribly helpful. For example, the NGA supports the principal of the standard school year; if each individual school has the power to change term dates this could create real problems for parents and for teachers who have children in other schools. Any school changing its term dates or the length of the school day should ensure it properly consults parents and staff before doing so.

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.

**Question 14: But won't those freedoms be given to maintained schools too?**

**Answer:** They may well be or at least some; the Government has indicated it wants to give all schools more freedom, but we do not have details yet on this.

**Question 15: 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.

**Question 16: So, what are the pros and cons of becoming an academy?**

**Answer:** That is a very good question which gets to the heart of the decision which needs to be made by the governing body – and one which is best answered at local level. We had intended to include in this version of the Q&As a list of the implications of the change, and we have spent time over the past ten days talking to as many sources of information as possible to compile this. However again this appears to be very subjective as to whether a move to academy status is seen as a form of independence or a change from local to central control. Many of our members have expressed concerns about academies ceasing to work with other local schools; however this need not happen. Indeed schools are expected to work with at least one other school to improve their standards, and this will be discussed as part of the application process.

However the difference is that the governing body of a maintained schools reports to the local authority, while in academies the Trust reports to the Secretary of State.

Many commentators have labelled this as 'control', so in effect by converting a school moves from local authority control to central government control.

The main practical change is that academies will have to procure the services they previously bought from the local authority. Schools taking the academy route need to be aware that the LA ceases to have any responsibility for an academy – so it's not just a case of the school being 'free' from local authority interference, it also has no right to local authority support, although some specific services may be purchased. The school will become responsible for providing a number of services that are currently being provided by the LA. You will need to make arrangements to either provide these services direct or buy them in from another provider.

**Question 17: 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 18: What are the additional responsibilities of the governing body at an academy?**

**Answer:** These are not as different in practice as have been portrayed in some quarters. The governing body will have to report to the Trust, but in practice this could be the same people. In existing academies the Trust has the ability to appoint the majority of the governors. The NGA would recommend that schools choosing to take the academies route make sure there is proper representation for all stakeholders on the governing body, as well as the mix of skills needed to perform the role effectively.

**Question 19: If we become an academy, would we have to change the make-up of the governing body?**

**Answer:** No, you should not have to. However the Trust you set up would be able to do that. The DfE guidance says that the composition of the governing body is a matter for agreement between the Trust and the Secretary of State and will be including in the Trust's Articles of Association; it is therefore very important that if the governing body that makes the resolution to become an academy sets some conditions for this, and then decides not to proceed if the Secretary of State does not agree to what the governing body considered necessary. Academies are only required to have one elected parent member; however the NGA would encourage governing bodies to continue to have at least one-third of their members as parents.

**Question 20: Should the governing body become the Trust or should we work with a partner?**

**Answer:** The NGA welcomes the fact that academies can be set up by the existing governing body, rather than have to invite in an outside body which does not necessarily have local knowledge. You may want to consider partnering with others,

including the local authority; as far as we can see from the information so far there is nothing to prevent this.

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

**Answer:** No. Although this is not covered currently in the Bill, the Secretary of State has said that all academies will have to abide by the Admissions Code. Although existing grammar schools will be allowed to convert, other schools will not be able to introduce selection.

**Question 22: 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 23: Should we be seeking legal advice?**

**Answer:** If you decide to apply for academy status then you will require legal advice in relation to setting up the Trust Body, negotiation the Funding Agreement (although a standard template will be used) and transferring land. Schools will necessarily need legal advice to decide whether to apply for academy status, but should make sure that they have full information about the implications of a change in status.

**Question 24: What criteria will the Secretary of State use to decide if we can become an academy?**

**Answer:** This is not entirely clear, but it appears that for outstanding schools, the issues which will be considered are deficits and federation status. It is not yet known how the Secretary of State will deal with federations where only one school is outstanding. Having a PFI arrangement will not necessarily prohibit you from becoming an academy, but it is likely to slow down the process.

**Question 25: We are not a school with outstanding status. How will this affect us? Will we get left behind?**

**Answer:** You can register an interest with the DfE, but your interest will not be processed in the first batch.

The NGA believes that all schools within the local community should work together in the best interests of local provision. We hope that the new academies continue to do this; and secondary academies are expected to agree to offer support to another school. However there could be medium-term consequences on the viability of local authority services if a significant number of schools become academies and choose not to buy in local authority services. The process for schools who do not currently have outstanding status will be published by the DfE at a later date.

**Question 26: Why are outstanding schools being given priority?**

**Answer:** We do not know.

**Question 27: 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, including one concerning consultation. A number of other peers have submitted amendments and as a result an additional committee day has been added to the timetable. This now means that the Bill will be going into the House of Commons later than originally envisaged and potentially means that it will not be enacted before the summer recess. If this is the case then it will not be possible for any school to adopt Academy status via this route by September 2010.

If you have contacts in Parliament, please do get in touch and we will provide you with a copy of briefing.

**Question 28: 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?**

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

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 are responsible and also to 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 30: What other clarification has been made over the amount that will be paid in lieu of contracting out of the LEA?**

The DfE already have a formula which is used to calculate the grant for central services – this is known as the Local Authority Central Spend Equivalent Grant (LACSEG). It is based on the relevant Local Authority's central spending and the number of pupils in the school. This means that each school will receive a different amount.

**Question 31: How will the 'failing school to work with' be chosen?**

There has been no further information published on this issue as yet.

**Question 32: How exactly will budgetary over-spends be dealt with once free of the LEA support?**

Academies are directly accountable to the Secretary of State and have to report to him on an annual basis. In addition, academies are companies limited by guarantee and charities as such they are subject to audit requirements.

**Question 33: 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 NGA is seeking further clarification about admission arrangements from the Department.

**Question 34: Under Academy status, will we have freedom to purchase specialist services such as Speech & Language Therapy, Occupational Therapy or Physiotherapy from providers other than the Local Authority or the NHS? And what regulations will pertain to our use of such services?**

It is the NGA's understanding that the Academy will be free to source its own providers for any services which it is directly responsible for providing, but we are seeking further clarification on these issues.

**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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**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](mailto:membership@nga.org.uk) for more information.

**National Governors' Association**