

Answers to our members' questions on the Academies Bill

Version 4: 01 July 2010

This is the fourth edition of our Q&As on the Academies Bill and has been extensively revised from the previous editions. We will continue to 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](#). Our members have funded this resource.

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 and some [guidance – DfE Academies Information](#) - which sets out the process for outstanding schools wanting to undertake fast-track conversion to academy status. 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 there 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).

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

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 for more information.

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