

Academies – a guide for governors

What are academy schools?

Academies as defined by the Department for Education (DfE) are publicly funded independent schools that have:

- freedom from local authority control
- ability to set own pay and conditions for staff
- freedom from following the National Curriculum

Academies exist in a number of forms as academies, free schools, studio schools, university technical colleges (UTC's) and sixth form colleges.

The Education and Adoption Act 2016

The Education and Adoption Act 2016 was granted Royal Assent on 16 March 2016. At its core, the Act is the drive for continuing structural change to secure the academisation of the overwhelming majority of schools on the premise of raising standards.

The Education and Adoption Act 2016 provides a statutory basis for removing the right of parents to have a say in the type of school in which their child is educated and removes from parents, governors, local communities and democratically elected bodies the right to be consulted on whether or not their school converts to an academy through the creation of a new 'coasting' category of schools which would be targeted for academisation.

Educational Excellence Everywhere White Paper 2016

The DfE White Paper, *Educational Excellence Everywhere*, makes clear the Government's intention to increase the number of academies and multi-academy trusts (MATs) still further as part of its proposal to ensure that all remaining maintained schools transition to academy status. The White Paper suggested that this should be achieved by 2022, although subsequently this proposal was abandoned.

Academies are not linked to democratically constituted local authorities and are not obliged to implement the national pay and conditions framework for teachers or the National Curriculum for children and young people.

The NASUWT believes that if standards of achievement are to be raised for all children and young people, then the focus needs to be on standards rather than structural change. Whether schools are academies, trusts, foundation or community schools, the test should be: are they delivering the entitlements a public education service should be ensuring for all children and young people?

What academy conversion means in practice

The DfE has made it clear that it expects all schools to convert to an academy, either through choice or because they are deemed to be 'coasting' or 'inadequate'.

Regional Schools Commissioners (RSCs) have the power to issue warning notices to maintained schools and decide on the most appropriate course of action for schools deemed to be 'coasting'.

Where a school is deemed inadequate by Ofsted, then the Secretary of State has a duty to issue an academy order.

The Secretary of State has the power to issue warning notices to schools deemed to be 'coasting' and to decide on the most appropriate course of action.

Where a school is not subject to an Academy Order, the decision on conversion to academy status rests with the governing body, and if the school is a voluntary aided or controlled school, with the relevant religious authorities.

The decision to become an academy school is a highly significant and irreversible step for any school. It has profound implications for children and young people, governors, parents, the local community and staff.

It is a decision requiring the most careful thought and consideration, access to detailed and accurate information about what the change of status will mean in practice and in the long term, and a fair and open consultation process with all stakeholders.

'Freedom'

Some headteachers and governing bodies believe that becoming an academy provides them with greater freedom, less bureaucracy and more financial advantages. However, this is not the case.

Maintained schools already enjoy considerable autonomy over their affairs, but nevertheless are accountable for their use of public money. Academies will be subject to the same inspection regime as maintained schools and their test/examination performance will continue to be included in the national school and college performance tables.

Academy schools also remain subject to primary legislation, including employment law, health and safety, and equalities legislation.

There is no financial advantage to becoming an academy.

Experience has shown that where private providers and sponsors are involved, individual schools often have far less freedom and flexibility than when they were part of the family of local authority schools. Academy sponsors operating in a competitive market will be concerned about their business reputation and financial margins often before considerations about how to best support effective teaching and learning. Many current sponsors have little or no background in running schools.

Multi academy trusts (MATs) may seek to 'standardise' the schools in the chain, giving less freedom and flexibility than the schools enjoyed when they were maintained. In many trusts, individual schools have relatively little control over key decisions, including those relating to pay, appraisal, the curriculum, pedagogy and behaviour management.

It is important to note that Ofsted inspects all schools on an individual basis, including those that are incorporated into MATs. As a result, teachers, school leaders and individual governing bodies in these schools are held to public account for actions and outcomes that are often beyond their reasonable control as key decisions are made at the overarching level of the MAT.

Funding

Increased costs

All schools will incur additional costs as a result of conversion to academy status. These include costs associated with support, branding, external services and warranties, personnel functions, legal functions, IT maintenance contracts, health and safety duties, special needs provision, public liability and asset insurance, as all may currently be managed, provided or covered by the local authority.

Potential accrued and contingent liabilities of the school that will fall on the academy can be considerable, particularly liabilities for pensions. These additional costs run to hundreds of thousands of pounds for an individual school.

The DfE's own impact assessment indicates that all schools should expect a minimum one-off cost of academy conversion of £78,000. On completion of the process, the DfE has indicated that it will provide schools that have converted with a flat-rate grant of around £25,000 towards the cost of conversion. However, this will not be sufficient to offset the total cost associated with academy conversion, leaving each school with a minimum shortfall of around £53,000.

Long-term financial uncertainty

Academies are funded in the same way as maintained schools, following the local authorities' funding formula. Once the money is allocated to the school, it will have to make provision to replicate those important services previously provided by the local authority from within their own budgets.

In a harsher public spending context, any new academy school would need to be able to guarantee that it could remain financially solvent and self-sufficient in financially turbulent times. Academy schools would not be able to fall back on support from their local authorities if their financial circumstances were to change, as schools have been able to do in the past.

There is no protection for the governing body if an academy school encounters a future budget deficit. Currently, all local authorities have statutory powers that enable them to provide financial support to schools in financial difficulty. Such support would no longer be available and members of the governing body may not be indemnified against any financial liability or loss as a result of a failure of the school's provision.

The governing body of an academy school would also need to make arrangements for raising additional funding to support the development, upgrading or expansion of the school or any other capital projects.

Where an emergency arises, such as the development of a major structural fault or serious fire damage or flooding, which has occurred in some schools, the local authority will not be required or be in a position to provide the capital to repair or rebuild the school. The governors of the academy would have to apply for funding to the DfE. All of the funding available to assist academies in respect of this is limited. There is no guarantee that a bid would be successfully approved. Ministers oversee the allocation and distribution and are involved in the prioritisation of what the money is spent on.

Governors may think that such disasters could be covered by insurance through the Government's Risk Protection Arrangement (RPA), which is available as an alternative to insurance. Irrespective of this, governors should ensure that they have sufficient cover to meet the requirements of the funding agreement.

The local authority has responsibility for the wellbeing of the pupils in such circumstances, but that could be discharged by simply relocating them to other schools. The academy governors, whether the school was functioning or not, would still retain the liability for staff, staff salaries and other ongoing costs and liabilities.

Increased running costs for schools

Schools that convert to academy status will need to use their budget allocation to meet the additional cost of paying for services no longer provided by the local authority.

As an academy, the local authority would be under no obligation to provide the school with the range of support services the school currently enjoys. These include:

- governor information and support;
- financial services;
- auditing;
- school improvement support;
- training and professional development for staff;
- legal advice and information;
- payroll;
- pensions administration;
- insurances and indemnification, including public liability;
- technology and other IT infrastructure support services;
- licences and warranties;
- representation and employment support.

A more extensive, illustrative list is given in Annex 1.

A key justification set out in the Government's published White Paper, *Educational Excellence Everywhere*, for sponsored conversion to a MAT relates to the efficiencies and economies of scale that collaboration between schools is able to secure.

However, it is by no means clear that the forms of collaboration evident across MATs secure meaningful economic benefits in all circumstances. For example, the size of some trusts, the speed at which they have expanded and their geographical incoherence can serve to undermine rather than enhance economies of scale through, for example, more complex communications arrangements, increased transportation costs between sites and the introduction of inefficient bureaucratic procedures.

It is, therefore, not a guarantee that sponsored conversion will secure greater economies of scale and permit a greater proportion of available resources to be reallocated to educationally worthwhile activities.

Implications for governors

More demands

It is often assumed that becoming an academy will mean less bureaucracy for schools. This is a fallacy.

Schools rely on the support of volunteer governors and in many schools it is already difficult to recruit and retain governing body members because of the time and workload commitments associated with school governance.

Governing bodies of schools looking to convert as either a standalone academy or part of a sponsored academy may face increased workloads associated with the process. The independence associated with academy schools would, therefore, add to and compound the existing difficulties faced by many schools in finding people to serve on the governing body.

For those converting as a sponsored academy, there is no guarantee that the same level of governance will continue after conversion. There is no certainty under the governance provisions of the academies that a governing body in its current form would continue to operate when a school converts to academy status.

The governance provisions set only minimum requirements and allow for a reduction in the size and composition of the governing body. There is no requirement, for example, to have parent governors. Where such changes in governance have taken place previously, evidence shows that parent, staff and local authority-nominated governors are the casualties.

Under the arrangements for academies, the proprietors of the academy will have the final say over the school's future governance and management. Not every member of the existing governing body will be a proprietor of the school.

Often academy schools have trust boards appointed with no fixed term of office. They have considerable discretion to appoint and dismiss governors, which further undermines the ability of governing bodies to reflect and represent all stakeholder groups.

Additional legal responsibilities

The governors will be wholly responsible for the full range of statutory responsibilities, many of which would previously have been discharged by the local authority or other relevant body. These include the requirements of pension provision, health and safety liability and a raft of other legislative provisions previously monitored, managed and administered by the local authority on behalf of schools.

Pensions are a good example of the complexities the governing body will inherit. There are important legal responsibilities with regard to pensions. The governing body would acquire the full weight of responsibility for the employers' functions, which are subject to a range of statutory requirements. Failure to meet these statutory requirements could result in significant financial penalties being imposed upon the governing body by the Pensions Regulator. The expense of securing appropriate legal and personnel advice in this one area of responsibility alone to ensure compliance with statutory provisions would be significant.

Governors may also be personally liable in the case of the failure of the academy school, or if the affairs of the academy are inadequately or unlawfully discharged.

An illustrative list of some of the issues which will become the sole responsibility of governing bodies in academies can be found in Annex 2.

Public concern and opposition

Schools that choose to become an academy could find that they come into conflict with parents and the local community. This stresses the importance of genuine engagement and meaningful consultation prior to conversation.

Vulnerability to legal challenge

Governors considering conversion to an academy leave themselves extremely vulnerable to legal challenge.

Public law duties can be breached by failing to correctly identify appropriate persons with whom to consult, failure to carry out an appropriate consultation process, failure to give conscientious consideration to issues raised and failure to consult the local authority.

Governors have separate but equally important responsibilities under Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Breach of these leaves a governing body liable to be fined.

A good school for every child – how governors can help

All schools should be focused on delivering high standards of education. Converting to academy status is a distraction for governing bodies, school leaders and other staff, pupils and parents. Experience shows that simply considering academy status can divide the school community and take the focus of everyone involved off the all-important core function of teaching and learning.

Academy conversion also serves to fragment education provision. Schools work best when they work collaboratively, rather than in competition with each other. Thousands of schools judged by Ofsted as 'good' or 'outstanding' have achieved their high status without the need to become an academy. There is no evidence, either in the UK or internationally, that structural change raises educational standards.

By remaining part of the family of local provision in an area, schools can work together to better meet the needs of all children and young people. They can benefit from mutual support and expertise. They can access the economies of scale that enable the best value for money from their school budget and education funding.

Further advice and guidance

For further advice and guidance, please contact the NASUWT.

We can help with information and advice to support you.

Telephone: **03330 145550**

Email: **advice@mail.nasuwt.org.uk**

We will be happy to discuss your circumstances and answer your questions.

See the NASUWT advice and FAQs on: www.nasuwt.org.uk/academies.

Annex 1

An illustrative list of some of the services local authorities provide

EMPLOYMENT-RELATED SERVICES

Recruitment and placement

Pre-employment checks and records (DBS, List 99)

Other pre-employment checks and records (medical, etc)

Contracts

Conditions of service

Payroll services (records, processing, etc)

Personnel records

Employee benefits

Pensions services

Training and development

ICT SERVICES

Broadband connection (including configurable web and e-mail filtering services, website hosting and anti-virus software)

Broadband maintenance (including planning, management and administration of works)

Broadband change requests (administration of change requests from schools)

Whole school ICT support

Curriculum ICT support service

School office ICT support service

School-based ICT support service and complete ICT network management solution

Connection to county council intranet

ICT advice and consultancy

Management and administration of one-off grants

PUPIL AND CURRICULUM-RELATED SERVICES

Early years and childcare

Reviews or 'health checks' (e.g. pre-Ofsted)

Development of early years foundation stage (EYFS) delivery

Training and bespoke workshops

Moderation of EYFS profile

Education psychology

Special educational needs (SEN) statementing and assessment

Consultation support for pupils with complex needs and statements, including training and annual reviews processes

Monitoring of SEN provision

Monitoring of pupil outcomes

Additional education psychologist time

Education welfare

Development of whole school strategies (e.g. attendance procedures and policies, behaviour management, anti-bullying, differentiation, assertive discipline, etc)

Planning and delivery of training

Specific advice on best practice and effective educational interventions

Prosecution of parents for non-attendance

Monitoring of SEN provision, parent partnerships

Education child protection service

Planning and delivery of training

Equalities and cohesion

Support to promote best practice and ensure compliance with statutory requirements

Information, advice and guidance (primary) curriculum development

Curriculum development and reviews, advice/support for careers education and personal learning planning

Access to, and advice on, key resources

Use of information, advice and guidance (IAG) tools

Training and development

Reviews or health checks (e.g pre-Ofsted)

Support for school self-evaluation

School improvement continuing professional development (CPD)

Assessment for learning

SEN consultancy

Information, advice and guidance (secondary) curriculum development

Curriculum development and reviews, advice/support for careers education and personal learning planning

Workshops for staff underpinning support for careers education and personal learning planning

Access to, and advice on, key resources !

Careers education development, including training for newly appointed co-ordinators, annual programme of CPD, etc

Use of IAG tools

Training and development

Review or health checks (e.g pre-Ofsted)

Support for school self-evaluation

School improvement CPD

Assessment for learning

SEN advice and support

Library service

Supply and management of media

Media loan and reservations

Membership management

Music service

Music general advice, model teaching, observations and school in-service training (INSET) !

Music training for co-ordinators and class teachers !

Whole class instrument teaching programmes (Key Stages 2 and 3) !

After-school music lessons !

Outdoor education advisory service

Advice and support on all aspects of education visits process

Training courses to support educational visits and outdoor learning

Out-of-school hours study support

Out-of-hours tuition services

Out-of-hours clubs

Programmes for young people at risk of being 'not in education, employment or training' (NEET)

Student services

Administration of free school meals

Administration of school clothing allowances

Administration of the Learner Support Fund (post-16)

Primary secondary special

Advice and guidance on current developments, available resources and good practice

In-school support

Secondary work experience

Provision of work experience packages

SEN and inclusion team

Strategic planning support

Swimming service

Health and safety guidance (basic) !

Liaison/representation with governing bodies and organisations !

Additional health and safety support (traded) !

Provision of instructors !

PROPERTY AND PREMISES-RELATED SERVICE

Development of school-specific asbestos management plan

Arranging and overseeing asbestos surveys

Provision of statutory training on asbestos and asbestos management

Oversight and audit of any asbestos survey undertaken at the school

Ad hoc asbestos sampling of suspected materials as and when required to enable maintenance work to be undertaken

Maintenance and management of a database of asbestos-containing materials in the school

Management of any on-site asbestos emergencies

Project management of scheduled works on asbestos-containing materials

Provision of a 'management of contractors' controls system to ensure contractors are aware of asbestos hazards

Asset management

Assessment of the general condition of the school's accommodation and overall site

Assessment of the general suitability of the school's accommodation against the latest DfE Building Bulletin

Calculation of the Net Capacity Assessment from which the school's intake limit and published admission number (PAN) are determined

Fire safety services

Undertaking and reviewing fire risk assessments

Development of fire safety solutions

Designing and delivering fire safety training

Investigating fire incidents !

Liaising with statutory/enforcement agencies

Health and safety

Provision of policies, generic guidance and advice notes designed to secure compliance with health and safety (H&S) legislation

Training across a range of H&S matters to ensure compliance with council guidance or legislative requirements

Telephone and e-mail support on specific H&S matters

Provision of generic risk assessments

Liaison with key stakeholders, including enforcement agencies, to identify H&S solutions to challenges facing schools

Advice and guidance on statutory H&S responsibilities, including those related to management of property-related matters

Inspections and audit of school H&S performance

Recording of incidents and reporting to the Health and Safety Executive (HSE) on behalf of the school as and when required by law

Provision of H&S advice for construction work

Provision of updates on key H&S legislation affecting schools and other education settings

Insurance services

Advice on insurance requirements

Fire insurance valuations

Insurance quotations

Risk management advice with a view to reducing claims

Planning services

Advice and support on all aspects of planning

Site appraisals

Preparation of applications

Consultation and negotiation

Commissioning of specialist advice

Temporary accommodation

Initial surveys and advice

Provision of rented accommodation (full installation service, including management of enabling works and removal)

Provision of purchased accommodation (full installation service, including management of enabling works)

SCHOOLS MANAGEMENT SERVICES

Finance support

Help desk and training packages

Basic accounts

Full accountancy service

Budget review and monitoring

Admissions and appeals

Co-ordination of in-year admission applications

Home to school distance measurement

Governor services

Governor training and development programme

Additional bespoke school-based training sessions

Governor clerking service

Information retrieval management service

Specialist bespoke analysis of data in response to particular performance issues

Data management of school staff INSET

Data interpretation for Ofsted inspections

Support for evaluation of initiatives

Development of surveys for staff/family consultation

Development of needs analysis frameworks for performance management and evaluation

Collection and collation of Fischer family data

Legal services

Advice and guidance

Representation

Procurement support

Advice and guidance

Available contracts

Mini-competition management

Management of tenders

Contract management advice and support

Procurement training

Vehicle purchase and hire

Specialist contracts – inclusion within framework and bulk buying initiatives

School licences

CLA (Copyright Licensing Agency) school licence !

ERA (Education Recording Agency) school licence !

PRS (Performing Rights Society) and PPL (Phonographic Performance Licence) school !
licences !

PVSL (Public Video Screening Licence) !

CCLI (Christian Copyright Licensing International) !

Annex 2

An illustrative list of the duties of academy governing bodies

The following list of duties and powers of governing bodies is not exhaustive, but it indicates some key areas of governing body functions.

Compliance with statutory provisions including:

- employment law;
- health and safety legislation;
- equalities legislation;
- public law, including those relating to admissions and exclusions;
- contract law;
- financial regulations;
- Charities Act (2006) and Company Act provisions (2006).

Governors have the following statutory duties which include:

- the constitution, functions and membership of governing bodies (sections 19, 20, 23 and 34 of the Education Act 2002);
- the conduct of the school and to promote high standards of educational achievement: promoting the wellbeing of pupils at the school and promoting community cohesion (section 21 of the Education Act 2002 as amended by section 38 of the Education and Inspections Act 2006);
- the control of school premises (section 40 of and Schedule 13 to the School Standards and Framework Act 1998);
- the determination of school session times (section 32 of the Education Act 2002);
- the right to a delegated school budget and expenditure for community use (sections 50, 51 and 51A of the School Standards and Framework Act 1998);
- the provision of religious education (section 69 of and Schedule 19 to the School Standards and Framework Act 1998);
- the employment and dismissal of staff (sections 35-37 of the Education Act 2002 and additional provisions for staffing at foundation or voluntary schools with religious character – sections 58 and 60 of the School Standards and Framework Act 1998 as amended by section 37 of the Education and Inspections Act 2006);
- the primary legislation also places requirements on governing bodies concerning their relationship with stakeholders, for example, by providing parents with an annual report (maintained nursery schools only), having a process in place for dealing with complaints (section 30 and 29 respectively of the Education Act 2002) and having regard to the views expressed by parents of registered pupils (section 21(5) of the Education Act 2002 as amended by section 38 of the Education and Inspections Act 2006);
- the provision of a broad and balanced curriculum (sections 78 and 79 of the Education Act 2002) and to exercise their functions so as to implement the National Curriculum, including any tests (section 88 of Education Act 2002);
- the behaviour, discipline and welfare of pupils (section 88 of the Education and Inspections Act 2006 and section 175 of the Education Act 2002), including home-school agreements (section 110 of the School Standards and Framework Act 1998);
- admissions (Part III of the School Standards and Framework Act 1998, as variously amended) and further functions in the case of governing bodies who are the admissions authority for the school (Part III, Chapter 1 of the School Standards and Framework Act 1998 (as variously amended));
- consultation with pupils (sections 176 of the Education Act 2002);
- the preparation of a post-Ofsted inspection action plan (section 39 Education Act 2005);
- religious worship (section 70 of the School Standards and Framework Act 1998, as amended);

- charging (section 457 of the Education Act 1996);
- the setting of targets for pupil attainment (section 19 of the Education Act 1997);
- foundation governors of a voluntary aided school with a religious character must preserve and develop this character and ensure compliance with the trust deed (the School Governance (Constitution) (England) Regulations 2007).

Complementing and supporting these core responsibilities and requirements, governing bodies also have powers relating to:

- innovation in schools (section 1 of the Education Act 2002, with sections 2-5 of the same setting out administrative arrangements);
- the formation of companies (sections 11-13 of the Education Act 2002);
- governing body collaboration or federation, including collaboration with further education institutions (sections 24-26 of the Education Act 2002, section 116 of the Education and Inspections Act 2006);
- the provision of community facilities (section 27 of the Education Act 2002);
- publishing proposals to make prescribed alterations to the school (including to change category). Voluntary and foundation school governing bodies have additional powers to publish proposals to close the school (Part 2 of the Education and Inspections Act 2006).