



## BRIEFING PAPER

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# FAQs: Academies and free schools

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# 1. Summary

## What is an academy?

Academies and free schools are state-funded, non-fee-paying schools in England, independent of local authorities. They operate in accordance with their funding agreements with the Secretary of State, and are independent of local authorities (LAs). Maintained schools, on the other hand, have varying degrees of council involvement and are directly funded by them.

## How do free schools differ from academies?

Free schools are new state schools, whereas many academies are converter schools that were previously maintained by local authorities. Free schools operate in law as academies.

## What rules do academies and free schools have to follow?

Although academies, free schools and maintained schools share many similarities, there are some important differences in terms of the rules and legislation that apply to them.

## What is a multi-academy trust or MAT?

Multi-academy trusts, or MATs, usually run more than one academy. MATs themselves are single legal entities, with one set of trustees. Their member schools operate under a single governance structure. A handful of MATs are very large, with 40 or more schools; most MATs are much smaller than this, having between 1 and 10 schools. The Department for Education publishes [performance data for MATs](#).

## How do parents get places for their children at an academy?

Mainstream academies can decide for themselves how they will prioritise applicants for school places, where they are oversubscribed (e.g., have more applicants than places available). They have to comply with national fair admission rules in doing this. Regardless of a state school's legal status, parents usually apply to their home local authority for mainstream school places. Parents and carers whose application for a place at an academy is refused have the right of appeal.

## Curriculum at academies

Academies aren't required to follow the national curriculum. Primary academies are, however, required to participate in the assessments aligned with the national curriculum – i.e., SATs.

From September 2020, all academies and free schools will be required by legislation to offer revised Relationships and Sex Education, and health education.

## Who scrutinises academies?

The operation of academies is overseen by: The Education and Skills Funding Agency (ESFA – a Department for Education executive agency); Schools' inspectorate, Ofsted; and Regional Schools Commissioners (DfE appointees who each cover one of eight regions in England).

## Who owns academy land and buildings? Can property or land be sold off?

Academies can have various tenure types, but many hold their sites on long leases from the local authority, for a nominal charge.

There are controls on the disposal of academy (and maintained school) publicly-funded land. The Secretary of State's permission is required for the disposal of publicly-funded school land or school land that was originally private but which has been enhanced at public expense.

## What are the rules about staff employment in academies and free schools?

Where an academy converts from maintained school status, transferring staff are protected by TUPE (Transfer of Undertakings and Protection of Employment) arrangements.

When hiring new staff, or in the case of entirely new academies and free schools, academy trusts can determine their own pay, terms and conditions for staff, providing they comply with employment law and any relevant terms in their funding agreements.

## Are academies a good thing for school standards?

- The arguments for and against academies, and information on the Government's wider schools' policies are covered in a separate historical Library briefing paper:
- [House of Commons Library briefing paper, Every school an academy: the White Paper proposals](#)

## How are free schools performing as a group?

There are a relatively small number of free schools with pupils in the final year of primary (Key Stage 2) or compulsory education (Key Stage 4). As such, some caution is still needed when comparing their performance to other school groups. Of free schools that have been inspected by Ofsted as at 31 March 2019:

- **37%** of primary free schools were graded Outstanding overall, and **53%**, good. Across all primary school types, **18%** were outstanding and **69%**, good.
- **27%** of secondary free schools were graded outstanding overall, and **55%**, good. Across all secondary school types, **21%** were graded outstanding, and **54%**, good.<sup>1</sup>

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<sup>1</sup> Ofsted, '[State-funded schools inspections and outcomes as at 31 March 2019](#)', 13 June 2019. Free school figures excludes University Technical Colleges and Studio Schools.

## 2. What are academies and free schools and how do they differ from maintained schools?

In England, academies and free schools are state-funded, non-fee-paying schools independent of local authorities. They operate according to their funding agreement between the individual academy trust and Secretary of State.

Maintained schools, in contrast, are so called because they are 'maintained' by the local authority; the local authority has varying degrees of involvement dependent on the subtype of maintained school.

### 2.1 What's the difference between a free school and an academy?

In law, free schools operate as academies.

However, free schools are entirely new state schools, whereas most academies are either converters or sponsored academies, and will have previously been maintained schools.

A school's name is not always an indication of the school's legal category. An individual school's status can be checked on the [DfE's school performance tables website](#) or on the DfE's [Get information about schools](#) website.

### 2.2 What are the key differences between maintained schools and academies?

Some key differences include:

- **Curriculum:** maintained mainstream schools must currently follow the national curriculum; academies don't have to teach this but may follow it in full or in part. Primary academies do have to participate in national curriculum assessments, though (also known as SATs).
- **Local authority role:** councils have a very limited role in academies. They will typically have a greater role in maintained schools, although the extent of this depends on what subtype of maintained school it is.
- **Teachers:** academies don't have to employ teachers with qualified teacher status (QTS)<sup>2</sup> unless this is required by the funding agreement, while in general maintained schools must. Academies also employ their own staff, whereas for many (but not all) maintained schools the local authority is technically the employer.

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<sup>2</sup> The exception is in relation to the school's Special Educational Needs Co-ordinator (or SENCO), who must have QTS, even in academies.

- **School standards:** local authorities have very limited powers to directly intervene in academy schools; their intervention powers are greater in maintained schools.

## 2.3 How are academies and free schools funded and held accountable?

The Education and Skills Funding Agency (ESFA) is a DfE executive agency that funds open academies and free schools, and monitors finances and governance. However, these schools' revenue funding allocations are currently determined in large part by the local authority's locally-determined funding formula.

### Reforms to school funding and effect on academies and free schools

The 2015 Government proposed major changes to the way that schools (including academies) would be funded. Following consultation and the publication of final reform plans, a new national funding formula has been used to calculate core funding from 2018-19. A description of the current system, and the planned changes, is available in two separate publications:

- CBP 8419, [School funding in England: FAQs](#)
- CBP 8106, [Implementation of the national funding formula for schools in England](#).

In July 2017, Education Secretary Justine Greening announced £1.3 billion additional funding for schools and high needs, across 2018-19 and 2019-20. This, she said, would allow per-pupil funding to be maintained in real terms for the final two years of the Spending Review period. The money, she said, would come from making efficiency savings in the existing DfE budget, including from the free schools programme:

In delivering the programme, and the plans for a further 140 free schools announced at the last Budget, we will work more efficiently to release savings of £280 million up to 2019-20. This will include delivering 30 of the 140 schools through the local authority route, rather than the free schools route.<sup>3</sup>

There are two main ways of opening free schools:

- The local authority route (sometimes known as the free schools presumption route), where the LA identifies a need for a new school. In this case the LA is responsible for providing the site, and meeting the associated capital costs.
- The central free schools programme, where proposers apply to one of the DfE free school application rounds. In this case, the Department is responsible for procuring the site and capital costs.

Then-Minister, Lord Nash, was asked in July 2017 whether the plan to deliver 30 free schools through the local authority route would trigger additional funding for local authorities. In response, he said:

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<sup>3</sup> Justine Greening, [Statement to Parliament](#), 17 July 2017.

As I said, we have been working very collaboratively with local authorities to plan much more accurately with them precisely where they want free schools. Local authorities obviously often produce free school sites on a peppercorn for no money. It is also clear to us that some local authorities have perhaps not been spending their basic need money, as they should have been, but relying on the central programme. I believe that this can be done efficiently. The local authorities that we work with certainly seem keen to provide many more of these schools. We go through a process whereby they decide where they want the schools to be and, effectively, an open process is then gone through whereby school providers can approach them and be approved, initially by the local authority and then by the department.

[...]

The answer to the question on where the money will come from is that local authorities are funded substantially to provide their basic need budgets. We will look to them to use those budgets to fund some of these places through new schools and the free schools programme. [...] <sup>4</sup>

### Academies financial handbook

All academies are required to abide by the current version of the ESFA's [Academies Financial Handbook](#).<sup>5</sup> The handbook sets out rules on financial management, control and reporting requirements for standalone and multi academy trusts.

### Ofsted inspections of academies, free schools and multi-academy trusts

Ofsted (the Office for Standards in Education, Children's Services and Skills) is responsible for inspecting the quality of education in all state-funded academies and free schools, and uses the same inspection framework as for maintained schools.

### Regional Schools Commissioners

Eight Regional Schools Commissioners (DfE appointees) oversee academy performance and approve some strategic and management decisions. In respect of academies and free schools, RSCs' main duties are:

- taking action where academies and free schools are underperforming
- intervening in academies where governance is inadequate
- deciding on applications from local-authority-maintained schools to convert to academy status [...]
- encouraging and deciding on applications from sponsors to operate in a region
- taking action to improve poorly performing sponsors
- advising on proposals for new free schools

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<sup>4</sup> [HL Deb 17 July 2017](#), c1436-7

<sup>5</sup> ESFA, [Academies Financial Handbook](#), June 2018. All sources last accessed 18 June 2019 unless indicated otherwise.

- advising on whether to cancel, defer or enter into funding agreements with free school projects
- deciding on applications to make [significant changes to academies and free schools](#).<sup>6</sup>

Further background on RSCs can be found in:

- [Commons Library briefing paper, Regional Schools Commissioners](#)

## 2.4 How many pupils attend free schools and academies?

In January 2019, nearly 3.8 million pupils attended academies and free schools in England. This means 72.3% of secondary pupils and 29.7% of primary pupils attended academies and free schools.<sup>7</sup>

A regularly updated Gov.uk web page provides information on the number of open academies and free schools, and academies awaiting approval:

- Gov.uk transparency data, '[Open academies, free schools, studio schools and UTCs](#)'.

The DfE publishes an academies sector consolidated annual report and accounts. This provides data on the number, location, type, finances, performance and accountability of academies in England.<sup>8</sup>

## 2.5 Does academy status lead to school improvement?

An in-depth discussion of the impact of academy status on pupil outcomes can be found in a related Library briefing paper:

- [House of Commons Library briefing paper, 'Every School an Academy: The White Paper Proposals'](#) – see section 6.

## 2.6 How are free schools performing as a group?

There are a relatively small number of free schools with pupils in the final year of primary (Key Stage 2) or compulsory education (Key Stage 4). Consequently, the number of free schools for which we have attainment and performance data is also comparatively small. As such, caution is needed about drawing firm conclusions on performance compared to other types of school. In 2018:

- **61%** of pupils in free schools met the expected standard in all of reading, writing and maths. Across all school types, the figure was **64%**. **12%** of free school pupils reached the higher standard, compared to **10%** across all school types.<sup>9</sup>

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<sup>6</sup> Gov.uk website article, '[About us](#)', undated.

<sup>7</sup> DfE, [Schools, pupils and their characteristics: January 2019, Main text, 10 June 2019](#), p4.

<sup>8</sup> See: [Academies and free schools](#) section of Gov.uk website for most recent report.

<sup>9</sup> DfE, '[Key stage 2 and multi-academy trust performance, 2018 \(revised\)](#)', main text, 13 December 2018.

- At secondary level, free schools achieved an average Progress 8 score of **+0.24**, significantly above the average (**+0.01**) across all secondary school types.

As the name suggests, Progress 8 aims to measure the amount of progress a school makes with its pupils between the end of KS2 and the end of KS4.

Progress 8 scores are presented with 95% confidence intervals.

A positive Progress 8 score with a confidence interval wholly above zero generally indicates that a school is making more progress with its pupils than would be expected.

For free schools in 2018, the confidence intervals are such that we can be reasonably sure that free schools, as a group, are making more progress with their pupils, as measured by Progress 8, than would be expected based on national averages.<sup>10</sup>

Of free schools that have been inspected by Ofsted as at 31 March 2019:

- **37%** of primary free schools were graded Outstanding overall, and **53%**, good. Across all primary school types, **18%** were outstanding and **69%**, good.
- **27%** of secondary free schools were graded outstanding overall, and **55%**, good. Across all secondary school types, **21%** were graded outstanding, and **54%**, good.<sup>11</sup>

### 2.7 Do academies have the same legal responsibilities as maintained schools towards children with special educational needs and disabilities (SEND)?

Following the passage of the *Children and Families Act 2014*, mainstream academies and free schools are subject to most of the same direct statutory duties as maintained mainstream schools, in respect of children with special educational needs and disabilities (SEND). As such, mainstream academies and free schools must:

- Have regard to the statutory [SEND Code of Practice](#): 0-25 years, the current version of which came into force on 1 April 2015.<sup>12</sup>
- Use their 'best endeavours' to make sure a child with SEN gets the support they need.
- Designate a qualified teacher to be the SEN Co-ordinator (SENCO).<sup>13</sup>

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<sup>10</sup> DfE, '[Key stage 4 and multi-academy trust performance 2018 \(revised\)](#)', main text, 24 January 2019.

<sup>11</sup> Ofsted, '[State-funded schools inspections and outcomes as at 31 March 2019](#)', 13 June 2019. Free school figures excludes University Technical Colleges and Studio Schools.

<sup>12</sup> DfE/ DH, [Special Educational Needs and Disability Code of Practice](#), January 2015.

<sup>13</sup> This does not apply in the case of 16-19 academies.

- Co-operate with the relevant local authority in respect of the child.
- Admit a child where the school is named on that child's Education, Health and Care plan (EHC plan).
- Ensure that children, young people and their families are involved in decision-making and planning.

Although academies and free schools are outside local authority control, LAs still retain their statutory SEND duties. These include carrying out statutory education, health and care needs assessments of children with SEND, and arranging the special education provision specified in any EHC plan.

Background on the recent reforms to SEN assessment and provision can be found in a separate Library briefing paper:

- [Link to House of Commons Library briefing paper, 'Special Educational Needs. Support in England'](#)

## 2.8 What are academy sponsors, and what do they do?

Sponsors are responsible for key tasks such as appointing the school's leadership and teaching staff, ensuring quality and high educational standards.

More information about sponsorship is provided in a Gov.uk collection:

- [Gov.uk website guidance, Sponsor an academy](#)

Since May 2010, sponsors have no longer been required to make a financial contribution to the establishment of an academy, although they can do so if they wish.

The DfE publishes a list of current sponsors:

- [DfE website article, Academy sponsor contact list](#)

Ofsted-rated outstanding schools and schools that are performing well and that want to convert to academy status are not required to have a sponsor. However, each 'low-performing' school becoming an academy is expected to have a sponsor to bring added drive, expertise and capacity to the school.

## 2.9 What is a multi-academy trust, or MAT?

Multi-academy trusts, or MATs, usually run more than one academy. MATs themselves are single legal entities and will have one set of trustees. Their member schools will operate under a single governance structure. A handful of MATs are very large, with 40 or more schools; most MATs are much smaller than this, having between 1 and 10 schools.

### Does Ofsted inspect MATs?

Ofsted currently does not conduct inspections of, and give ratings to MATs, although there have been calls for it to do so.

In July 2018, HMCI, Amanda Spielman gave [a speech](#) where she said that the inspectorate was trialling a new approach to the inspection of schools in MATs over the summer months. In December 2018, Ofsted published [a blog](#) with the results of the trial, and announced that based on these results it would be changing the way it inspected schools within MATs:

In short, this new approach will involve a number of inspections of individual academies from a MAT, taking place over a period of up to two terms. And once all the inspection reports are published, a small team of inspectors will visit the 'head office' to work with MAT senior leaders to evaluate the educational effectiveness of the MAT as a whole. This will draw on the inspections carried out and discussions with MAT leaders.

Ofsted's previous approach was to conduct batched inspections of individual schools within trusts.

### 2.10 How do I find out information about a particular MAT?

The Department for Education publishes [performance data for MATs](#) and, as noted above, Ofsted has recently revised their approach to inspecting MAT academies:

- [Link to Ofsted, 'Find a MAT'](#)

The Commons Education Committee published a [report on MATs](#) on 28 February 2017.<sup>14</sup> The Committee concluded:

- There was "a gap in assessing MATs which neither Ofsted nor RSCs presently fulfil." Ofsted needed a new framework for inspecting MATs, and the associated inspection powers and resources to put this into action.<sup>15</sup>
- MATs were not sufficiently accountable to local communities and parents; instead the focus was on upward accountability.<sup>16</sup>
- The Government had initially "encouraged trusts to expand too quickly over too large geographical regions". As such, the Committee welcomed the DfE's development of a 'growth check' for use when deciding whether a MAT should be allowed to expand, with tight controls.<sup>17</sup>
- There remained "a high degree of uncertainty around the effectiveness of MATs and there is not yet the evidence to prove that large scale expansion would significantly improve the school landscape."<sup>18</sup>

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<sup>14</sup> Education Committee, [Multi-academy trusts](#), Seventh Report of Session 2016–17, HC 204, 28 February 2017.

<sup>15</sup> *Ibid.*, p30.

<sup>16</sup> *Ibid.*, p15.

<sup>17</sup> *Ibid.*, p31; p28

<sup>18</sup> Education Committee, [Multi-academy trusts](#), Seventh Report of Session 2016–17, HC 204, 28 February 2017, p31.

- Local authorities with strong track records in education should be allowed to use the expertise within their education departments to set up MATs.<sup>19</sup>

## 2.11 Can companies connected to academies provide paid-for services to those schools?

Academy sponsors, and companies and individuals related to academy sponsors, may provide contracted services to their sponsored schools, as long as this is provided 'at cost' in the case of transactions over certain financial limits. The 'at cost' requirement applies to contracts entered into on or after 7 November 2013. The goods or services also have to be procured fairly and openly.

Paragraph 3.10.12 of the ESFA's Academies Financial Handbook provides more information on the detailed requirements on these transactions. Academy trusts are required to comply with the handbook via provisions in their funding agreements.<sup>20</sup>

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<sup>19</sup> *Ibid.*, p21.

<sup>20</sup> ESFA, [Academies Financial Handbook](#), June 2018.

## 3. Opening, closing, and other organisational changes at academies and free schools

### 3.1 How do schools voluntarily convert to academy status?

The *Academies Act 2010*, as amended, allows the governing body of a maintained school in England to apply to convert the school to an academy provided it has passed a resolution to do so.

Information about how local authority maintained schools can convert to academy status is available on the Gov.uk website:

- [Gov.uk website article, Convert to an academy: guide for schools](#)

Model funding agreements are also available on the Gov.uk website. The DfE's expectation is that these model documents will be followed in most cases but the exact terms of funding agreements can vary between schools.

Each application to convert is considered on its merits, with the decision being informed by various factors which are set out in the Gov.uk guidance on becoming an academy linked to above.

### 3.2 When can schools be made to convert to academy status?

Following the passage of the *Education and Adoption Act 2016*, the Secretary of State must make an academy order where a school has been judged by Ofsted to be inadequate (Grade 4). This means the school has been judged to have serious weaknesses or to require special measures. This is the only mandatory route to academisation.

Under the 2016 Act the Secretary of State also has the ability to convert a school identified as coasting to an academy, although doing so is discretionary. The *Coasting Schools (England) Regulations 2017* (SI 2017/0009) set out the criteria for designation as coasting. In May 2018, the Secretary of State [announced](#) that from 2018/19 powers to make coasting schools convert to an academy would not be used, and in a May 2019 Government [response](#) to a recent [consultation](#), it was confirmed that the coasting standard would be removed.

DfE guidance sets out the intervention options currently available to local authorities, the ESFA, and Regional Schools Commissioners for both maintained and academy schools, and the legislative basis for the conversion of schools to academies:

- DfE statutory guidance, '[Schools causing concern](#)'.<sup>21</sup>

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<sup>21</sup> DfE, [Schools causing concern](#), updated November 2018.

### 3.3 What about the proposals to convert every remaining school to academy status?

In March 2016 the then-Government set out plans to require all remaining maintained schools in England to convert to academy status in a White Paper, *Educational Excellence Everywhere*.<sup>22</sup> Further details on these plans can be found in a Library briefing paper:

- [House of Commons Library briefing paper, Every School an Academy: The White Paper Proposals](#).

In May 2016, it revised these plans. It said that while the aim was still full academisation, it would not pursue “blanket conversion”.<sup>23</sup> It would nevertheless introduce legislation that would provide for academy conversion in situations where:

- A local authority could no longer support its remaining schools because a critical mass of schools in that area had already converted, or where a local authority had requested the DfE to convert all of its remaining schools.
- A local authority consistently failed to meet a minimum performance threshold across its schools.

#### October 2016 statement – no wider education legislation to be introduced, and conversion will remain voluntary

- In October 2016, Education Secretary Justine Greening said in a Statement that while the Government’s ambition remained that all schools would have academy status, it would not introduce any wider education legislation in this parliamentary session. The focus would instead be on “building capacity in the system and encouraging schools to convert voluntarily”.<sup>24</sup>

### 3.4 Can an academy ever return to local authority control?

There is no mechanism for an academy to return to local authority control. Academies that are deemed failing or underperforming may be transferred to another MAT or sponsor (known as re-brokering) or subject to other intervention from the relevant Regional Schools Commissioner.

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<sup>22</sup> DfE, [Educational Excellence Everywhere](#), CM 9230, 17 March 2016.

<sup>23</sup> [‘Next steps to spread educational excellence everywhere announced’](#), DfE press notice, 6 May 2016.

<sup>24</sup> Written Statement to Parliament, [Technical and Further Education, HCWS223](#), 27 October 2016.

### 3.5 Can an academy unilaterally decide to leave a multi-academy trust, or MAT, once it's joined?

There is currently no mechanism for a school that is part of a MAT to unilaterally decide to leave or transfer to another MAT. Schools may however be able to negotiate an exit or transfer. Schools with concerns about their position in a MAT should seek professional guidance - e.g., from a teaching or school leaders' union or other body.

### 3.6 How do groups apply to open a free school?

The Gov.uk website provides guidance for groups wanting to open a free school:

- [Gov.uk website collection, Opening a free school](#)

As mentioned above, local authorities can also invite proposals to open a free school, if they identify a need for an entirely new school in this area. The DfE publishes a list of local authorities seeking free school proposals:

- [Gov.uk transparency data, New school proposals](#)

Guidance for applicants on free school bid assessment criteria can be found on the Gov.uk website:

- [Gov.uk/ DfE, Free schools: how to apply](#)

### 3.7 Recent free school application waves

On 11 March 2019, Education Secretary, Damian Hinds, [announced](#) the approval of 37 new special free schools and two alternative provision free schools, creating around 3,500 additional places.<sup>25</sup>

On 14 June 2019, a further 22 free schools were approved to proceed to the pre-opening phase. These included two new specialist maths schools; the DfE estimates that the 22 schools will create around 19,000 places.<sup>26</sup>

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<sup>25</sup> DfE press release, '[Thousands of places created in new special free schools](#)', 11 March 2019.

<sup>26</sup> DfE press release, '[Thousands of new school places in underperforming areas](#)', 14 June 2019.

## 4. Land and buildings

### 4.1 Who owns academy land and buildings?

Academy land tenure type will vary from school to school. Land issues can be complicated and schools should take appropriate professional advice before entering into contracts or disposing of any land.

The basis on which an academy trust holds land will depend on a range of factors, including:

- What type of school it was before converting, in the case of a convertor academy.
- The school's history.
- Who owned the land and buildings of the predecessor school.
- Any terms negotiated by the academy trust, or the ESFA on the trust's behalf.

Further guidance on land transfer issues for maintained schools converting to academy status is available in the DfE's guidance on land transfer:

- [DfE, Academy conversion: land transfer advice](#).<sup>27</sup>

### 4.2 Are all academies held on long leases for 'peppercorn rents'?

There are many possible tenancy types for academies, including where the academy trust:

- Leases the land on a long lease for a peppercorn rent. This is the most common arrangement.
- Holds a freehold interest.
- Has a mixture of tenure types.
- Rents on a commercial basis.

### 4.3 Can academies and free schools sell off land?

There are controls on the disposal of academy (and maintained school) publicly-funded land. The term disposal can include both sale and the granting of leases or easements. There is a general policy presumption against the sale of school playing field land. Further guidance on disposal of school land can be found in a DfE guidance document:

- [DfE guidance, Advice on the protection of school playing fields and public land](#).<sup>28</sup>

The Secretary of State's permission is required for the disposal of publicly-funded school land or school land that was originally private

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<sup>27</sup> DfE, [Academy conversion: land transfer advice](#), April 2013.

<sup>28</sup> DfE, [Disposal or change of use of playing field and school land](#), May 2015.

but which has been enhanced at public expense. Academy land disposal is a complex area and anyone initiating a disposal should seek appropriate advice.

## 4.4 What kind of buildings and land arrangements are in place for new free schools?

DfE guidance on site management for free school proposer groups and open free schools outlines the three most common tenure options for free schools:

- Peppercorn rent lease- the academy trust will rent the land on a long-term basis at near zero cost from a landowner such as a local authority.
- Commercial lease – can apply to a wide range of buildings not traditionally used for schooling.
- Outright purchase – land and buildings held on freehold basis.<sup>29</sup>

There will also be planning considerations in respect of new free school buildings.

Guidance on planning matters for free schools can be found in a Department for Communities and Local Government briefing note:

- [DCLG guidance, Plain English guide to planning for free schools, published January 2015.](#)<sup>30</sup>

Securing a site can be a challenging aspect of establishing a free school, especially in densely-populated urban areas with high land values and few vacant public buildings.

### Launch of LocatEd, March 2017

In March 2017 the DfE launched LocatED, a property acquisitions company for free school sites. A press release explained LocatED's aims:

[LocatED](#) has been established to acquire land and buildings across the country to help the government build 500 new free schools by 2020 and create 600,000 new school places by 2021. [...]

LocatED is a government-owned property company and will operate with a £2 billion budget, making it one of largest purchasers of land in the UK. Working directly with landowners, agents and developers across Britain, LocatED has been established to help overcome some of the challenges of securing sites and land for new free schools.<sup>31</sup>

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<sup>29</sup> DfE, [Options for securing or acquiring a site](#), 1 March 2013.

<sup>30</sup> DCLG, [Plain English guide to site planning for free schools](#), January 2015.

<sup>31</sup> DfE press release, [‘Government launches company to create more free schools’](#), 28 March 2017.

## 5. Day to day operation of academies and free schools

### 5.1 How can parents or others complain about an academy or free school?

Complaints about academies are handled by ESFA on behalf of the Secretary of State, once the complainant has been through the school's own internal complaints procedure. Some specific types of complaints may need to be taken up with other agencies. Examples include concerns about potentially criminal behaviour (police) or child protection (the local council).

A Gov.uk website article offers information on how to raise concerns about a free school or academy:

- [Gov.uk article, 'Complain about a school or childminder'](#).

There is a specific, separate procedure for complaints about the administration of independent appeal panels for admissions to academies. The DfE has produced a factsheet on this type of complaint:

- [DfE, Academy independent admission appeal panel complaints factsheet](#).

### 5.2 How do parents get a place for their child at an academy or free school?

#### Academies are their 'own admissions authorities' but parents usually apply to the local authority

An admissions authority is the body responsible for setting a school's admissions arrangements (i.e., how it will allocate places) and for some aspects of administering the admissions process.

Parents applying for places at mainstream academies at the normal points of entry (e.g., entry to reception, or to the first year of secondary school) usually apply to their home local authority and not directly to the academy.

Some free schools choose to opt out of the local authority's co-ordinated admissions scheme in their first year of opening and may ask for direct applications.

All local authorities in England produce booklets and online guides for parents on how to apply for school places, including places at academies.

#### In-year admissions

Some local authorities co-ordinate all in-year admissions – that is, applications for a school place at times other than when a child would normally be expected to join the school. In other areas, there is no central co-ordination and applications need to be made directly to the

preferred school(s). Again, the local authority should be able to provide information on how the system works in a particular area.

### 5.3 Do academies have to comply with school admissions legislation?

The DfE's model funding agreement for mainstream single academies and free schools requires academies to comply in full with the current DfE *School Admissions Code* and the law relating to admissions. The Secretary of State has the power to vary this requirement where there is "demonstrable need".<sup>32</sup>

The Code makes clear that, under an academy's funding agreement, the Secretary of State for Education has the power to direct an academy to admit a particular child.<sup>33</sup>

### 5.4 How can a parent appeal a decision to refuse a place at an academy?

The academy trust is responsible for arranging for an appeal against refusal of a place. Details of how to appeal, and any associated time limits, should be provided with the original decision notice sent to the parent or carer.

Following the appeal to the academy's independent admissions appeals panel, a parent may be able to make a further appeal to the Secretary of State about the way the original appeal was carried out.

Regardless of school type, parents considering appealing against a decision to refuse a school place may wish to seek independent advice from an organisation such as [Coram Children's Legal Centre](#), a [local law centre](#), or [Citizens Advice](#).

### 5.5 Can an academy use faith criteria to allocate school places?

A school is oversubscribed if it has more applicants than it has places available. When a school is oversubscribed, schools with a religious designation (faith schools) are allowed to give priority in admission arrangements to children of a particular faith or faiths.

In the case of a converter academy which was previously a (maintained) voluntary-aided, (maintained) voluntary-controlled or (maintained) foundation school with a religious character, there is no restriction on the proportion of places that can be allocated on the basis of faith.

In September 2016, the Government published the consultation [Schools that work for everyone](#), which included proposals to allow new faith free schools to select up to 100% of pupils based on their faith, subject to schools taking new measures to promote inclusivity.

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<sup>32</sup> DfE, [School Admissions Code](#), December 2014. p4.

<sup>33</sup> *Ibid.*, p32.

On 11 May 2018 The Secretary of State for Education made a [statement](#) about the [Government response](#) to the consultation. The Government decided to retain the 50% cap for faith free schools, but also created a capital scheme to support the creation of new voluntary aided schools (where for qualifying projects 90% of the capital cost of a new school is to be paid by the state and 10% sourced by the proposers). Faith schools created through this mechanism may have 100% faith-based oversubscription criteria in their admissions. For further detail on the capital scheme (now closed to new applications) please see the [Guidance and Criteria](#).

As is the case for maintained faith schools, if a faith academy has fewer applicants than places (i.e., is undersubscribed) it generally has to offer a place to any child that applies, without reference to faith.

## 5.6 What curriculum do free schools and academies follow?

Academies and free schools are not required to follow the national curriculum, although in practice many follow it at least in part. Primary academies and free schools are required, however, to participate in national curriculum assessments, often referred to as SATs.

Academies must ensure they offer a broad and balanced curriculum, which includes English, mathematics, sciences, and religious education (RE).

From September 2020, academies and free schools will be required to teach statutory Relationships and Sex Education (RSE), and health education. Further background on what academies and free schools have to teach in terms of RSE, and also RE, can be found in two other Library briefing papers:

- Commons Library briefing paper, [Sex and relationships education in schools \(England\)](#).
- Commons Library briefing paper, [Religious Education in schools \(England\)](#).

## 5.7 Can academies teach creationism?

In 2012, the DfE amended the model funding agreement for mainstream free schools to require the teaching of evolution and prevent the teaching of theories contrary to established scientific evidence, as fact. The model funding agreements for single and multi-academy trusts were subsequently amended in the same way.

The relevant clause in the current mainstream single model funding agreement for new free schools and academies reads:

2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.

2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.<sup>34</sup>

## 5.8 What are the rules on school uniform for academies?

Maintained school and academy governing bodies are able to determine their own school uniform policies.

The DfE's School Admissions Code makes clear that schools "**must** ensure that [...] policies around school uniform [...] do not discourage parents from applying for a place for their child".<sup>35</sup>

Further non-statutory advice from the DfE on school uniform stresses that the cost and availability of uniform should be a key consideration when setting uniform policies:

No school uniform should be so expensive as to leave pupils or their families feeling unable to apply to, or attend, a school of their choice, due to the cost of the uniform. School governing bodies should therefore give high priority to cost considerations. The governing body should be able to demonstrate how best value has been achieved and keep the cost of supplying the uniform under review.

When considering how the school uniform should be sourced, governing bodies should give highest priority to the consideration of cost and value for money for parents. The school uniform should be easily available for parents to purchase and schools should seek to select items that can be purchased cheaply, for example in a supermarket or other good value shop. Schools should keep compulsory branded items to a minimum and avoid specifying expensive items of uniform e.g. expensive outdoor coats.<sup>36</sup>

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<sup>34</sup> DfE, [Mainstream academy and free school: single model funding agreement](#), updated 28 March 2019, p. 25

<sup>35</sup> DfE, [School Admissions Code](#), December 2014, para 1.8, p10.

<sup>36</sup> DfE, [School uniform](#), September 2013.

## 6. Employment in academies

### 6.1 Qualified Teacher Status (QTS)

Unlike maintained schools, an academy is not required to employ teachers with Qualified Teacher Status (QTS) unless there is a clause in its funding agreement that says it has to. The exception is that the teacher fulfilling the role of the Special Educational Needs Co-ordinator (SENCO) at mainstream academies must hold QTS.

### 6.2 Early Career Framework

Under Government plans, from September 2021 all early career teachers in England undergoing induction will receive two fully-funded years of structured professional development underpinned by the [Early Career Framework](#). This includes 5% funded off-timetable time in the second year of teaching.

In February 2019, a PQ response set out the position concerning academies and the Early Career Framework:

All schools, including academies, that provide statutory induction must comply with relevant regulations and statutory guidance. From 2021, subject to regulatory changes, this will include an enhanced support offer for early career teachers, underpinned by the Early Career Framework.

Although not legally required, the majority of non-maintained schools, including academies, do provide statutory induction. Most recent available data shows that 29,765 Newly Qualified Teachers from across all sectors passed induction in 2017/18.

[...]

It is important to note that the funding for the Early Career Framework will be available to all schools, including academies, supporting an early career teacher who is undergoing statutory induction. It is anticipated that academies will continue to offer induction and there has been strong support from the school sector, including academies, for these reforms.<sup>37</sup>

For further information on the Early Career Framework please see Section 4 of the Library Briefing Paper [Teacher recruitment and retention in England](#).

### 6.3 Conversion to academy status: TUPE implications for existing staff

Existing staff in maintained schools that convert to academy status should have their terms and conditions protected under the *Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006*, SI 2006/246, as amended.

The Advisory, Conciliation and Arbitration Service (ACAS) website provides guidance on practical issues for existing staff when a maintained school converts to academy status:

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<sup>37</sup> [PO 216345](#), 7 February 2019.

- [ACAS website article on staff at schools transferring from maintained to academy status, undated](#)<sup>38</sup>

Staff in schools that are converting to academy status and who have queries about the likely implications of this for their role should contact their union or ACAS for further guidance.

Outside of TUPE arrangements, academies are legally able to set their own terms and conditions for staff.

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<sup>38</sup> ACAS website article, [Transferring staff \(TUPE\)](#), undated.

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