

Guidance

Pupil Referral Units conversion to Alternative Provision Academies in 2012/13

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1. Introduction

The *Importance of Teaching* White Paper sets out our vision for improving alternative provision (AP), including allowing PRUs to access the freedoms that Academy status can offer them to raise the standard of the whole AP sector.

Evidence both from exam results and independent reports shows that the autonomy enjoyed by mainstream Academies is leading to an increase in standards. A Public Accounts Committee report from 2011 found that Academies have achieved rapid academic improvements and raised aspirations in some of the most challenging schools in the most deprived areas of the country. 26% of the Academies inspected in 2009/2010 were rated outstanding by Ofsted compared to 13% of secondary schools nationally. In addition, a lower proportion of Academies were rated inadequate compared to secondary schools nationally. All of which is an achievement for Academies given that these Academies were generally starting from a low base and in challenging circumstances.

By giving PRUs the opportunity to convert to alternative provision (AP) Academies, PRUs will give education professionals greater scope to innovate and raise standards for their pupils whilst still remaining clearly accountable for the outcomes they deliver. They will be able to develop their own provision and increase and diversify the range of AP provision in the area.

Working closely with all commissioners and other providers, and playing a leading role in driving up quality and spreading best practice across the whole alternative provision sector, AP Academies will have a key role to play in shaping the strategic direction of alternative provision in their area.

2. Context

What is an AP Academy?

The Education Act 2011 creates a new type of Academy - Alternative Provision (AP) Academies.

There is only one category of AP Academy in law. However, there are a number of ways to become AP Academy including: PRUs converting to become AP Academies; new providers (such as brand new AP provision or existing independent provision) entering the state funded sector as AP Free Schools; and PRUs becoming AP Academies with the support of a sponsor.

This guidance is for Pupil Referral Units (PRUs) that wish to convert to AP Academies.

AP Academies will cater principally for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education.

Parents cannot choose to send their child to an AP Academy. Instead, local authorities, schools and Academies act as 'commissioners', referring pupils of compulsory school age to alternative provision.

Law and policy

AP Academies were introduced in the Education Act 2011. As a general rule, education legislation is applied to PRUs by regulations. The regulations applying the Academies Act 2010 to PRUs are currently subject to consultation and are likely to come into force in May 2012, but PRUs wishing to convert in September 2012 can start the process now.

3. Things to consider before registering an interest

One of the key features of the Government's vision for improving AP is to enable PRUs to access the enhanced autonomy that Academy status can offer - autonomy to help raise standards within the PRU and across the whole AP sector. Higher standards in AP will in turn provide a source of local expertise to help mainstream schools improve their practice and the outcomes for some of the most vulnerable children in our society.

Many PRUs have expressed an interest in operating independently from their local authority. AP Academies will have a key role to play in shaping the strategic direction of AP in their area, working closely with all commissioners (schools and local authorities) and other AP providers, playing a leading role in driving up quality and spreading best practice.

In converting to AP Academy status, PRUs should be aware that as well as gaining greater autonomy, they will take on additional responsibilities – including control and management of their budgets, and control over staffing. It is important that PRUs consider their freedoms, additional responsibilities and future governance arrangements when taking forward their interest in becoming an AP Academy.

Criteria

Initially, the Department will consider registrations of interest from PRUs that are performing well. PRUs interested in converting should provide:

- Evidence of capacity to improve outcomes for pupils;
- Evidence of strong and improving pupil attainment and progress and evidence of other achievements that support the learning of pupils in AP, such as improvements in behaviour, attendance (overall and persistent), and rates of exclusion;
- Evidence of where the pupil goes after their time in AP and of systems being in place to enable reintegration into suitable mainstream education where appropriate;
- Evidence of leadership and management capacity to drive improvement, and preparedness to take on new staffing and financial management responsibilities; and
- Any other evidence which the PRU may put forward in order to demonstrate that it is performing well, including "evidence of demand" for places.

Evidence of meeting these criteria can be demonstrated by a range of indicators including: Ofsted report; attainment and progression data; evidence of tailored approaches to

individual pupils; and systems for sharing information and for reintegrating pupils into mainstream education, where appropriate.

We recognise that looking at exam results is not always the most meaningful indicator of quality for PRUs, and we are therefore asking PRUs to provide information they feel demonstrates the quality of provision in their PRU and beneficial outcomes for the pupils they serve.

The PRU Information Form

As with mainstream converting schools, PRUs will be asked to provide the information necessary for the Department to provide advice on the range of models of governance and/or the most likely conversion date. The information includes:

- a. Details about the PRU;
- b. Buildings and land ownership;
- c. Finance;
- d. Staffing arrangements; and
- e. Consultation plans.

In considering converting its PRU to an AP Academy, the PRU's management committee should also consider the information they will include in the PRU Information Form. The form should help the management committee consider all the key aspects that will need to be resolved during the conversion period and it may inform their choice of governance arrangements.

Funding

The school funding review and future funding

The Government is currently considering future funding arrangements for high needs pupils. A consultation on school funding was published in July 2011, and set out a range of proposals for reforming funding arrangements for high needs pupils, which includes pupils placed in AP settings.

Any reformed funding approach for the AP sector will apply to all AP providers, including maintained PRUs and AP Academies.

Funding for AP Academies opening in 2012/13 and after

Until the introduction of a reformed approach to funding pupils in AP settings, PRUs that convert to AP Academy status will be funded through interim arrangements which will seek to replicate the funding arrangements and budgets already in place for them. PRUs converting will therefore benefit from consistency of funding until the new funding system is in place.

Funding will be confirmed for one academic year and will be set out in a funding letter from the Education Funding Agency (EFA) a month before the AP Academy's opening date.

The level of funding for an AP Academy will be set at the same level they would have received if they were still local authority maintained. We will use the confirmed funding figures - either those for 2011/12 updated to the Department's rate, or the 2012/13 budget provided through, for example, the PRU's funding statement.

Like other Academies, AP Academies will receive LACSEG (Local Authority Central Spending Equivalent Grant). LACSEG is designed to compensate Academies for the loss of services that the local authority would have provided to them. In 2012/13 there is a separate LACSEG rate for each local authority. From 2013/14 the DfE hopes to set a national per pupil rate for LACSEG for AP Academies. LACSEG weighting for AP Academies will be set at 3.75 times the normal level to allow for the fact that PRUs require larger budgets compared to mainstream provision catering for the same numbers of pupils.

Funding will be paid by the Education Funding Agency (EFA) who will recoup the funding from the local authority's Dedicated Schools Grant (DSG) where the AP Academy is situated. Any local funding arrangements can remain subject to agreement from the parties involved – for example, the “home” local authority can recoup costs from any other local authorities that have pupils placed at the AP Academy.

Conversion grant

Mainstream schools wishing to convert to Academy status receive a £25,000 conversion grant. That same amount will also be provided to cover the legal costs of conversion of PRUs. In the case of a mainstream school converting, that grant is given to the school itself. PRUs do not have their own budgets, but as part of the conversion process they will need to set up an Academy Trust. When this has been done, and the Trust has set up its bank account, the Department can enter into a grant arrangement with the Academy Trust and issue it with the conversion grant. In cases where the PRU wishes to join an existing Multi-Academy Trust, the conversion grant will be paid to that existing Multi-Academy Trust.

The process explained

The following sets out the various steps that relevant parties will need to take to achieve conversion in 2012/13:

1. If you are interested in becoming an AP Academy you can register an interest at the section of the Department for Education website (www.education.gov.uk) relating to becoming an Academy. Following submission of the short on-line registration form, an DfE project lead will be assigned to help you work through the conversion process. Your project lead will also be able to give you more information about any of this guidance that is unfamiliar.
2. The Management Committee (MC) will need to meet to discuss a resolution to agree “in principle” to seek to convert to AP Academy status and in favour of submitting the ‘PRU Information Form’. To inform their decision, the MC may consider this guidance document, the PRU converter Q and A document and the information required in the PRU Information Form.
3. If the MC votes in the majority in favour of the resolution, they should submit the PRU Information Form to PRU.CONVERSIONS@education.gsi.gov.uk , and copy in their DfE project lead. The MC will need to send a signed hardcopy of

the completed PRU Information form to their DfE project lead as soon as possible, along with a signed resolution/agreement “in principle” stating the PRU MC’s intent to become an AP Academy. Although the MC may not have all the information to complete the form, it should aim to provide as much information as possible. If you have any queries about the form, you should talk these through with your project lead.

4. The Academy Trust is the body that will govern the AP Academy and it is the Academy Trust that will enter into a Funding Agreement with the Secretary of State. (More information about Academy Trusts and how to set one up is in Section 4 below. Section 5 gives more detail on different types of governance.) If the MC wishes to convert on its own or with a group of PRUs, it will need to decide who the three founding members of the Academy Trust will be. If the MC wishes convert as part of an existing Multi-Academy Trust (MAT), then that decision is not needed as it will be the existing MAT that will enter into the Funding Agreement with the Secretary of State. However, it will still need to decide who the additional member/s of that MAT might be to ensure that it is appropriately represented. An early indication of the preferred Academy Trust arrangements will help inform the DfE project lead about which Articles of Association will be required.
5. On receipt of the PRU Information Form, the DfE will assess the likelihood of achieving the preferred conversion date as stated on the form, and will advise the PRU accordingly. We will also give an early indication of the issues that will need to be addressed during the conversion process. The DfE will consider the PRU Information Form and, if the ‘performing well’ criteria are met, will provide an agreement in principle to proceeding with the conversion process.
6. Upon receiving the DfE’s agreement in principle, if it has been agreed that the best governance arrangement requires the setting up of a new Academy Trust (i.e. the PRU will not be joining an existing Multi-Academy Trust), the MC will need to set up the Academy Trust. This will allow the Secretary of State to enter into “Academy arrangements” with that Academy Trust.
7. Before the Academy Trust can be set up, the PRU (or a solicitor on its behalf) will need to complete the DfE model Memorandum and appropriate AP Articles of Association. These can be downloaded from the DfE website and will then need to be submitted to the DfE project lead for clearance. The Memorandum of Association sets out the name of the trust and provides for details of the three subscribers who wish to form the trust and become its members under the Companies Act 2006. The Articles of Association prescribes for the internal management, decision making and running of the Academy Trust and its liabilities.
8. When these documents have been approved by the DfE, the MC will then be in position to register the trust with Companies House. A small fee will be incurred for this which may be reimbursed from the £25,000 grant when this is issued.
9. The Academy Trust will then need to set up a bank account and download a grant claim form from the DfE website to claim the £25,000 contribution towards costs associated with the conversion process. The form will need to be completed (including the bank account number), signed and returned to the DfE

project lead. The signed form may be faxed or scanned as a PDF document and emailed to the DfE project lead.

10. Once the grant claim and bank details have been submitted to the DfE project lead, the DfE will pay the £25,000 grant to the trust. A grant letter will be sent to the Academy Trust setting out the terms and conditions of the grant.
11. The following steps may then proceed in parallel:
 - a. The MC will need to start the consultation required by Section 5 of the Academies Act 2010 with interested parties about becoming an AP Academy (the consultation can start later but must be completed before the Funding Agreement can be signed).
 - b. The local authority will also wish to start the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) discussions in earnest at this point.
 - c. The Academy Trust will work with their DfE project lead to resolve any issues arising from the PRU Information Form, in order to agree the various model documents that will be provided to them (i.e. the Funding Agreement and annexes), and to agree land/buildings arrangements/transfer with the local authority and/or the private land owner.
 - d. The MC and the local authority will need to agree a Commercial Transfer Agreement (CTA).
 - e. The Academy Trust completes the Land Questionnaire (available at the becoming an Academy section of the DfE website www.education.gov.uk) and submits it to their DfE project lead. NB this will need to be completed and submitted by the PRU/Academy Trust's solicitors.
12. As soon as the relevant provisions in the Education Act have commenced, the DfE project lead will inform the PRU so that the MC can formally apply to the Secretary of State for an AP Academy Order (May 2012). This process will not be onerous. The PRU MC will simply need to confirm in writing that they wish to convert.
13. Assuming that nothing has changed since the DfE agreed in principle that the conversion process could begin, the Secretary of State will then issue an Academy Order for the PRU. It should be noted that an AP Academy Order will not take effect until the conversion date specified in the order, and the granting of one does not guarantee that Academy arrangements (i.e. the Funding Agreement) will be entered into - this will be dependent on all the conversion issues being resolved prior to signing the Funding Agreement. The DfE project lead will work with the MC/Academy Trust to finalise all remaining issues.
14. The Academy Trust will then submit the Funding Agreement and all other documents (annexes, Land Questionnaire, etc) for final approval to their DfE project lead.

15. At this stage, the Academy Trust, local authority, and any other parties will agree all the leasing arrangements for the PRU land and buildings. All these must be in place before the DfE signs the Funding Agreement.
16. The Education Funding Agency will provide the Academy Trust with an indicative funding letter. This is normally a month prior to opening. However, it should be noted that PRUs that convert in 2012/13 will be funded at the same level as they were previously funded as maintained PRUs (see section 3 of this guidance).
17. When all the documents are approved, the DfE project lead will arrange for the signing and sealing of the Funding Agreement.
18. The Academy Trust will need to ensure that all the necessary CRB checks are carried out as necessary prior to opening.
19. The Academy Trust and the local authority will agree the Commercial Transfer Agreement to assign contracts and liabilities to the appropriate body.
20. The Academy Trust will ensure that all relevant registrations are completed (for example with exam bodies).
21. When all the above has been done, then the PRU is ready to open as an Alternative Provision (AP) Academy.

4. Setting up the Academy Trust and Governing Body

Setting up the Academy Trust

If the PRU's management committee does not wish to join an existing Academy Trust, it will need to set up a new one. This will enable the Department to enter into a grant arrangement with a legal entity that is separate to the local authority.

An Academy Trust is a company limited by guarantee which is made up of members and directors. The directors will also be the governors of the AP Academy and they will be responsible for the day-to-day management and governance of the AP Academy. The members of the Academy Trust will be its legal owners and will have a strategic role in running the AP Academy and ultimate control over the company. A company is legally required to have only one founding member, but it is the Department's policy that there should be three founding members. Members and directors/governors are not paid for their work in these roles.

The management committee will first need to agree who will be the three founding members of the Academy Trust (the signatories to the Memorandum of Association) in order to set up the Academy Trust (the company). If finding three members causes your PRU difficulties, you should discuss this with your DfE project lead. The management committee will then need to decide who the subsequent members will be and also who will sit on the new Governing Body.

The members appoint the directors/governors of the company. When setting up the company, the members are required to appoint at least one director (the chair of governors). This may be one of the members themselves.

The members are not always directors/governors, but in some cases they will undertake both roles. There is an expectation that most of the directors/governors will not also be members of the Academy Trust. This is to ensure that there are clear lines of accountability between the directors/governors and the members. A Principal may technically be full member of an Academy Trust, although it is the Department's policy that they should not. Such arrangements are highly unusual and would not generally be viewed as good practice in terms of effective governance.

Deciding who should form and sit on the Academy Trust

The DfE policy is that no Academies should have local authority influenced status. This is because local authority influenced status brings with it a range of bureaucratic burdens and requirements that reduce the autonomy of the Academy Trust.

A company is 'local authority influenced' if:

- 20% or more of the **members** or 20% or more of the **directors** (often referred to as the governors) who sit on the Academy Trust are Associated Persons

'Associated Persons' are defined as current members (councillors), current officers (employees of the local authority), or anyone who has been a member of the local authority within the past four years.

However, Academies may still wish the Academy Trust to have local authority representation. In those cases, local authority membership of Academies at member level should be less than 20%. Local authority officers are defined as employees of the local authority regardless of the position they hold, thereby making up numbers that contribute to local authority influenced status in an Academy Trust.

Current parent or community governors of a PRU's management committee, or headteachers of other schools who are not employed by the local authority, could be the founder members who set up the Academy Trust. Then, as per the Articles of Association of the Academy Trust, these founder members can appoint additional members at a later stage (while bearing in mind the DfE requirement that less than 20% of the members should be local authority associated).

Headteachers who are not considered as being employed by the local authority include headteachers of foundation schools, voluntary aided schools, Trust schools, non-maintained special schools and Academies.

So, if three founding members set up the Academy Trust and one was employed by the local authority, this would not be in line with DfE policy as 33% of the members of the Academy Trust would be local authority associated. However, if 6 members set up the Academy Trust and one was employed by the local authority, this would be in line with DfE policy as less than 20% of members would be local authority associated.

Documents required to set up a company

In order to register as a company, the founding members of the Academy Trust will need to sign the Memorandum of Association and agree the Articles of Association. PRUs should

use the Department for Education's AP Academy model Memorandum and Articles of Association.

The Memorandum of Association is a legal document which lists who the founding members of the company are.

The Articles of Association set out the Academy Trust's charitable objects and the rules that govern it. The objects describe and define the purpose for which the Academy Trust has been set up. It also sets the limits of the financial relationship the governors and members can have with the Academy Trust and the limits of their liability for the Academy Trust. The Articles of Association also outline the rules for the running and regulation of the Academy Trust's internal affairs. In practice, this means that they explain the governance of the Academy Trust (this consists of members of the Academy Trust and governors of it) and how that governance structure should operate (e.g. how they hold meetings, or what would disqualify a governor).

If the company is formed using the model Memorandum and Articles of Association it will also be a charity at the point that the Articles are adopted. The company's Directors will then also be its trustees¹ for charity law purposes.

Further information on what you need to do to set up a company is available [here](#) on the Companies House website.

Setting up the Governing Body of the AP Academy

Discussions will need to take early on in the process to agree which members of the management committee will become governors of the AP Academy.

To facilitate this discussion, DfE guidance on governing bodies, including their responsibilities, is available here:

<http://www.education.gov.uk/schools/leadership/governance>

Similar to an Academy Trust and in line with DfE policy, the Governing Body of an AP Academy should not be local authority influenced. Where the Academy Trust wishes to have local authority representation on the Governing Body, this should be less than 20%.

¹ There is guidance issued by the Charity Commission on the role and duties of charity Trustees: <http://www.charitycommission.gov.uk/publications/cc3.aspx>

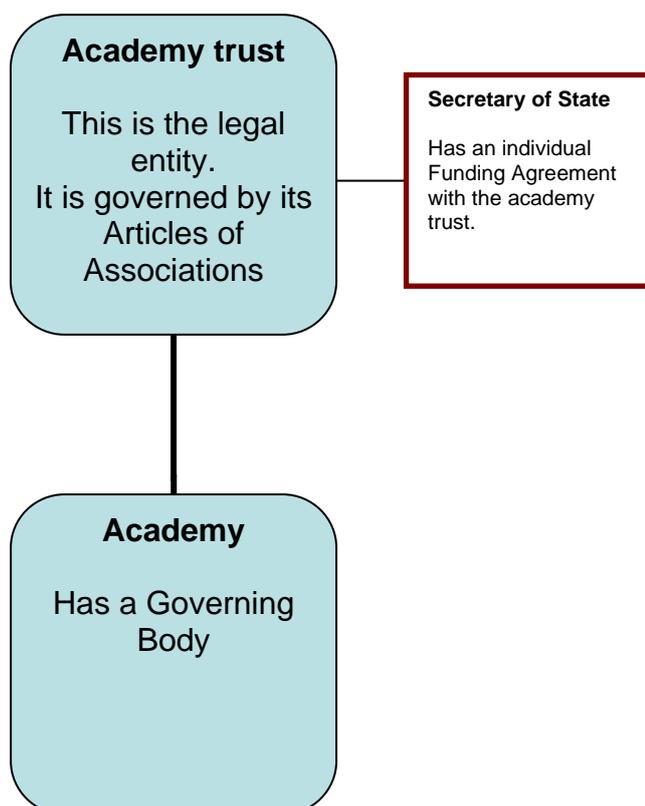
5. Examples of governance

NOTE: the following examples are drawn from guidance for mainstream and special schools. However, the structure could apply to converting PRUs.

Whichever governance model is chosen, the Academy Trust that will be responsible for the AP Academy/ies will be a charitable company limited by guarantee created under the Academies Act of 2010, and there is no share capital for the people that run it. The Academy Trust is responsible for the running of the AP Academy, and it has control over the land and other assets.

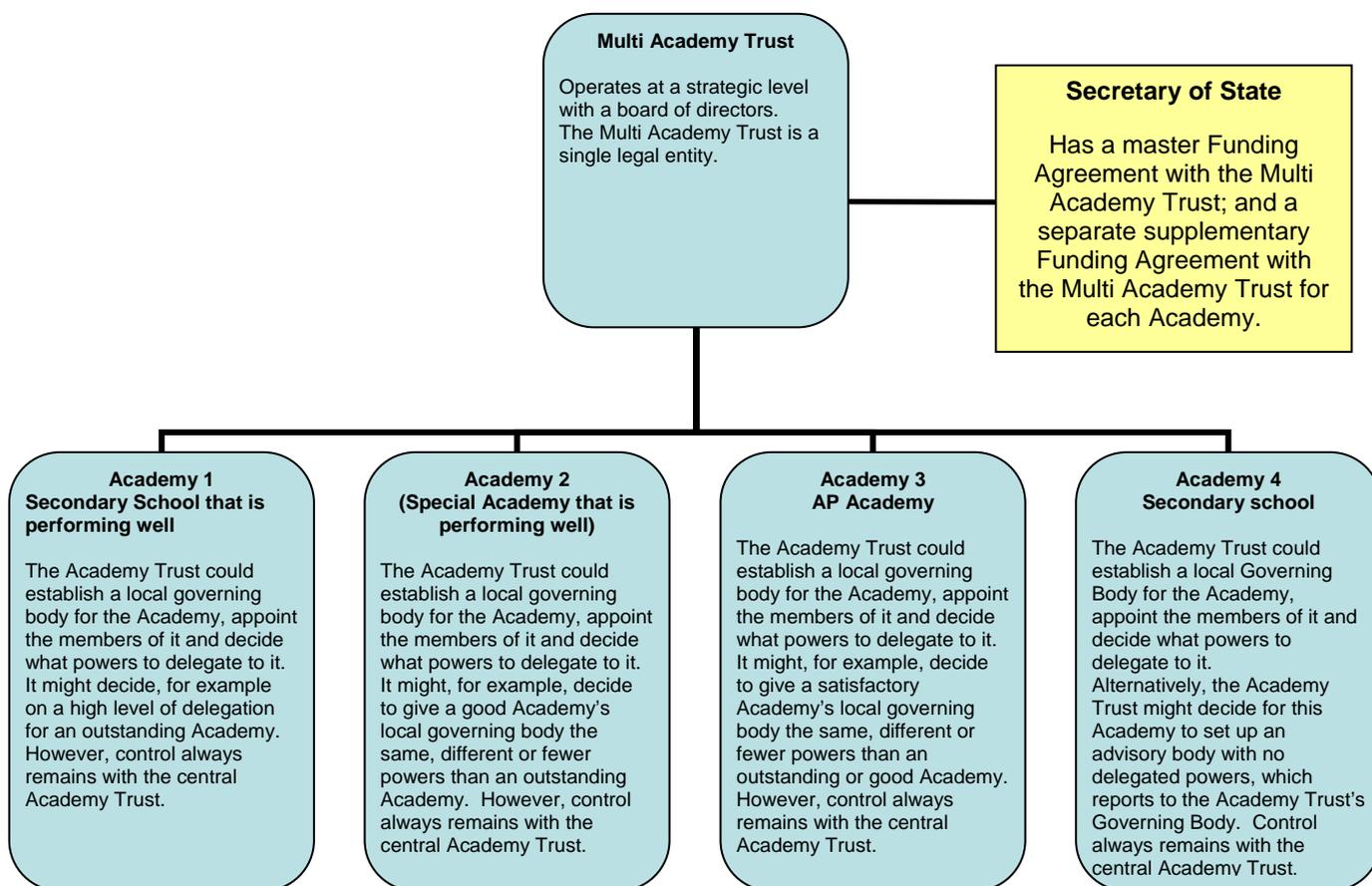
There are currently four types of governance structures, including three to suit schools or PRUs looking to convert as a group: 1) single Academy Trust 2) Multi-Academy Trust (MAT), 3) Umbrella trust (UT), and 4) Collaborative partnership. Features for each model are listed below:

Single Academy Trust

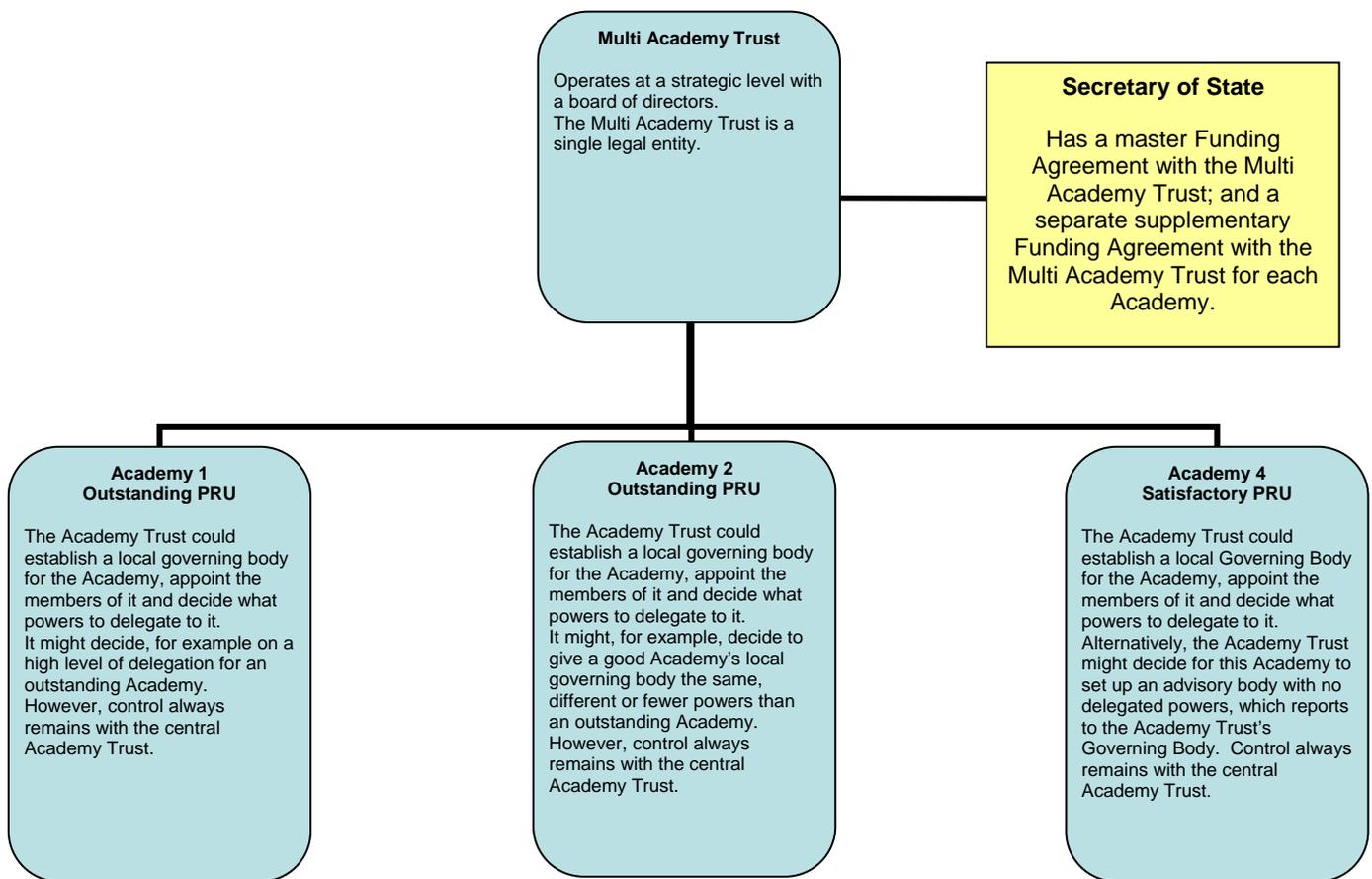


- This model is suitable where an education institution wants to convert on its own. There is only one institution and that the Academy Trust is responsible for.

Multi-Academy Trust (MAT) 1



Multi-Academy Trust (MAT) 2

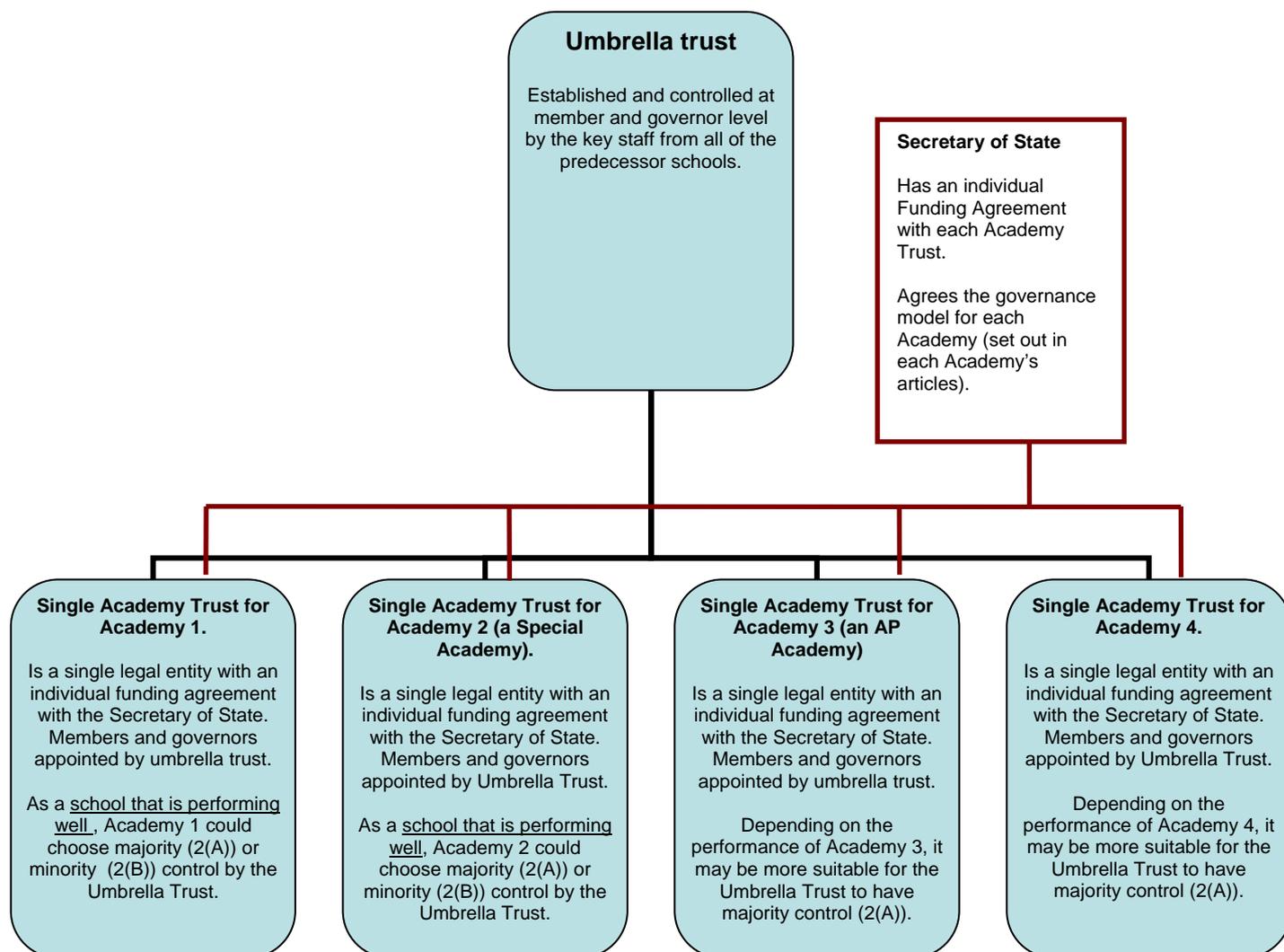


- A MAT has overall responsibility for all the education institutions in the chain and is the legal entity and the body accountable for the performance of all the Academies in the chain; although it can delegate powers to governing bodies of the individual education institutions. As such, this single model governance structure provides strong levers and incentives to generate school improvement and collaboration. This is the model used by traditional, sponsor-led chains and is the most 'top-down' model.
- There is a single Academy Trust (the Multi-Academy Trust, or "MAT") which enters into one Funding Agreement for all the Academies in the chain.
- The Secretary of State will sign a master Funding Agreement with the new overarching Academy Trust, and supplemental Funding Agreements with each individual Academy.
- The MAT is made up of a small number of key individuals (members), who operate at a strategic level. The members appoint a board of Directors, who are legally responsible and accountable for all the education institutions in the chain.
- Each education institution can still have its own Governing Body and be represented

on the board of the MAT. Individual governing bodies operate subject to delegation to them of powers from, and control by, the MAT.

- Some MAT chains may choose to have one single Governing Body covering all the education institutions, in a similar way to schools in a 'hard federation'. In such cases, the Directors will effectively be the Governing Body for each education institutions in the chain.
- Education institutions performing well in the chain can use their representation at Trust level to provide integral support and challenge roles to other Academies within the chain.
- The MAT is the employer of all the staff and can procure services on behalf of all the education institutions in the chain. Straightforward joint procurement of services will enable economies of scale and the sharing of services.
- The sharing of staff is straightforward as the MAT is the employer of all its education institutions' staff.
- Education institutions in the chain will still have separate DfE numbers and separate URNs, and so will be separately inspected by Ofsted. They may ask Ofsted to be inspected together, but the timetable for inspection would be determined by the inspection timetable of the weakest education institution in the chain. The decision of how and when to inspect sits with Ofsted.
- As the Funding Agreement covers all of the education institutions, it is difficult for individual institution to leave a MAT chain. Unless there is a breach of the Funding Agreement (or some other event) which enables the Secretary of State to terminate early, the MAT and Secretary of State would have to agree to vary the Funding Agreement to allow an individual institution to leave the MAT chain.

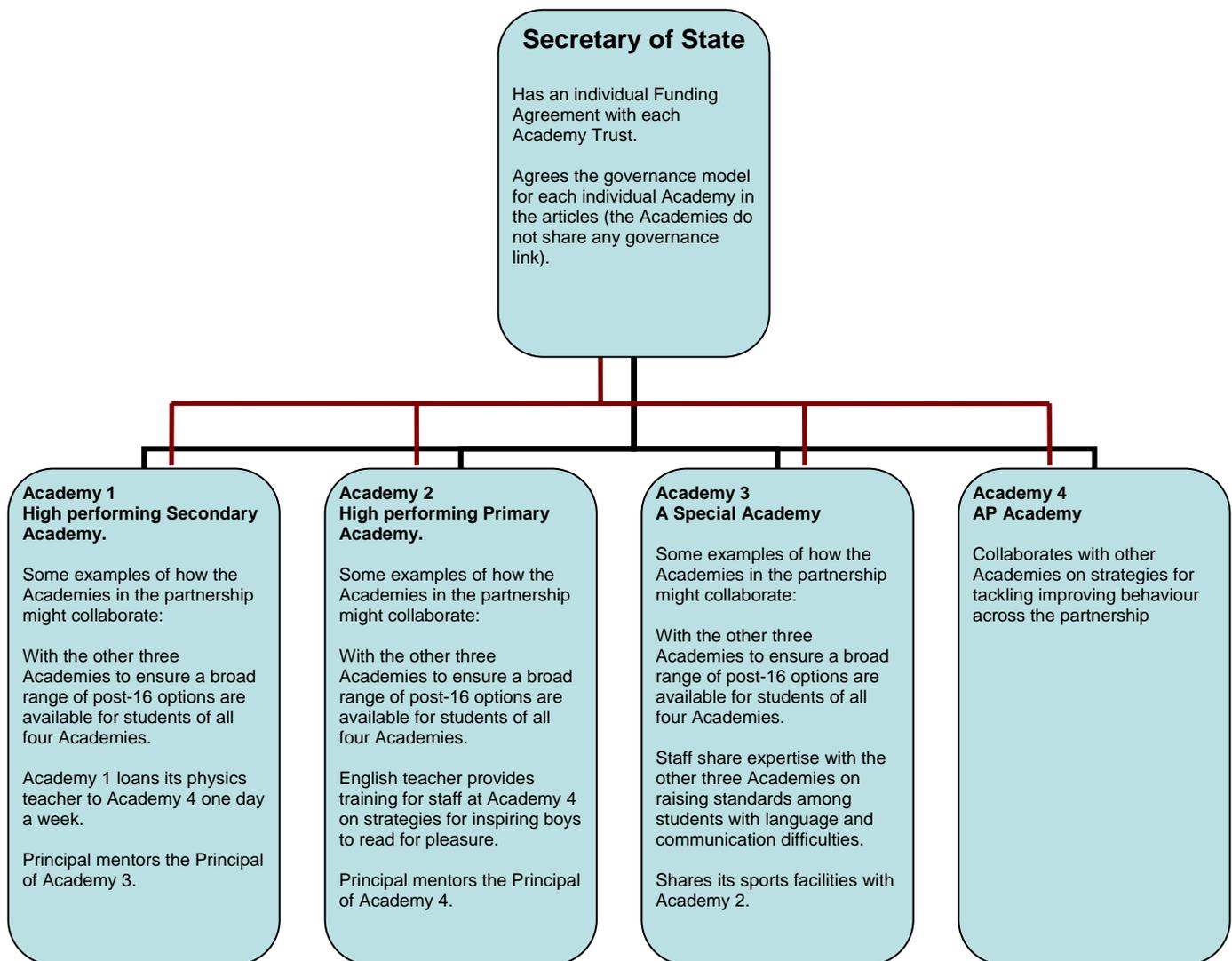
Umbrella trust (UT)



- An Umbrella Trust (UT) is a separate charitable Trust formed by key individuals from the previous education institution's staff. DfE does **not** need to approve an UT's memorandum and articles. PRUs looking to use this model can view information at the following link as a starting point: <http://www.charity-commission.gov.uk/Library/guidance/gd1textc.pdf>
- This model combines elements of shared governance which enables education institution of differing constitutions to join up in a formalised way. It also allows those institutions to have a formalised collaboration structure, whilst retaining their identity as individual Academies' Trusts.
- Each education institution would still establish its own Academy Trust, and each individual Academy Trust in the chain will have its own Funding Agreement with the Secretary of State.
- The UT is set up before conversion. This allows governance arrangements and the presence of the overarching Trust to be reflected in Articles of Association for each Academy.

- The members of the UT will appoint a proportion of the members and, if desired, Directors of the Academy Trusts for each Academy in the chain.
- The number of required members is not prescribed, and the terms of service is not time restricted.
- The UT has a relationship with each education institution but it doesn't have direct management of them.
- UTs give education institution greater independence, and the degree of closeness in terms of governance between the UT and the individual Academy Trusts can be very flexible.
- Where there are performance issues with any education institution, we would expect there to be a formal approved sponsor arrangement where the UT (or other approved sponsor) is responsible for appointing the majority of the Governing Body of the weaker Academy.

Collaborative partnership



- This is the most flexible model as it allows education institutions to design and manifest their preferred terms for working together. Those institutions are governed by separate Trusts and can choose to recognise their arrangement as they wish e.g. through a collaboration agreement or other arrangement.
- Some education institutions may prefer to build on existing relationships, or share the benefits of working together without being formally accountable. For these looser arrangements without formal governance, the Secretary of State will need to be satisfied there is adequate support for weaker institutions.
- The relationship is not legally binding, and can take whatever form the education institutions wish. It can be as intensive or light-touch as it is felt would be most effective in bringing about improvements.
- We would always expect any commitments for education institutions wanting to work together to be upheld, and this model allows them the flexibility to decide when, where, and how their plans will be implemented.
- Although not a requirement, with this model, it may be helpful to have a written

agreement to clearly set out their expectations and commitments, including what action will be taken if one education institution starts to struggle.

- The collaborative partnership is recorded with the DfE, and there is an expectation that the education institutions involved are working together and supporting each other to secure improvement.

6. Other elements of the conversion process

Informing staff and TUPE

We strongly recommend that the employer (the local authority for PRUs) starts informal discussions with staff as soon as the proposal to convert to AP Academy status is mooted.

In all cases there will be an obligation to provide written information about the transfer to employee representatives, and in some cases there will also be a duty to consult representatives and individual staff. Substantial compensation can be awarded if an employer fails to comply with these obligations, and so it is important that management committees take specialist advice to ensure that they do comply.

As soon as the management committee has approved the proposal to convert to AP Academy status, the employer can start the formal TUPE information and consultation process. We recommend that the TUPE process starts as soon as possible to allow the maximum amount of time to consult with staff.

You should formally notify the local authority that you have applied so that the TUPE process can be commenced. Once the Secretary of State has approved your application, the Secretary of State will write formally to the local authority – however, this may happen a few weeks after your application is received, so you may wish to make direct contact the local authority. This will allow a reasonable period of time for meetings to take place.

The information which the current employer must give in writing to employee representatives (which will be union representatives where a trade union is recognised in respect of the relevant category of staff) is as follows:

- (a) The fact that the transfer is to take place, when and why;
- (b) The "legal, economic and social implications" of the transfer for the affected employees;
- (c) The "measures" which the employer envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
- (d) Any measures which the employer envisages the Academy Trust taking in connection with the transfer in respect of the transferring employees or, if no measures are envisaged, that fact.

This information must be provided long enough before the transfer to enable consultation to take place, even if consultation is only voluntary because there is no legal obligation to consult in the particular circumstances

There is also an obligation on the Academy Trust to write to the current employer to inform them of any "measures" which the Trust envisages taking in relation to staff once the transfer has taken place. This information should be provided as soon as possible once the Trust has had the opportunity to consider what measures it envisages taking. "Measures" is a very broad term which encompasses any action, step or arrangement taken in connection with the transfer which affects staff or their working conditions.

As stated above, local authorities are encouraged to consult employees and union representatives throughout the conversion process. However, the legal obligation to consult under TUPE only arises where the current employer (and not the Academy Trust) envisages taking "measures" in relation to affected employees in connection with the transfer.

For most PRUs converting to become AP Academies it is envisaged that the staffing structure and terms and conditions of employment will remain unchanged, at least initially. Any changes must be subject to consultation with unions and affected staff and implemented in accordance with employment law.

It is also necessary to carry out a due diligence exercise for all transferring staff, to verify information on contracts, terms and conditions, pension deficits etc. Particular care will be needed in respect of staff who are not based exclusively at the PRU and staff on fixed-term contracts.

Commercial Transfer Agreement

This document should be discussed and agreed with the Academy Trust and, where appropriate, the local authority before the Academy opens. It is designed to ensure that all information on the staff who are transferring to the academy is recorded and transferred to the Academy Trust, so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. It also includes details of any assets or contracts that will transfer to the Academy Trust and of those that will not. A model agreement is available on the DfE Academies website. While it is not necessary for the Commercial Transfer Agreement to be signed prior to the Funding Agreement, it is desirable, and we expect it to be in place before conversion takes place. The finalised commercial transfer document needs to be sent to the DfE project lead.

Criminal Records Bureau checks

The Independent School Standards place a statutory duty on Academies to ensure that all members of staff have received an enhanced CRB check prior to the confirmation of their appointment or as soon as practically possible thereafter, and that this check confirms their suitability to work with children. New disclosures should be sought unless the member of staff has worked in a relevant educational setting within the previous 3 months. Checks must also be undertaken on the Chair of the Board of Governors/Directors of the Academy Trust and all Governors/Directors, but if they have already had a CRB check carried out by the local authority there is no requirement for a further check to be undertaken. **It is important to note, where a check on the Chair of the Governing Body is required, it must be sought through the Department and countersigned by the Secretary of State.** Details of the procedure for CRB checks to be countersigned by the Secretary of State are on the Academies website.

Finance-related appointments

PRUs wishing to convert must appoint an Accounting Officer who must be the Principal of the AP Academy. The Board of Governors/Directors of the Academy Trust must also appoint a Responsible Officer to monitor and check the academy's financial management. The Department expects the Academy will appoint its Responsible Officer during its first

www.ypla.gov.uk/

More information about the payment arrangements and the requirements for financial monitoring and assurance, along with the YPLA's responsibilities, are contained in a letter which is accessible via the link below:

http://readingroom.ypla.gov.uk/ypla/ypla-schools_voluntarily_converting_to_academies_information-le-oct10-v1.pdf

From April 2012, the YPLA will be replaced by the Education Funding Agency.

Pension registrations

Once the Academy Trust has been established it will be responsible for the pension arrangements for staff employed by the Academy - even if the local authority is acting as the payroll provider for the Academy. The occupational pension schemes are the Local Government Pension Scheme (LGPS) for non-teaching staff and the Teachers' Pension Scheme (TPS) for teaching staff. Both schemes are statutory schemes.

Teachers' Pensions Scheme

The TPS is administered on the DfE's behalf by Capita Teachers' Pensions (TP). The DfE notify TP about each Academy's approval and this will prompt TP to supply the Academy with information about the TPS. If you have not heard from TP within a week of receiving confirmation from the Secretary of State regarding approval of your application to convert to Academy status, please email: chris.mcmaster@teacherspensions.co.uk

Local Government Pensions Scheme.

Academies' Funding Agreements require them to offer Local Government Pensions Scheme (LGPS) membership to all non-teaching staff. When a PRU becomes an academy, existing staff who are already members of the LGPS will be unaffected and their membership of the LGPS will continue. After conversion, any new non-teaching staff will also be eligible to join the LGPS. Further information about the LGPS is available on the DfE Academies website. The first step will be for the PRU to contact the local authority to obtain the details of the relevant pension authority which presently administers the LGPS scheme.

Insurance

Academy trusts are responsible for making arrangements for the insurance of the Academy. **It is imperative that a converting PRU is insured from midnight of the date of conversion so that there is continuity of cover.**

The main types of insurance cover to be arranged are:

- premises and contents. These should be insured at replacement cost against damage by subsidence, fire, lightning, explosion, storm, flood, riot, malicious damage, terrorism and similar risks;
- business interruption;

- employer's liability and public liability insurance;
- any statutory motor transport insurance.

Further detail on the types and levels of insurance required and guidance on how to obtain such insurance can be found under the supporting documents section of the DfE Academies website.

Academy registrations

The Governors will need to complete the following to ensure that the Academy is registered with the appropriate organisations.

Data Protection Registration

The governors will need to notify the Information Commissioner's Office (ICO) in writing that the Academy is opening and will now be responsible for processing personnel and pupil data (failure to do so is a criminal offence). The information provided will be added to the Information Commissioner's register which is available to the public. A fee of £500 is payable to the ICO. Further guidance can be found here:

www.ico.gov.uk/what_we_cover/data_protection/notification.aspx

Exam bodies

Academies can continue to use the same exam centre number as the former PRU. You will need to contact the National Centre Number Register², which is run by Oxford, Cambridge & RSA examinations (OCR) on behalf of all the Joint Council for Qualifications (JCQ) awarding bodies, to let them know about your change of status to an Academy, and any change of name. This will ensure that all awarding bodies are aware of the change and it means you won't have to contact each awarding body you use separately.

Establishment Number and Unique Reference Number (URN)

PRUs converting to become Academies retain their establishment number but are given a new URN for use by YPLA to calculate funding, and by Ofsted in carrying out inspections. Once your PRU's Funding Agreement has been signed EduBase (www.edubase.gov.uk) will allocate a new URN. This will not remove the inspection history of the PRU and changes to the Ofsted website are in hand to ensure that the necessary links are made.

Financial systems

It will be for the PRU to decide whether its existing financial systems are suitable for the requirements of an Academy. These could include not only the day-to-day processing of income and expenditure items, but also the production of management accounts, cash flow reconciliations and balance sheets. If a PRU's systems do require upgrading, the Academy can use part of its General Annual Grant for this purpose, where this is affordable.

² National Centre Number Register, 1 Hills Road, Cambridge, CB1 2EU

Transfer of contracts and licences

Decisions will need to be taken about contracts that the local authority may have entered into with external suppliers on behalf of PRUs. Does the Academy Trust wish these to be transferred by the local authority to the Academy Trust? If so, then these should be mentioned in any agreement reached with the local authority relating to the transfer of assets/property of the local authority.

PRUs will also need to consider their position in relation to any contracts they may hold directly with external suppliers, for such services as catering, cleaning, security, and ICT products and services. If you wish to maintain a contract with an existing supplier, you will need to discuss with the supplier how it could be transferred to the Academy Trust. Contractors are unlikely to object to the transfer as it allows them to retain the business and most contracts will, in any case, contain an assignment clause, permitting its transfer to a new entity.

Decisions will also need to be made about services currently provided by or bought from the local authority, which the Academy might wish to obtain elsewhere.

Software licenses will need to be renewed or transferred to the Academy Trust. This should be discussed with your software supplier(s). Some software suppliers may require Academies to purchase a new licence for management information systems with a further charge to transfer data from the PRU's old database to the Academy's new database. PRUs can use the Academy Conversion Expenses grant towards these costs.

As stated in Section 2 the Chair of Governors will additionally need to send a completed support grant certificate to the DfE contact just before the conversion takes place. This is to confirm how much of the grant associated with conversion has been spent and whether any is being carried forward into the bank account of the Academy Trust.

7. Further information and guidance

There are a range of websites and documents that you may find useful when considering conversion, including:

For key documents, the section of the DfE website relating to becoming an Academy: (www.education.gov.uk).

Charity Commission guidance:
<http://www.charitycommission.gov.uk/publications/cc3.aspx>

Companies House: <http://www.companieshouse.gov.uk/>

Academies Financial Handbook: http://readingroom.ypla.gov.uk/ypla/ypla-academies_financial_handbook-gn-nov06.pdf

Governance guidance: www.education.gov.uk/schools/leadership/governance

Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

Schools benchmarking website (for examples of maintained school finances):
<https://sfb.teachernet.gov.uk/Login.aspx>

Special Educational Needs Code of Practice:
<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DfES%200581%202001#downloadableparts>

Special Educational Needs and Disability Green Paper:
<http://www.education.gov.uk/schools/pupilsupport/sen/a0075339/sengreenpaper>

Department for
Education

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