



## Free schools and academies– frequently asked questions

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

This note covers the issues that the Library is asked about most frequently in relation to the opening and running of these schools, including:

- Academy admissions
- Setting up a free school or academy
- Academy accountability and governance
- Ownership and disposal of academy land and buildings
- The curriculum in academies
- The effect of academy status on results and outcomes for children

While providing general background, the note does not aim to provide definitive guidance on the operation of individual schools. Academies and free schools are autonomous institutions and funding agreements can differ from school to school.

There are different types of academy and free school. Some have sponsors and were set up to replace schools with a history of failing to achieve good results compared to other schools. Others are schools that were performing well and have converted to academy status without a sponsor. Some academies operate as part of a chain. Free schools, university technical colleges and studio schools operate as academies and are entirely new state schools; a small number were previously independent schools.

The note does not provide extensive background on the development of the free schools and academies policies – this can be found in previous Library Standard Notes.

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## 1.1 Introduction

In England, academies and free schools are state-funded, non-fee paying schools that are independent of local authorities. They operate in accordance with a funding agreement between the individual academy trust and Secretary of State. In law, free schools operate as academies, and so the term 'academy' is used in this note to refer to both academies and free schools, unless otherwise stated.

The first academies were established in 2002 by the Labour government as part of its programme to increase diversity in school provision and improve educational standards. Generally, these academies were established to replace poorly-performing schools in deprived areas, and had sponsors. A Library Standard Note, [Academies under the Labour Government](#) (published 20 January 2015) describes how the academies programme developed, and outlines the substantial reforms made by the current administration.

Immediately after the 2010 General Election, the Government announced its intention to allow all schools to seek academy status. The *Academies Act 2010*, as amended, allows the governing body of a school in England to apply to the Secretary of State to convert to academy status. It also provides for the establishment of 'additional schools' under academy arrangements – e.g. free schools – and requires that the likely impact of any such schools on other local providers should be considered when the Secretary of State is deciding whether to enter into a funding agreement. [Library Research Paper 10/48](#) (14 July 2010), provides background on the 2010 Act.<sup>1</sup> The *Education Act 2011* amended the academies legislation. It allows the establishment of academies for the 16 to 19 age group and alternative provision<sup>2</sup> academies, and removes the requirement for academies to have a specialism. [Library Research Paper 11/14](#) provides background on the 2011 Act.

The [Education Funding Agency](#) (EFA), which is an executive agency sponsored by the DfE, funds open academies, and monitors their finances and governance. [Ofsted](#) (the Office for Standards in Education, Children's Services and Skills) is responsible for inspecting the quality of education in all state-funded schools, including academies and free schools.<sup>3</sup>

Detailed information and guidance relating to academies and free schools is provided on the Gov.uk [Opening an academy or free school](#) web page. Relevant information may also be found on the [Independent Academies Association website](#).

## 1.2 Government policy on academies and free schools

### ***Extending academy status to all maintained schools that wish to convert***

Below is a short timeline of events in the development of academies and free schools policy under the Coalition Government:

- 26 May 2010 – Michael Gove, then Secretary of State for Education outlines intention to open up the academies programme to all schools – including primary, secondary and special schools

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<sup>1</sup> This is a historical note and is no longer kept up to date.

<sup>2</sup> Alternative provision is for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education.

<sup>3</sup> Ofsted also inspects 'non-association' independent schools in England, as well as a wide range of other providers.

- 6 September 2010 – sixteen new free schools – the first ‘wave’ of such schools - were given approval to move to the next stage. These schools would open from September 2011
- 17 November 2010 – Government announces academy conversion programme will be expanded to include good schools with outstanding features, and groups of schools providing that at least one is outstanding or good with outstanding features
- 24 November 2010 - The schools white paper, [The Importance of Teaching](#), was published. This restated the Government’s intention to rapidly expand the academies programme, and use ‘academisation’ as a way of securing school improvement – e.g., by requiring the lowest-performing schools to be partnered with sponsors and converted
- January 2011 – special schools can now apply to become academies
- September 2011 – first free schools open
- 15 November 2011 – *Education Act 2011* gains Royal Assent, amending the academies legislation. It allowed the establishment of academies for the 16 to 19 age group and alternative provision academies, and removed the requirement for academies to have a subject specialism.

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

The Secretary of State can make an academy order to convert a school to an academy in two circumstances: where a school has made an application or where a school is ‘eligible for intervention’ within the meaning of Part 4 of the *Education and Inspection 2006 Act*.

Each application to convert is considered on its merits, with the decision being informed by various factors which are set out in DfE [guidance](#) on becoming an academy. Academies must operate within the terms of their funding agreement with the Secretary of State.

### ***How has the academy and free school sector grown?***

About 200 academies opened under the Labour government and it had a target of 400 in the longer term. At 13 February 2015, there were 4,461 open academies in England. The Gov.uk web page, [Open academies and academy projects in development](#) provides information on their location and basic characteristics and is updated monthly. Another Gov.uk [web page](#), also updated monthly, provides information on free schools open or planned to open. At 12 January 2015, there were 255 open free schools in England.

The National Audit Office recently estimated that 2.4 million school children in England were educated in academies or free schools, compared to 4.5 million in maintained schools.<sup>4</sup>

There are different types of free schools and academies, including:

- Mainstream academies and free schools
- Alternative provision academies and free schools – teach children who are not able to attend school and might otherwise not receive a suitable education

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<sup>4</sup> NAO, [Academies and maintained schools. Oversight and intervention](#). 30 October 2014, Pp. 16

- Studio Schools – free schools for 14-19 year-olds with year-round opening and an extended school day. Teaching is through enterprise education and work placements
- University Technical Colleges – free schools for 14-18 year olds. These focus on one or two technical specialisms in shortage subjects such as engineering and the built environment. UTCs are run in partnership with local employers and one or more higher education institutions
- Special free schools and academies – for pupils with significant Special Educational Needs or Disabilities (SEND).
- State boarding academies – these are secondary schools which are free to attend but which may charge fees to cover the cost of boarding
- 16-19 free schools and academies – cater for sixth-form age pupils

The DfE's [Academies Annual Report 2012-13](#), published 9 July 2014, provides data on the number, location, type and performance of academies.<sup>5</sup> It shows the number of academies that opened by month during the 2011-12 and 2012-13 academic years, broken down by type (sponsored or convertor). There is also a breakdown of the number of academies by type (i.e. primary, secondary, all-through and special) and by age range.

Academies are located across all regions of England – the report contains maps to show the proportion of primary and secondary schools operating as academies in different regions. There are significant regional discrepancies in the proportion of schools operating as academies.

There has been debate about whether free schools are opening in the places with the greatest need for additional school places. The DfE says that free schools:

[A]re predominantly located in areas with shortages of places, with almost three-quarters of open free schools being in areas with a projected need for additional school places. Almost half of free schools are in the 30% most deprived communities of the country.<sup>6</sup>

In a [report](#) on the establishment of the free schools programme published in December 2013, the National Audit Office made the following observation:

Most primary Free Schools are in areas that need extra school places, but application levels from areas of high or severe need have been mixed. Addressing forecast local need is not a formal objective of the demand-led Programme, but is one of the Department's wider priorities for capital spending. Around 70 per cent of estimated primary and secondary places from open or approved Free Schools are in districts forecasting some need for places. Free Schools already open are expected to provide an estimated 27,000 primary places in districts forecasting high or severe need (87 per cent of all primary places in Free Schools) but only 19 per cent of secondary places in Free Schools are in such areas. The estimated total capital costs for Schools opened in districts with no forecast need for extra school places are at least £241 million out of a projected total of £950 million for mainstream Schools. The Department has received

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<sup>5</sup> DfE, [Academies annual report. Academic year 2012-2013](#), May 2014.

<sup>6</sup> DfE press release, [Schools figures reveal impact of government's plan for education](#), 22 October 2014.

no applications to open primary Free Schools in half of all districts with high or severe forecast need [...]<sup>7</sup>

In evidence to the Education Select Committee on 22 October 2014, Education Secretary Nicky Morgan further stated that if free schools in the pipeline were included, then 90 per cent of all free schools would be in areas of basic need.<sup>8</sup>

The Labour Party pre-manifesto document, [Changing Britain Together](#) (8 December 2014) said it would end the free schools programme and “and instead prioritise new schools in areas where there are shortages of school places.”<sup>9</sup>

### **1.3 Does academy status lead to school improvement?**

The information below is not intended as a comprehensive analysis of academies’ performance. Two library statistical notes, [Sponsored Academies – Statistics](#) (SN 04719) and [Converter Academies: Statistics](#) (SN 06233) give more detailed background information and look at performance data.

#### ***Government position***

The Government says that academies are performing well and that they “drive up standards for the majority”.<sup>10</sup> The DfE offered evidence for this in recent written evidence to the Education Committee:

24. The first sponsored academies were very successful in tackling failure. Analysis published by the department last year shows that, between 2005/06 and 2009/10, the proportion of pupils achieving five good GCSEs including English and maths in sponsored academies improved by just over 21%. Nearly double the rate of improvement seen nationally over the same period.

25. In 2013, in secondary sponsored academies, the percentage of pupils achieving five or more good GCSEs rose by 1.8%. As academies mature, they continue to improve. Sponsored academies that have been open for three years have improved by 12% since opening (to 48.2%), compared to a 5% increase in maintained schools over the same period. In primary sponsored academies results improved by three this year.

[...]

27. It is not just sponsored academies that are successful. Converter academies are maintaining their already high standards: in 2013, 81% of pupils achieved level 4 or above in reading, writing and mathematics in primary converter academies, compared to 76% in LA-maintained mainstream schools. 25% of their pupils were above the expected standard at age 11 compared to 21% of pupils across all state-funded schools<sup>12</sup>. In secondary converter academies, 67.9% of pupils achieved five good GCSEs (including English and mathematics) compared to 58.8% of pupils in LA-maintained schools.

28. Converters do better than LA maintained schools against the new tougher Ofsted framework. Converter academies in both phases are more likely to retain their ‘Outstanding’ rating from Ofsted, with 33% of primaries, and 35% of secondary academies maintaining their rating, compared to 25% and 33% respectively, in maintained schools. Converter academies are also more likely to improve from ‘Good’

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<sup>7</sup> National Audit Office, [Establishing free schools](#), December 2013, Pp. 7

<sup>8</sup> Education Committee, [Academies and Free Schools](#), 22 October 2014, Q 1338

<sup>9</sup> Labour Party, [Changing Britain Together](#), Pp. 41

<sup>10</sup> Education Committee, [Academies and Free Schools](#), AFS 0066, pp. 5 (Jan 2014)

to 'Outstanding' than LA-maintained schools, with 27% of primary academies, and 16% of secondary academies, compared to just 12% of maintained primaries and 10% of secondaries improving to an 'outstanding' rating. This high performance is being mirrored in the first set of free school inspection results. Four of the original 24 free schools which opened in 2011 have already been rated 'Outstanding', whilst 14 have achieved 'Good'.

29. All academies are responding well to a new qualification regime. In converters, 43.3% of pupils are now entered for the EBacc compared to 33.8% in LA maintained schools. In sponsored academies, the number of pupils entered for the qualification has doubled in the last year to 21.7% in 2013.

30. Academies drive up standards for the majority, and – importantly – sponsored academies do better for the most deprived. Results for pupils eligible for free school meals (FSM) have improved faster than in comparable LA-maintained schools. In 2012, the proportion of FSM pupils gaining five or more good GCSEs (including English and mathematics) increased by 2.4% in sponsored academies, compared to 0.9% in similar LA schools. For pupils with Special Educational Needs, the proportion gaining five or more good GCSEs including English and maths increased by 3.1% between 2011 and 2012, compared to an increase of 0.3% in similar LA schools. [...] <sup>11</sup>

### ***National Foundation for Educational Research report***

In October 2014, the National Foundation for Educational Research (NFER) published the findings of research commissioned by the Local Government Association (LGA).<sup>12</sup> The research aimed to establish how performance in sponsored and converter academy secondary schools compared to performance in similar maintained schools, in an attempt to find out whether academisation had led to better progress for pupils. Key findings included:

- Progress between Key Stage 2 and Key Stage 4 outcomes on a range of performance measures, is higher after two years in sponsored academies compared to similar non-academy schools.
- There was no significant difference in attainment progress after two years between converter academies and similar non-academy schools. Converter schools tend to be higher performing schools already, and have been open for a shorter period of time.
- Attainment progress in sponsored academies compared to similar non-academies is not significantly different over time when the outcome is measured as GCSE points, excluding equivalent qualifications such as BTECs. This suggests that sponsored academies either use more equivalent qualifications, or that their pupils do better in them.<sup>13</sup>

### ***Education Select Committee inquiry findings***

On 27 January 2015, the Education Committee published the [report](#) of their long-running enquiry into aspects of the academies and free schools programme.<sup>14</sup> Section two of the report looks in detail at evidence on the effect of the programme on school standards and closing the gap between disadvantaged pupils and others. On this issue, the Committee concluded:

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<sup>11</sup> Education Committee, *Academies and Free Schools*, AFS 0066, Pps 4-5

<sup>12</sup> Worth, J. *Analysis of Academy School Performance in GCSEs 2013*, NFER, July 2014

<sup>13</sup> NFER news release, *'New research looks at performance in academy schools'*, undated

<sup>14</sup> Education Committee, *Academies and free schools. Fourth Report of Session 2014–15*, HC 258, 27 January 2015.

63. Current evidence does not allow us to draw firm conclusions on whether academies are a positive force for change. According to the research that we have seen, it is too early to judge whether academies raise standards overall or for disadvantaged children.

This is partly a matter of timing. We should be cautious about reading across from evidence about pre-2010 academies to other academies established since then. What can be said is that, however measured, the overall state of schools has improved during the course of the academisation programme. The competitive effect upon the maintained sector of the academy model may have incentivised local authorities to develop speedier and more effective intervention in their underperforming schools.

64. Some chains, such as Harris, have proved very effective at raising attainment, while others achieve worse outcomes than comparable mainstream schools. What is clear is that the picture is highly variable across the country and in the case of sponsored academies, across chains. More information is needed on individual groupings.<sup>15</sup>

On free schools, the Committee concluded that it “agree[d] with Ofsted that it [was] too early to draw conclusions on the quality of education provided by free schools or their broader system impact.”<sup>16</sup>

#### **1.4 How do schools convert to academy status?**

Information about how local authority maintained schools can convert to academy status is available on the DfE’s [Academy conversion process](#) web page. There is tailored guidance for schools wishing to convert as stand-alone academies, or as part of a chain. [Model funding agreements](#) are also available.

Decisions on whether to approve a conversion (without a sponsor) take into account a number of factors, including:

- Whether the school is judged by Ofsted to be ‘outstanding’, or ‘good’ with outstanding features
- Recent results, compared with the national ‘floor standards’, national averages, and results achieved by similar schools and/ or others in the local area
- The financial health of the school

Mainstream schools, including special schools and alternative provision can apply to convert to academy status. Currently, sixth form colleges cannot convert. The Government argues that they already have many of the freedoms that extend to academies.<sup>17</sup>

#### **1.5 Can underperforming schools be required to convert to academy status?**

For the majority of maintained schools, conversion to academy status is voluntary. However, in the case of ‘weak’ schools (see below), the Government has made it clear that the normal route to securing improvement will be via conversion to a sponsored academy and that, if necessary, the Education Secretary may use the powers in Section 4 of the *Academies Act*

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<sup>15</sup> Education Committee, *Academies and free schools. Fourth Report of Session 2014–15*, HC 258, 27 January 2015. Pp. 23

<sup>16</sup> *Ibid.*, Pp. 59

<sup>17</sup> See e.g. [PQ of 12 May 2014, c 370 w](#)

2010, as amended, to bring this about. Decisions on whether to intervene in particular schools 'eligible for intervention' are made on a case-by-case basis.

The Department for Education (DfE) publishes [Schools causing concern – statutory guidance for local authorities](#) (May 2014) which sets out the measures available both to a local authority and the Secretary of State in respect of maintained schools.<sup>18</sup> It includes information on academy conversion when a maintained school is 'eligible for intervention'. Only the Secretary of State has the power to make an academy order. The guidance states:

Section 4 of the Academies Act 2010 permits the Secretary of State to make an academy order in two circumstances: firstly, on the application of a school's governing body; or secondly, if the school is eligible for intervention within the meaning of Part 4 of the 2006 Act.

Before making an academy order in respect of a foundation or voluntary school with a foundation that is eligible for intervention, the Secretary of State must consult:

1. the trustees of the school;
2. the person and persons by whom the foundation governors are appointed; and,
3. in the case of a school which has a religious character, the appropriate religious body.

If an academy order is made in respect of a school, the Secretary of State must give a copy of the order to:

1. the governing body of the school;
2. the headteacher;
3. the local authority; and,
4. in the case of a foundation or voluntary school that has a foundation:

(I) the trustees of the school;

(II) the person and persons by whom the foundation governors are appointed; and,

(III) in the case of a school which has a religious character, the appropriate religious body.

If an academy order is made in respect of a school which has a Foundation holding the freehold or leasehold of publically funded land, the Secretary of State may direct the Foundation to transfer the relevant land and buildings to the academy provider<sup>13</sup>.

Under section 5 of the Academies Act 2010 before a maintained school can convert into an academy, the governing body must consult on the question of whether conversion should take place.

In the case of a school eligible for intervention under Part 4 of the 2006 Act, the consultation may be carried out by the governing body of the school (or an IEB where appointed) or the person with whom the Secretary of State proposes to enter into academy arrangements in respect of the school or an educational institution that replaces it.

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<sup>18</sup> DfE, [Schools causing concern – statutory guidance for local authorities](#), May 2014

The expectation is that a persistently underperforming school or a school that is in Ofsted category will become an academy. Any such academy would be a “sponsored” academy, meaning that the school would adopt governance arrangements, involving a strong external body (such as an organisation or a sponsoring school), that will ensure that the school is supported in turning its performance around.

The expectation would be that any strong school which was proposing to act as a sponsor would themselves also be an academy or willing to become an academy in order to take on the sponsorship role. Being an academy will allow the sponsoring school to use its academy freedoms to secure rapid improvement in both the school it is sponsoring, as well as its own school.<sup>19</sup>

The issue of ‘forced academies’ is controversial. In an [adjournment debate on 12 January 2012](#), David Lammy raised the policy in relation to Downhills primary school in Haringey. Subsequently, then Secretary of State, Michael Gove, replaced the school’s governors with an interim executive board, prior to it becoming an academy.<sup>20</sup> Parents at the school opposed the move and sought judicial review of the decision. However, Mr Justice Kenneth Parker found that the decision was rational given the school’s ‘egregious’ past performance.<sup>21</sup> There have subsequently been a number of other controversial academy conversions.

In March 2014, the DfE published [Academies: a myth-buster](#) which argued that ‘forced academisation’ was rare. This said that in thirteen cases the Secretary of State had used formal intervention powers to bring about a conversion to sponsored academy status, out of a total of 1025 sponsored academies.<sup>22</sup> The publication also noted that there were a “number of cases” where the Government had decided not to pursue sponsored academy status.

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

The [Gov.uk website](#) hosts a collection of guidance documents for those groups wanting to open a free school. Free school applications are made in ‘waves’ and applicants must also complete a pre-application to register their initial interest. The wave eight application round closed on 10 October 2014; a ninth application round is expected in May 2015. Local authorities may also invite free school or academy proposals where a local need for additional places has been identified.

### ***What are the assessment criteria for free school applications?***

Applications are assessed on their merit. The DfE guidance document, [Free school applications: criteria for assessment](#) (February 2015) gives information on the evidence proposer groups should include in their application, and how such evidence will be treated.<sup>23</sup>

Wave nine applicants are asked to provide evidence on a range of issues, including (but not limited to):

- Demand from parents of a number of pupils that is close to the school’s planned capacity
- The group’s educational vision and educational plan
- The group’s capacity and capability

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<sup>19</sup> DfE, [Schools causing concern – statutory guidance for local authorities](#), May 2014, Pp. 21-22

<sup>20</sup> ‘[Academy row school governors sacked by Michael Gove](#)’, BBC News Education, 15 March 2012

<sup>21</sup> ‘[Downhills School: Academy judicial review bid fails](#)’, BBC News Education, 15 August 2012

<sup>22</sup> DfE, [Academies. A myth-buster](#). 19 March 2014.

<sup>23</sup> DfE, [Free school applications: criteria for assessment Mainstream and 16 to 19](#), February 2015

- Need – either/ both that there is a shortage of places in the local area, or that the places that are currently available are in underperforming schools.

The guidance states that where there is a surplus of good school places in the area, the DfE will require proposer groups to demonstrate even more parental demand than in areas where there is a shortage of good school places or particularly poorly-performing educational provision.<sup>24</sup>

Independent schools wishing to join the state sector by becoming free schools are required to provide specific evidence on:

- Demand from current and prospective parents
- How they have targeted parents and children beyond their current base, focusing in particular on those from disadvantaged backgrounds

Independent schools wishing to convert are also required to show how they will use their best endeavours to admit proportionate numbers of disadvantaged children.

The charity the [New Schools Network](#) provides advice and support to free school proposer groups.

### **1.7 What oversight is there of free schools and academies?**

Like maintained schools, academies and free schools are inspected in line with the current Ofsted [Framework for School Inspection](#).<sup>25</sup> Ofsted's [policy statement](#) on inspecting academies clarifies that new academies' first Section 5 inspections<sup>26</sup> would usually take place within two years of opening, but that in most instances it would not schedule an inspection of a new academy until after four terms have elapsed from opening.<sup>27</sup> Some converter academies will be exempt from Section 5 inspections if their predecessor school(s) were graded 'outstanding' and providing there are no concerns about their performance. Some newly-established academies and free schools are also required to undergo a pre-registration Ofsted inspection.

The Secretary of State, and the Education Funding Agency (EFA), have powers to intervene where there are concerns about underperformance or other irregularities at an academy or free school. Interventions can include issuing a warning notice, finding a new sponsor for a school, facilitating a merger, the school joining an existing academy chain or, in extreme cases, closure of the school and termination of the funding agreement.

Unlike in the case of maintained schools, the local authority has no powers to directly intervene at an academy school where there are concerns about general underperformance or financial mismanagement at an academy school. LAs can, however, raise any concerns they have about an academy's performance with the DfE, and their Special Educational Needs (SEN) and pupil safeguarding responsibilities continue to apply in respect of academies.

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<sup>24</sup> *Ibid.*, Pp. 6

<sup>25</sup> Ofsted, [Framework for School Inspection](#), updated July 2014. 16-19 academies, 16-19 university technical colleges and 16-19 studio schools are inspected in line with Ofsted's Common Assessment Framework.

<sup>26</sup> Section 5 of the *Education Act 2005* provides for the routine inspection of maintained schools and academies.

<sup>27</sup> Ofsted, [Policy statement for inspecting academy schools, including free schools](#), April 2014

There is no mechanism whereby an academy judged to be failing can return to local authority control, and the Government has indicated it has no plans to change this position.<sup>28</sup>

The national Schools Commissioner within the Department for Education (DfE) has an 'outward-facing' role which includes:

- promoting the benefits of free schools and academies
- initiating academy brokerage – e.g., finding and matching sponsors and schools
- encouraging potential sponsors<sup>29</sup>

From September 2014, there have been eight new [Regional Schools Commissioners](#) (RSCs) whose duties include:

- monitoring academy performance
- deciding on applications for academy conversion
- brokering academy sponsorship.
- approving changes to open academies.

RSCs also advise the Secretary of State on free school applications, and it is expected that they will decide on such applications from June 2015.<sup>30</sup> The commissioners are advised by head teacher boards; four academy head teachers sit on each board, alongside two to four other members. The head teacher members are appointed via election.

The RSC posts have emerged following debate about whether a 'middle tier' of school oversight is necessary, and if so, what form this should take. This debate has been given new vigour in the wake of the 'Trojan Horse' affair in Bradford.

In 2012, education expert and RSA fellow Robert Hill published [The Missing Middle: the case for School Commissioners developing a system of great schools in England](#).<sup>31</sup> This argued the case for education to be part of sub-regional government with school commissioners steering the school system. Amongst other things, the report envisaged each commissioner co-ordinating place planning and school competitions across local authorities in the sub-region and commissioning specialist services for vulnerable children; challenging local authorities that are considered to be either too lax in understanding the performance of local schools, or too overbearing in their dealings with school leaders. The report said that a commissioner's ability to steer the system would be achieved by 'holding funding agreements for all academies, allocating capital funding for all major building projects and disbursing a school improvement budget allocated by the DfE to each sub-region.'<sup>32</sup>

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<sup>28</sup> HC Deb 27 October 2014 cc14-15

<sup>29</sup> See Gov.uk website article, [Schools Commissioner Frank Green CBE](#), (undated)

<sup>30</sup> See DfE, [Free schools. Pre-opening proposer group guidance for: mainstream, special, alternative provision and 16-19 free schools](#), September 2014, Pp. 12

<sup>31</sup> [The Missing Middle: the case for School Commissioners developing a system of great schools in England](#), RSA 2012

<sup>32</sup> *Ibid.*

In 2013, the Labour Party asked David Blunkett MP to undertake a review of educational structures in England; the [report](#) was published on 30 April 2014.<sup>33</sup> This questioned the DfE's capacity to hold the large number of newly independent schools to account, and said that if the academies programme were carried to its logical conclusion, this would result in "over 20,000 'autonomous' schools, result in an unmanageable Kafkaesque caricature, freeing schools from everything except of course the Secretary of State."<sup>34</sup> The report proposed the establishment of new Directors of School Standards who would have responsibility for school improvement, the commissioning of new schools, and brokering partnerships.

In an article for the Daily Mail on 13 October 2014, the Prime Minister pledged to give the eight RSCs a wider remit and "unprecedented powers to overhaul failing schools".<sup>35</sup>

The Liberal Democrat pre-manifesto, published in September 2014, said that the party would abolish "unelected regional school commissioners" and would "encourage local head teachers with a strong record to play a key role in school improvement through a local 'Head Teacher Board'".<sup>36</sup>

On 30 October 2014, the National Audit Office (NAO) published its report, [Academies and maintained schools: oversight and intervention](#).<sup>37</sup>

On 10 December 2014, Ofsted published its annual review for the 2013-14 academic year, along with a commentary from the Chief Inspector, Sir Michael Wilshaw. Section two of the commentary concerns oversight, improvement and intervention in both maintained and academy schools – an extract is below (emphasis in original):

Around a quarter of secondary converter academies and around half of primary converter academies have joined multi-academy trusts. The best multi-academy trusts, such as the Harris Federation and Outwood Grange Academies Trust, provide excellent challenge, support and intervention to their schools, as do the best local authorities, for example Wigan and Hampshire. They all use their powers to intervene and bring about improvement. The most successful have seen substantial gains in attainment among their schools.

However, there are a number of multi-academy trusts and local authorities that are failing to provide the necessary oversight and intervention. This year, we inspected the school improvement arrangements of nine local authorities and carried out focused inspections of schools in 10 local authorities and four multi-academy trusts where we had concerns about performance. These inspections found a lack of convincing strategies to improve the weakest schools, little challenge to the best and poor use of data on the progress and attainment of pupils. Some local authorities are continuing to provide poor oversight. The rapid expansion of some multi-academy trusts has left them without the capacity to support the improvement of all their constituent schools.

As well as worrying about schools in weaker local authorities and multi-academy trusts, we also need to be concerned about those converter academies that have not become part of a multi-academy trust. Many of these are continuing to perform well but even the best schools can deteriorate, sometimes very rapidly.

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<sup>33</sup> Labour's Policy Review, [Review of education structures, functions and the raising of standards for all Putting students and parents first](#), April 2014.

<sup>34</sup> *Ibid.*, Pp. 6

<sup>35</sup> ['I want a brilliant education for all and I want it fast, writes David Cameron'](#), Daily Mail, 13 October 2014. 8 September 2014

<sup>36</sup> Liberal Democrats, [Pre-Manifesto 2014. A Stronger Economy and a Fairer Society](#), Pp. 42

<sup>37</sup> NAO, [Academies and maintained schools. Oversight and intervention](#). October 2014

**In 2013/14, Ofsted found that 89 converter academies had declined since their previous inspection to requires improvement or inadequate.** Of these, 66 were not in a multi-academy trust. Of the 21 formerly outstanding converter academies that declined to requires improvement or inadequate, 15 were not in a multi-academy trust. These figures are disturbing. We have to ask whether the necessary challenge, support and intervention for these academies have been put into place quickly enough. Since 1 September 2014, eight Regional Schools Commissioners have been responsible for overseeing academies, but it is too early to assess whether they have the capacity to perform this role effectively.

I am also concerned about the level of confusion in the system over the exact role of local authorities in relation to academies and their pupils. Ofsted's Regional Directors report that some local authorities do raise concerns about the performance of academies, including free schools, in their area with the trust, the Department for Education or the schools themselves.

However, other local authorities do not see it as their role to do this and leave these academies well alone.

This is a worry when the concerns relate to falling standards, but even more so when they are about safeguarding and the protection of children, including from radicalisation. The dangers of local authorities not taking action where safeguarding concerns emerge have become all too clear in the last 12 months.<sup>38</sup>

On 16 January 2015 the DfE published the findings of a [review](#) carried out by its Permanent Secretary, Chris Wormald, into whether the Department (or predecessor departments) had received warnings about extremism at Birmingham schools.<sup>39</sup>

In his report, Mr Wormald concludes that there were no instances "where direct warnings of 'extremism' in Birmingham schools were received by the Department and ignored". However, he went on to say that:

Whilst I have not found instances of warnings having been ignored or of individuals having acted inappropriately, I have found that the Department has lacked inquisitiveness about this issue, and that procedures could have been tighter than they were.

[...]

Overall I find that in future the Department needs to be more vigilant, more inquisitive and have more robust systems in place than it has had in the past if in future it is to play its part in preventing and countering the issues identified in the Clarke Report.<sup>40</sup>

The report also says that the DfE had already taken a number of steps, including strengthening the academy conversion and academy sponsor approval process.<sup>41</sup>

### ***What financial oversight are academies and free schools subject to?***

A [letter](#) from the Chief Executive of the EFA, Peter Lauener, to the chair of the Education Select Committee provides an overview of the financial accountability framework for academies and free schools.<sup>42</sup>

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<sup>38</sup> Ofsted, *Ofsted annual report 2013/14 HMCI commentary*, 10 December 2014, Pps 17-18

<sup>39</sup> DfE, *Review into possible warnings to DfE in relation to extremism in Birmingham schools*, 16 January 2015.

<sup>40</sup> *Ibid.*, pp.6

<sup>41</sup> *Ibid.*, pp. 12-13

Academies must comply with the terms of the [Academies Financial Handbook](#),<sup>43</sup> and any relevant terms in their funding agreement with the Secretary of State. The Handbook sets out the internal and external financial oversight requirements for academy trusts. The EFA also conducts a number of financial management reviews of individual academy trusts' financial arrangements. Trusts must comply with any requests from the EFA for information. The NAO has rights of access to academy trusts' accounts and other relevant documents and reports.

The DfE compared the financial oversight regimes in maintained and academy schools in written evidence to the Education Select Committee:

Academy trusts must adhere to their funding agreement and to the academies financial handbook, and produce annual accounts for scrutiny by an independent external auditor. Audited accounts and funding agreements are published; as are details of budget allocations to academies.

In LA-maintained schools it is the local authority that has responsibility for financial oversight. The frequency and depth of audit is variable and maintained schools are often not subject to the same rigour as academies and free schools.<sup>44</sup>

The NAO has published a series of reports on free schools and academies. In [Managing the expansion of the Academies Programme](#) (November 2012) they argued that the DfE had not been sufficiently prepared for the financial implications of the rapid expansion of the programme, or for the challenge of overseeing and monitoring such a large number of new academies, and had had to meet £1 billion of additional costs between April 2010 and March 2012.<sup>45</sup> The NAO said that the DfE must build on its efforts to reduce costs and tackle accountability concerns if it was to reduce the risks to value for money. The executive summary to the report noted that:

13 Uncertainty is inevitable in forecasting a largely demand-led programme. However, the Department's initial failure to anticipate the scale of interest or develop robust cost estimates led to funding pressures. Between April 2010 and March 2012, the Department funded the Programme mainly from its overall schools funding settlement. To remain within overall spending limits without restricting the pace or scale of the expansion, it used additional contingency funding of £105 million in 2011-12. It also reassigned money from other budgets, including around £84 million of previously allocated discretionary funding in 2010-11, and £160 million in 2011-12. The Department's forecasts of academy numbers and costs have become more robust, although it expects to overspend against budgeted Programme expenditure in 2012-13 (paragraphs 1.6–1.12).

14 The Department's risk-based approach to approving conversions – coupled with the fact that most converters to date have been outstanding and good schools – appears so far to have managed the risk of schools converting with underlying financial or performance issues, or being unable to cope with academy status. Few of the 1,808 converters open by September 2012 have shown academic or financial decline. However, the widening of conversion criteria has meant that the proportion of applicants rated only 'satisfactory' (a grade now replaced by 'requires improvement') has risen from under 5 per cent in 2010 to 22 per cent in 2012. Future applications may therefore involve more complex financial, governance and performance issues,

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<sup>42</sup> See: [Letter to the Chair of the \[Education Select\] Committee](#) from Peter Lauener, dated 14 October 2014

<sup>43</sup> DfE, [Academies Financial Handbook](#), August 2014, effective from 1 September 2014

<sup>44</sup> Education Committee, [Academies and free schools](#), AFS 0066, published 8 Jan 2014, Pp. 3

<sup>45</sup> National Audit Office, [Managing the expansion of the Academies Programme](#), 22 November 2012

and the Department's assessment process will need to remain sufficiently robust (paragraphs 1.24–1.28, 1.30–1.31).<sup>46</sup>

In December 2013, the NAO published a further report, [Establishing Free Schools](#), which stated that the DfE had made clear progress in opening relatively large numbers of free schools over a short time period, and in many cases relatively low cost. However, it also found a rising trend in capital costs for new free schools, and said again that the DfE had initially underestimated the capital costs of the programme.

A third NAO report [Academies and maintained schools: oversight and intervention](#) (October 2014) considered both academies and local authority schools. On the issue of financial management, this found that:

[T]he Department has not defined national measures and, beyond annual financial reporting, data is not routinely collected to identify risks. This means it is not possible to describe overall trends in schools' financial management and governance, or in how schools protect the children who attend them.<sup>47</sup>

A [PQ of 27 October 2014](#) asked what the Government was doing to improve financial oversight of academies:

**Asked by Baroness Jones of Whitchurch**

To ask Her Majesty's Government what steps they are taking to improve the financial regulation of academy schools.

**The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con):** My Lords, academies are subject to considerably more rigorous financial regulation than local authority maintained schools. For example, they have to publish annual, independently audited accounts; local authority maintained schools do not. They are subject to the rigorous oversight of the Education Funding Agency and anyone in a governing relationship with an academy, or an organisation closely linked to it, can provide services to a local authority maintained school at a profit; they cannot to an academy. However, we are continually looking at ways to refresh the financial regulation of academies.

**Baroness Jones of Whitchurch (Lab):** I thank the Minister for his reply, but is he concerned about the increasing number of stories of academy chiefs being paid inflated salaries, heads employing family members and friends to provide school services, lavish expenditure on hotels and travel and, recently, a head paying £26,000 for furniture for her office? This is not their money, it is taxpayers' money, but it seems that a small minority are using the academy funding system as a cash cow. Does the Minister accept that the Government's centralised oversight of these schools makes it more difficult to supervise academy school expenditure effectively? Does he now accept that that was a mistake?

**Lord Nash:** The noble Baroness picks out some isolated examples. I point out to her, as I have before, that 36 of the 55 pre-warning notices that this Government have issued to academy sponsors have been to sponsors approved under the previous Government. This Government have considerably tightened up financial oversight and improved things such as control of grants.

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<sup>46</sup> *Ibid.*, executive summary

<sup>47</sup> NAO, [Academies and maintained schools. Oversight and intervention](#). October 2014

Of course, these figures are but nothing compared to the £10 billion overspend the National Audit Office tells us that the previous Government were heading for under the Building Schools for the Future programme.<sup>48</sup>

## 1.8 Sponsors and sponsorship

Ofsted-rated outstanding schools and schools that are performing well 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 who is expected to bring added drive, expertise and capacity to the school. The responsibilities of sponsors are described in the Gov.uk web page on [Sponsoring an academy](#) (updated 25 March 2014). 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](#), which may be of use for schools or local authorities seeking an academy sponsor, or existing sponsors looking for other sponsors to work with.

Academy sponsors - and companies 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, and also provided that the service is procured fairly and openly. The DfE’s [Academies Financial Handbook](#) provides more information on the detailed requirements – academy trusts are required to comply with the handbook via provisions in their funding agreements.

In September 2014, in the course of its inquiry into free schools and academies, the Education Committee published commissioned research on conflicts of interest in academy sponsorship arrangements. The [research](#) was conducted by two academics at the Institute of Education, Professor Toby Greany and Jean Scott.<sup>49</sup> The review identified four areas where real or perceived conflicts of interest might occur in relation to academy sponsorship:

- Connected party transactions – e.g., where individuals on academy trust boards benefit personally or via other companies
- Sponsors providing paid services ‘at cost’ – e.g., back-office functions or school improvement services
- ‘Intangible conflicts’ – e.g., inappropriate oversight or control
- Conflicts in the wider system “for example if a contracted Department for Education (DfE) Academy Broker is also working for an academy trust and this influences their decisions on which trusts are invited to pitch for a new school.”<sup>50</sup>

The researchers concluded that although the framework for regulating conflicts of interest was weak after the 2010 election, it had improved significantly over the past two years. Cases of deliberate fraud, they said, were “rare” and that “many of the instances where real or perceived conflicts [of interest] have arisen are the result of people being asked to work

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<sup>48</sup> [HL Deb 27 October 2014, c 941-2](#)

<sup>49</sup> Professor Toby Greany and Jean Scott, (London Centre for Leadership in Learning, Institute of Education, University of London) for the Education Select Committee, [Conflicts of interest in academy sponsorship arrangements](#).

<sup>50</sup> *Ibid.*, Pp. 3

too fast with too few controls.”<sup>51</sup> They further concluded, however, that the checks and balances against conflicts of interest were still too weak, and that they had come across a “significant number” of real or potential conflicts of interest that they found concerning.<sup>52</sup>

The Chief Executive of the Education Funding Agency (EFA), Peter Lauener, subsequently wrote to the Committee challenging some of the report’s findings – a copy of his [letter](#) can be found on the Committee’s website.<sup>53</sup>

The Education Secretary said in oral evidence to the Committee that sponsors were carefully appointed following a robust process, and that the DfE takes account of local intelligence:

We rely a lot on MPs and intelligence coming forward from local areas where there is a concern about somebody who may want to take over a school or become a sponsor. We also pause sponsorships firmly. We have said to some sponsor bodies that they are growing too fast and not offering sufficient support to schools, and, if necessary, we will take schools away and re-broker.<sup>54</sup>

In its resulting report, the Committee concluded:

156. Greater transparency is also needed regarding the process and criteria by which sponsors are authorised and matched with schools. This information should be clearly set out and be in the public domain. The process of authorisation and approval has improved but could still be sharpened. Greater transparency over DfE decision-making will help in encouraging new sponsors to come forward and to understand what will be required of them. We recommend that the Government outline the process and criteria by which sponsors are authorised and matched with schools.

157. Conflicts of interests in trusts are a real issue, as shown by the cases which have come to light so far, and they are magnified in the public eye by the latent potential for the misuse, apparent or actual, of public money. It is essential that academy trustees act as trustees and on the Nolan principles of conduct in public life. We acknowledge that the DfE has responded and strengthened the system but we believe that the Department should go further. We recommend that the DfE take further steps to strengthen the regulations for governance in academy trusts and that the EFA revise its guidance on at cost transactions to make expectations of academies clearer.<sup>55</sup>

## 1.9 How are academies and free schools funded?

The Government has stressed that academy funding is based on the principle of equivalence – i.e. that academies receive the equivalent level of per-pupil funding as they would receive from the local authority as a maintained school.

There have recently been significant reforms to school funding in general, including the funding of academies – general background on the reforms can be found on the [Gov.uk website](#).

The [Gov.uk website](#) explains in more detail how mainstream academies are funded:

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<sup>51</sup> *Ibid.*, Pp. 3

<sup>52</sup> Professor Toby Greany and Jean Scott, (London Centre for Leadership in Learning, Institute of Education, University of London) for the Education Select Committee, [Conflicts of interest in academy sponsorship arrangements](#). Pp. 4

<sup>53</sup> See: [Letter to the Chair of the \[Education\] Committee](#) from Peter Lauener, dated 14 October 2014

<sup>54</sup> Education Committee, [Academies and Free Schools](#), 22 October 2014, Qs 1241-1242

<sup>55</sup> Education Committee, [Academies and free schools. Fourth Report of Session 2014–15](#), HC 258, 27 January 2015, Pp. 50

## **£25,000 flat rate grant**

Schools will get a start-up grant of £25,000 to help with the costs of converting, such as legal fees, stationery and signage. The grant will be paid into your school's new bank account when the Secretary of State has made an academy order agreeing to the conversion.

Your school can keep any unspent balance from this flat rate grant and add it to the overall income.

Start-up funding information is also available for [sponsored academies](#).

## **General annual grant (GAG)**

Most funding for the running of academies comes from the general annual grant (GAG). This is paid to academies by the Education Funding Agency (EFA), based on a formula provided by your local authority. EFA will tell you how much GAG funding you will get and how the grant has been calculated.

GAG is made up of:

- school budget share – calculated on a comparable basis to the running costs of maintained schools in the same local authority
- education services grant – allocated to academies based on the number of pupils they are responsible for, to buy services no longer automatically provided by the local authority

## **School budget share**

The school budget share is protected by a minimum funding guarantee, so that the funding for each pupil will not fall by more than 1.5% in 2013 to 2014, and 2014 to 2015.

Funding allocations for sixth forms and places in special units are not included in the calculation.

## **Education services grant (ESG)**

Academies will receive ESG at a rate of £150 for each pupil in the academic year 2013 to 2014, and £140 in the academic year 2014 to 2015.

Special academies will receive £637.50 for every pupil place in the academic year 2013 to 2014 and £595 in the academic year 2014 to 2015.

Alternative provision academies will receive £562.50 and £525 per pupil for academic years 2013 to 2014 and 2014 to 2015 respectively.

Academies are also protected in the academic year 2013 to 2014 against their previous local authority central spend equivalent grant (LACSEG) rates, to help them adapt to the funding changes.

The [ESG calculator](#) shows if a specific academy is eligible for protection funding, and provides an estimate of the ESG funding that an academy would receive.

The relevant services and costs within the ESG are listed on the [academy funding](#) website.

Schools may also receive additional funding for any pupils who qualify for the pupil premium, high-cost special educational needs provision, for free school meals, and for the PE and sports premium.<sup>56</sup>

The DfE has also published [guidance](#) for mainstream free schools on the revenue funding arrangements for 2014/15.<sup>57</sup>

The DfE meets the capital costs associated with the establishment of new free schools, via the EFA. There is more guidance on free school capital costs and site issues in section eight of the DfE's [Free schools pre-opening proposer groups guidance](#).<sup>58</sup>

Information about capital funding for open academies can be found on the [Gov.uk website](#).

## 1.10 Land and buildings

### ***Who owns academy free school land and buildings?***

The type of tenure of academy or free school estates will vary from case to case. Land transfer and tenure can be a complicated issue and it is important that academy trusts – or schools considering conversion to academy status - take appropriate advice.

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 EFA on the trust's behalf

Further guidance on land transfer issues for maintained schools converting to academy status is available in the DfE's [Land Transfer Advice](#) (updated April 2013).<sup>59</sup>

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

- Leases the land on a long lease for a 'peppercorn rent'
- Holds a freehold interest
- Has a mixture of tenure types
- Rents on a commercial basis

The DfE [land transfer guidance](#) states that, where appropriate, it expects local authorities, foundation trusts and schools to take "timely steps" to ensure that land transfers are completed in time for conversion to academy status.<sup>60</sup> Local agreement on land issues is the expectation, but where this is not possible the guidance states:

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<sup>56</sup> This list is not comprehensive – some academies may have income from other funding streams

<sup>57</sup> DfE, [A guide to new mainstream free school revenue funding 2014-2015](#), updated February 2015

<sup>58</sup> DfE, [Free schools. Pre-opening proposer group guidance for: mainstream, special, alternative provision and 16-19 free schools](#), 30 September 2014

<sup>59</sup> DfE, [Land transfer advice](#), April 2013

<sup>60</sup> *Ibid*, Pp. 6

[I]n circumstances where the parties concerned cannot reach agreement and/or in the Department's view there are unacceptable delays to the process, we will consider whether the Secretary of State should exercise his powers under Schedule 1 of the Academies Act 2010 to either make a scheme compulsorily transferring school land, or a scheme or direction transferring any existing interest, rights, or liabilities.<sup>61</sup>

DfE [guidance](#) on site management for free school proposer groups and open free schools outlines the three most common tenure options for such 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>62</sup>

There will also be planning considerations in respect of new free school buildings. DfE guidance on planning matters for free schools can be found in the note, [Site planning](#).<sup>63</sup>

In practice, securing a site is likely to be one of the most challenging aspect of establishing a free school, particularly in densely-populated urban areas with high land values and few vacant public buildings. All site acquisition negotiations are handled by the EFA, although proposer groups are asked to include any information on potential sites they have identified in their application.

Free schools may open in temporary premises while a permanent site is acquired or adapted. In December 2013, the National Audit Office reported that 60 per cent of free schools opened on such sites.<sup>64</sup>

It is possible for free school projects to be 'paused' or for planned opening dates to be delayed if there are issues about the school's site following initial approval of the bid.

In [written evidence](#) to the Education Select Committee, the New Schools Network cautioned (emphasis in original):

The challenges intrinsic to finding appropriate, value for money sites coupled with the continued growth of the free schools programme makes it unlikely that the EFA will be able to effectively manage site finding and procurement of premises for every free school in England as they do now over the long term. **We would recommend that a review of their role be undertaken and alternative approaches considered. This might include tendering contracts for third party property experts to run this function – perhaps split geographically.**<sup>65</sup>

As interim measures, the NSN advocated:

- the buying-up of land or premises in areas of basic need, in anticipation of new schools being established (rather than waiting for bids to be approved)

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<sup>61</sup> *Ibid.*, Pp. 8

<sup>62</sup> DfE guidance document, [Options for securing or acquiring a site](#), published 1 March 2014

<sup>63</sup> DfE guidance document, [Site planning](#), published 1 March 2014

<sup>64</sup> National Audit Office, [Establishing Free Schools](#), December 2013

<sup>65</sup> Education Committee, [Academies and free schools](#), AFS 0125, pp. 2

- greater collaboration at the local level to find suitable sites – including an enhanced role for LAs in terms of suggesting possible sites.<sup>66</sup>

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

There are controls on the selling-off of academy (and maintained school) publicly-funded land. There is a general presumption against the sale of school playing field land, and the DfE advises that schools should not view such sales as a mainstream or routine means of funding improvements. Further guidance on disposal of school land can be found in the DfE guidance document, [Advice on the protection of school playing fields and public land](#).<sup>67</sup>

### **1.11 What are academies' responsibilities in relation to children Special Educational Needs?**

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

- Have regard to the Statutory [SEND Code of Practice](#), the current version of which came into force on 1 September 2014.<sup>68</sup>
- Use their 'best endeavours' to make sure a child with SEN gets the support they need.
- Designate a teacher to be the SEN Co-ordinator (SENCO).<sup>69</sup>
- 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 SEN duties – e.g., for carrying out assessments of children with SEN, and for arranging the special education provision specified in any EHC plan.

Background on the recent reforms to SEN assessment and provision can be found in Library Standard Note SN 07020, [The reformed system for children and young people with Special Educational Needs in England](#) (27 November 2014).

### **1.12 How are admissions to academies managed?**

The admission authority for academies is the individual academy trust. The funding agreement between the academy trust and the Secretary of State will include provision relating to admissions. Although academies and free schools are their 'own admissions authorities', they participate in the local authority co-ordinated admissions arrangements for the normal admission round. As such, parents applying for places at mainstream academies and free schools at the 'normal' points of entry would usually apply to their home LA for a

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<sup>66</sup> *Ibid.*

<sup>67</sup> DfE, [Advice on the protection of school playing fields and public land](#), November 2014

<sup>68</sup> DfE/ DoH, [Special Educational Needs Code of Practice](#), July 2014

<sup>69</sup> This does not apply in the case of 16-19 academies

place. One exception is in the case of newly-opened free schools (including University Technical Colleges and Studio Schools) which, for the first year of opening, may choose whether or not to participate in co-ordinated admissions arrangements.

The DfE's model funding agreement for mainstream single academies and free schools requires compliance with the current statutory [School Admissions Code](#) and the law relating to admissions, although the Secretary of State has the power to vary this requirement where there is 'demonstrable need'.<sup>70</sup>

Free schools and academies can give some priority in school oversubscription criteria to children who qualify for the Pupil Premium or Service Premium where their funding agreements permit this.<sup>71</sup> A small number of free schools have variations in their funding agreements (known as derogations) to allow them to give priority in oversubscription criteria to the children of founders – i.e., individuals who played a material role in setting up the school and continue to be involved in running it.

In accordance with the Code, the Secretary of State has powers to direct admission to an academy or free school if a local authority makes a complaint and the academy is found to have breached its funding agreement or the Code.<sup>72</sup>

The academy trust is responsible for arranging for an appeal against refusal of a place. Details are contained in the DfE's [School Admission Appeals Code](#) (February 2012).<sup>73</sup>

A complaint about an academy appeal panel may be made to the Secretary of State. The Appeals Code explains:

5.4 Appellants may complain about maladministration on the part of an appeal panel to the Local Government Ombudsmen in respect of maintained schools. They may complain to the Secretary of State in respect of appeal panels for Academies. Admission authorities must inform parents about the arrangements for making a complaint.

5.5 The Secretary of State cannot review or overturn an appeal decision relating to a maintained school (footnote 23). An appeal panel's decision can only be overturned by the courts where the appellant or admission authority is successful in applying for a judicial review of that decision

5.6 However, under Sections 496, 497 and 497A of the Education Act 1996, and under an Academy's funding agreement, the Secretary of State may consider whether:

- a) the panel was correctly constituted by the admission authority; and
- b) the admission authority has acted reasonably in exercising functions in respect of the appeals process or failed to discharge a duty in relation to that process.

Footnote 23: In relation to an Academy, the Secretary of State may be able to intervene under the terms of the funding agreement. See paragraph 5.4<sup>74</sup>

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<sup>70</sup> DfE, [School Admissions Code](#), December 2014. Pp. 4

<sup>71</sup> The Government is proposing, via amendments to the Code, to extend this freedom to all school admissions authorities. Subject to parliamentary approval, the revised code will come into effect on 19 December 2014

<sup>72</sup> HC Deb 23 May 2012 cc747-8W

<sup>73</sup> DfE, [School admissions appeals code](#), February 2012

<sup>74</sup> *Ibid.*, Pp. 23

### ***Free schools and academies with a religious character***

When a school is oversubscribed, schools with a religious character ('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 voluntary-aided, voluntary-controlled or foundation school with a religious character, there is no restriction on the proportion of places that can be allocated on the basis of faith. For new faith academies and free schools, the DfE limits the number of places that can be offered on the basis of faith to fifty per cent of available places, via clauses in funding agreements.

#### **1.13 What curriculum do free schools and academies follow?**

Academies and free schools are not required to follow the recently-revised National Curriculum, although in practice many follow it at least in part. The [academy and free school model funding agreement](#) for single mainstream schools requires the academy trust to ensure that there is a broad and balanced curriculum, which includes English, Mathematics and Science.

The academy trust must also make provision for the teaching of religious education (RE). Requirements for academies broadly reflect the provisions that apply to local authorities and schools in the maintained sector. Additional requirements relating to religious education apply to schools that have been designated as having a religious character. The RE requirements for any particular school will be set out in its funding agreement.

The current model funding agreements also state that the academy must have regard to any guidance issued by the Secretary of State on sex and relationship education, further to section 403 of the *Education Act 1996* (which makes provision for sex education and provides that the teaching of sex education must include the teaching of moral principles and the value of family life).

Research published by the DfE in July 2014 suggests that there is variation between subjects and between primary and secondary schools in terms of the extent to which academies are planning to follow the national curriculum.<sup>75</sup> For example, 81 per cent of primary academies surveyed said they were planning to follow the maths national curriculum to a 'great extent', whereas only 35 per cent of such schools said the same about the music national curriculum. The research suggested that 79 per cent of academies open at 1 May 2013 have changed or planned to change their curriculum.<sup>76</sup>

#### ***Can academies teach creationism?***

In 2012, the DfE amended the model funding agreement for mainstream free schools to require the teaching of evolution and preclude the teaching, as fact, of theories contrary to established scientific evidence. 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 now 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.

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<sup>75</sup> DfE, [Do academies make use of their autonomy? Research report](#), July 2014

<sup>76</sup> *Ibid.*, Pp. 33; Pp 6

2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.<sup>77</sup>

The DfE also published a [supplemental model agreement](#) for Catholic and Church of England academies and free schools in June 2014, which further elaborates on the teaching of creationism:

23E) The parties acknowledge that clauses 2.44 and 2.45 of the Funding Agreement apply to all academies. They explicitly require that pupils are taught about the theory of evolution, and prevent academy trusts from teaching 'creationism' as scientific fact.

23F) 'Creationism', for the purposes of clauses 2.44 and 2.45 of the Funding Agreement and clause 23E above, is any doctrine or theory which holds that natural biological processes cannot account for the history, diversity, and complexity of life on earth and therefore rejects the scientific theory of evolution. The parties acknowledge that Creationism, in this sense, is rejected by most mainstream Churches and religious traditions, including the major providers of state funded schools such as the [Anglican] [Catholic] Churches, as well as the scientific community. It does not accord with the scientific consensus or the very large body of established scientific evidence; nor does it accurately and consistently employ the scientific method, and as such it should not be presented to pupils at the Academy as a scientific theory.

23G) The parties recognise that the teaching of creationism is not part of prevailing practice in the English education system, but acknowledge that it is however important that all schools are clear about what is expected in terms of the curriculum which they need to provide. The parties further recognise that the requirement on every academy and free school to provide a broad and balanced curriculum, in any case prevents the teaching of creationism as evidence based theory in any academy or free school.

23H) The Secretary of State acknowledges that clauses 2.44 and 2.45 of the Funding Agreement, and clauses 23E and 23G above do not prevent discussion of beliefs about the origins of the Earth and living things, such as creationism, in Religious Education, as long as it is not presented as a valid alternative to established scientific theory.<sup>78</sup>

## 1.14 Staffing

Unlike maintained schools, academies and free schools are not required to employ teachers with Qualified Teacher Status (QTS). The exception is that the teacher fulfilling the role of the Special Educational Needs Co-ordinator (SENCO) at mainstream academies must hold QTS. Academies and free schools set their own terms and conditions for staff.

ACAS gives [guidance](#) on what happens in respect of existing staff when a maintained school converts to academy status:

When a school transfers from local authority to academy status, its staff will automatically transfer their terms and conditions to the academy under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). The Academy takes over responsibility for the staff and inherits any liability in relation to disciplinary and grievance action taken by the local authority. Transferring employees retain their continuity of service.<sup>79</sup>

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<sup>77</sup> DfE, [Mainstream academy and free school: single model funding agreement](#), updated December 2014, Pp. 25

<sup>78</sup> DfE, [Church of England and Catholic single academy model supplemental agreement](#), updated June 2014

<sup>79</sup> ACAS website article, [Transferring staff \(TUPE\)](#), undated

Any school staff working in schools which are converting to academy status (either sponsored or standalone) should contact their union for further guidance.

In early 2014, the country’s largest academy chain, the Academies Enterprise Trust (AET) announced plans to explore setting up a limited liability partnership to procure non-teaching support services for its schools. It subsequently announced it had selected accountancy firm Price Waterhouse Cooper (PwC) as its preferred bidder in the joint venture. In November 2014, AET [announced](#) it would not proceeding with the joint venture at that time and that it would be pursuing an “internal solution” instead.<sup>80</sup>

**1.15 How can parents or others complain about an academy or free school?**

As noted above, academies operate in accordance with a funding agreement with the Secretary of State for Education. Complaints about academies are handled by the Education Funding Agency (EFA) on behalf of the Secretary of State.

The [Gov.uk website](#) offers information on how to complain about a free school or academy:

**Complain about an academy, free school, university technical college or studio school**

You can complain to the Education Funding Agency (EFA) if:

- there’s a problem with the school’s complaints procedure
- the school is not following the terms of its funding agreement

**Other types of complaints**

For some types of complaints you may need to contact a different agency.

<i>Complaint</i>	<i>Who to contact</i>
Child protection	local council
Criminal behaviour	police
Data protection	Information Commissioner’s Office
Discrimination	Equality Advisory and Support Service
Employment	an employment tribunal
Exam malpractice or maladministration	Ofqual and the awarding body
Quality of education or leadership	Ofsted

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<sup>80</sup> AET website article, ‘[Joint Venture](#)’, 20 November 2014

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.

### **1.16 How are academies governed?**

Models of governance for academies vary – for example, stand-alone academies may have different governance structures to those belonging to a multi-academy trust (MAT). The DfE's [Governors' Handbook](#) explains further:

An academy trust is a charitable company limited by guarantee. All academy trusts have two layers of governance:

- The Members of the trust, who are akin to shareholders, are the subscribers to its memorandum of association, and any other individuals permitted under its charitable articles of association. Members have a limited financial liability to the trust in the event it is wound up and have the power to appoint and remove trustees; and
- The trustees, who are responsible for the three core strategic governance functions outlined in [section 1](#). The trustees are also the directors of the charitable company. They are responsible for ensuring the charitable company achieves its objectives, as well as compliance with charity and company law and the academy trust's funding agreement.

A standalone academy is a single legal entity responsible for one academy that has its own articles of association and funding agreement with the Secretary of State.

MATs are also a single legal entity but its board of trustees is accountable for a number of academies in its chain. This means that an additional layer of governance is possible through the delegation of governance functions to local governing bodies, made up of local governors. Each academy may have a local governing body to which the MAT trustees may delegate some governance functions. Alternatively, local governing bodies may themselves govern more than one academy for example in a regional cluster. Local governors who sit on local governing bodies are not trustees of the academy trust unless they also sit on the trust's board.

In MATs, where trustees and members are responsible for more than one academy, it is the department's view that while there can be some overlap in the two layers, the most robust governance structures will retain at least some distinction between the individuals who are trustees and those who are members. This promotes internal challenge and scrutiny, which members who are independent of the trustees can provide.

In single school academy converters and free schools, the academy trust should consider what structure is most effective for its specific circumstances. This may include a flat governance structure in which all the trustees are also members. The department however expects that this should usually reflect a degree of separation between members and trustees.

The department recommends that trusts should ideally have at least five members, though it should be noted that trusts could have more should they choose to. Five

members ensures that the trust has enough members to take decisions via special resolution (75% of members agree) without requiring unanimity, while minimising circumstances in which a split membership prevents decisions being taken by ordinary resolution (at least 51% of the members are in favour).

It is the decision of the trustees about the arrangements for the constitution and responsibilities of local governing bodies. They can be constituted as wholly advisory or have a high level of responsibilities delegated to them. The department would encourage trusts to delegate responsibilities at a level that reflects the strength of the academy or academies they cover and the skills and expertise of the local governors. The extent of any delegation can be varied over time to reflect changes in the performance of the academy/academies.

All individuals involved in the governance of a MAT, whether at trust level or at the local governing body level, should know who the trustees are and understand what functions have been delegated by the trust to the local governing body or bodies. The department thinks it is important that all MATs which have devolved functions to local governing bodies have a clear written scheme of delegation. This should set out which responsibilities have been delegated to local governing bodies and which remain with the trust board.

[...]

Academy trusts have almost complete flexibility to shape their governance arrangements and design the constitution of their boards and local governing bodies as they see fit. There are very few requirements relating to the constitution of the board of trustees in the department's model articles of association. The board of an academy trust must include at least two elected parent governors – in a multi-academy trust the parents can be represented at local governing body level or on the trust's board. The members can decide to include the headteacher/principal as a trustee unless he or she chooses not to be. The headteacher/principal and any other trustees who are employees of the trust should be appointed on an "ex-officio" basis. This means that their role as trustees is dependent on their employment by the trust and if they leave the trust, they cease to be a trustee.

Other than this, academy trusts are free to constitute a board or local governing body in the way they consider is most appropriate for each academy for which they are responsible – ensuring each body has the necessary skills and expertise to carry out its functions. The specific arrangements for the constitution of the board will be set out in the trust's individual articles of association.

Academy trusts must also ensure that they are not local authority influenced [...]<sup>81</sup>

### ***Barring individuals from school management***

The DfE has recently consulted on reforms which are intended to make it easier to bar individuals from taking part in the management of independent schools – including academies and free schools. The Government's [consultation response](#) explained:

The Secretary of State currently possesses powers to bar people from taking part in the management of an independent school, as set out in section 142 of the Education Act 2002. We believe these powers, in some instances, leave a gap in the Secretary of State's ability to protect and safeguard children and young people from contact with people who are unsuitable. In particular, we believe that the current powers leave a

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<sup>81</sup> DfE, [Governors' handbook. For governors in maintained schools, academies and free schools](#), January 2015, Pp. 35-37

gap in the Secretary of State's ability to protect children, schools and the education service generally from extremism, and in some instances unsuitable individuals, that have been found to be in breach of professional standards by a professional body.

[...]

The proposed regulations will be made under section 128 of the Education and Skills Act 2008. The regulations will set out the grounds on which persons can be barred from taking part in the management of an independent school in England. The bar will apply to senior managers in schools, proprietors that manage schools, and members of boards of governors that carry out functions analogous to those of a maintained school governing body. As academies and free schools are constituted as independent schools, the regulations apply directly to them in the same way.<sup>82</sup>

The *Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014* (SI 2014/1977) were subsequently laid on 25 July 2014 and came into force on 1 September 2014.

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<sup>82</sup> DfE, *Management of independent schools: proposed regulations. Government consultation response*, July 2014