



## BRIEFING PAPER

Number 07059, 30 March 2017

# FAQs: Academies and free schools

By Nerys Roberts

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

### Contents:

1. What are academies and free schools and how do they differ from maintained schools?
2. Opening, closing, and other organisational changes at academies and free schools
3. Land and buildings
4. Day to day operation of academies and free schools
5. Employment in academies

# Contents

<b>Summary</b>	<b>3</b>
<b>1. What are academies and free schools and how do they differ from maintained schools?</b>	<b>5</b>
1.1 What's the difference between a free school and an academy?	5
1.2 What are the key differences between maintained schools and academies?	5
1.3 How are academies and free schools funded and held accountable?	6
1.4 How many free schools and academies are there?	6
1.5 Does academy status lead to school improvement?	7
1.6 Do academies have the same legal responsibilities as maintained schools towards children with special educational needs and disabilities (SEND)?	7
1.7 What are academy sponsors, and what do they do?	7
1.8 What is a multi-academy trust, or MAT; how do I find out information about a particular MAT?	8
1.9 Can companies connected to academies provide paid-for services to those schools?	9
<b>2. Opening, closing, and other organisational changes at academies and free schools</b>	<b>10</b>
2.1 How do schools voluntarily convert to academy status?	10
2.2 When can schools be made to convert to academy status?	10
2.3 What about the proposals to convert every remaining school to academy status? October 2016 statement – no wider education legislation to be introduced, and conversion will remain voluntary	11
2.4 Can an academy ever return to local authority control?	11
2.5 Can an academy unilaterally decide to leave a multi-academy trust, or MAT, once it's joined?	12
2.6 How do groups apply to open a free school?	12
<b>3. Land and buildings</b>	<b>13</b>
3.1 Who owns academy land and buildings?	13
3.2 Are all academies held on long leases for 'peppercorn rents'?	13
3.3 Can academies and free schools sell off land?	13
3.4 What kind of buildings and land arrangements are in place for new free schools?	14
<b>4. Day to day operation of academies and free schools</b>	<b>15</b>
4.1 How can parents or others complain about an academy or free school?	15
4.2 How do parents get a place for their child at an academy or free school? Academies are their 'own admissions authorities' but parents usually apply to the local authority	15
In-year admissions	15
4.3 Do academies have to comply with school admissions legislation?	16
4.4 How can a parent appeal a decision to refuse a place at an academy?	16
4.5 Can an academy use faith criteria to allocate school places?	16
4.6 What curriculum do free schools and academies follow?	17
4.7 Can academies teach creationism?	17
4.8 What are the rules on school uniform for academies?	18
<b>5. Employment in academies</b>	<b>19</b>
5.1 Qualified Teacher Status (QTS)	19
5.2 Conversion to academy status: TUPE implications for existing staff	19

## Summary

This briefing answers frequently asked questions about academies and free schools. It covers England only; there are no academies or free schools in Wales, Scotland or Northern Ireland.

### What is an academy?

Academies and free schools are state-funded, non-fee-paying schools in England, independent of local authorities. They operate in accordance with their funding agreements with the Secretary of State, and are independent of local authorities (LAs). Maintained schools, on the other hand, have varying degrees of council involvement. Although academies, free schools and maintained schools share many similarities, there are some important differences in terms of the rules and legislation that apply to them.

### How do free schools differ from academies?

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

### Will all maintained schools have to convert to academy status?

In March 2016, the Government said it would pass legislation to require all remaining maintained schools to convert to academy status by 2022 at the latest. The plan was met with criticism; in October 2016, Education Secretary Justine Greening said that the Government would not bring forward further legislation this Parliamentary session. Instead, the emphasis would be on supporting schools toward voluntary conversion and building system capacity.

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

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

The Department for Education now publishes [performance data for MATs](#).

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

Academies can decide for themselves how they will prioritise applicants for school places, but they have to comply with national fair admission rules in doing this. Regardless of a state school's legal status, parents usually apply to their home local authority for school places, although there are limited exceptions. Parents and carers whose application for a place at an academy is refused have the right of appeal.

### Who scrutinises academies?

The operation of academies is overseen by:

- The Education Funding Agency (EFA – a Department for Education executive agency);

## 4 FAQs: Academies and free schools

- Schools' inspectorate, Ofsted;
- Regional Schools Commissioners (DfE appointees who each cover one of eight regions in England)

Academies must comply with the current version of the [EFA's Academies Financial Handbook](#).

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

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

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

### **Curriculum at academies**

Academies aren't required to follow the national curriculum although some do at least in part. The curriculum requirements for a particular academy can be found in the academy's funding agreement.

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

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

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

### **Are academies a good thing for school standards?**

The arguments for and against academies and free schools, and information on the Government's wider schools' policies are covered in a separate Library briefing paper:

- [House of Commons Library briefing paper, Every school an academy: the White Paper proposals](#)

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

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

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

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

In law, free schools operate as academies and so the term academy is used here to refer to both types of school.

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

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

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

Some key differences include:

- **Curriculum:** maintained mainstream schools must currently follow the national curriculum; academies do not have to teach this but may follow it in full or in part. Academies do have to participate in national curriculum assessments, though (also known as SATs).
- **Local authority role:** councils have a very limited role in academies. They will typically have a greater role in maintained schools, although this depends on what subtype of maintained school it is.
- **Teachers:** academies don't have to employ teachers with qualified teacher status (QTS)<sup>1</sup> unless this is required by the funding agreement, while in general maintained schools must. Academies also employ their own staff, whereas for many (but not all) maintained schools the local authority is technically the employer of the staff.

---

<sup>1</sup> The exception is in relation to the school's Special Educational Needs Co-ordinator (or SENCO), who must have QTS.

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

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

The Education Funding Agency (EFA) is a DfE executive agency that funds open academies and free schools, and monitors their finances and governance. However, academies' revenue funding allocations are currently determined in large part by the local authority's locally-determined funding formula. The Government is planning major changes to the way that schools (including academies) are funded from 2018/19 onwards. A description of the current system, and the planned changes, is available in a separate House of Commons Library briefing paper:

- [Link to House of Commons Library briefing paper, School funding in England. Current system and proposals for 'fairer school funding'](#).

All academies are required to abide by the current version of the EFA's Academies Financial Handbook.<sup>2</sup>

Eight Regional Schools Commissioners (DfE appointees) oversee academy performance and approve some strategic and management decisions – e.g., about school expansion.

Ofsted (the Office for Standards in Education, Children's Services and Skills) is responsible for inspecting the quality of education in all state-funded academies and uses the same inspection framework as for maintained schools. In recent years it has undertaken batched or focused inspections of groups of schools belonging to a single multi-academy trust (for more on these see section 1.8 below).

### 1.4 How many free schools and academies are there?

At January 2016, 65.5 per cent of secondary pupils and 19.5 per cent of primary pupils in England were attending academies.<sup>3</sup>

Two regularly updated Gov.uk web pages provide information on the number of open academies and free schools:

- [Gov.uk web page, Open academies and academy projects in development](#)
- [Gov.uk web page, Free schools open and successful applications](#)

The DfE publishes annual reports on academies and free schools providing data on number, location, type and performance.<sup>4</sup>

---

<sup>2</sup> EFA, [Academies Financial Handbook](#), July 2016, effective September 2016. All sources last accessed 30 March 2017 unless indicated otherwise.

<sup>3</sup> DfE, [Schools, pupils and their characteristics: January 2016 SFR 20/2016, 28 June 2016](#), p3.

<sup>4</sup> See: [Academies and free schools](#) section of Gov.uk website for most recent report.

## 1.5 Does academy status lead to school improvement?

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

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

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

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

- Have regard to the statutory [SEND Code of Practice](#), the current version of which came into force on 1 April 2015.<sup>5</sup>
- Use their 'best endeavours' to make sure a child with SEN gets the support they need.
- Designate a qualified teacher to be the SEN Co-ordinator (SENCO).<sup>6</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 SEND duties. These include carrying out statutory needs assessments of children with SEND, and arranging the special education provision specified in any EHC plan.

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

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

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

Ofsted-rated outstanding schools and schools that are performing well that want to convert to academy status are not required to have a

---

<sup>5</sup> DfE/ DH, [Special Educational Needs and Disability Code of Practice](#), January 2015.

<sup>6</sup> This does not apply in the case of 16-19 academies.

sponsor. However, each 'low-performing' school becoming an academy is expected to have a sponsor to bring added drive, expertise and capacity to the school.

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

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

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

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

The DfE publishes a list of current sponsors:

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

## 1.8 What is a multi-academy trust, or MAT; how do I find out information about a particular MAT?

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

The Department for Education now publishes [performance data for MATs](#), and as noted above, Ofsted conducts batched or focused inspections of MAT academies:

- [Link to Ofsted, 'Ofsted inspections of multi-academy trusts: outcome letters'](#)

The House of Commons Education Committee published a [report on MATs](#) on 28 February 2017.<sup>7</sup> The Committee concluded:

- There was "a gap in assessing MATs which neither Ofsted nor RSCs presently fulfil." Ofsted needed a new framework for inspecting MATs, and the associated inspection powers and resources to put this into action.<sup>8</sup>
- MATs were not sufficiently accountable to local communities and parents; instead the focus was on upward accountability.<sup>9</sup>
- The Government had initially "encouraged trusts to expand too quickly over too large geographical regions". As such, the Committee welcomed the DfE's development of a 'growth check'

---

<sup>7</sup> Education Committee, [Multi-academy trusts](#), Seventh Report of Session 2016–17, HC 204, 28 February 2017.

<sup>8</sup> *Ibid.*, p30.

<sup>9</sup> *Ibid.*, p15.



for use when deciding whether a MAT should be allowed to expand, with tight controls.<sup>10</sup>

- There remained “a high degree of uncertainty around the effectiveness of MATs and there is not yet the evidence to prove that large scale expansion would significantly improve the school landscape.”<sup>11</sup>
- Local authorities with strong track records in education should be allowed to use the expertise within their education departments to set up MATs.<sup>12</sup>

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

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

Section 3.2 of the EFA’s Academies Financial Handbook provides more information on the detailed requirements on these transactions. Academy trusts are required to comply with the handbook via provisions in their funding agreements.<sup>13</sup>

---

<sup>10</sup> Education Committee, [Multi-academy trusts](#), Seventh Report of Session 2016–17, HC 204, 28 February 2017, p31; p28

<sup>11</sup> *Ibid.*, p31.

<sup>12</sup> *Ibid.*, p21.

<sup>13</sup> EFA, [Academies Financial Handbook](#), July 2016, effective September 2016.

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

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

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

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

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

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

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

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

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

The Secretary of State can also make an academy order where a school has been notified that it is considered to be coasting, although making an order in these circumstances is not mandatory. The *Coasting Schools (England) Regulations 2017* (SI 2017/0009) set out the criteria for designation as coasting.

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

- [DfE, Schools causing concern \(March 2016 version\)](#).<sup>14</sup>

---

<sup>14</sup> DfE, [Schools causing concern](#), March 2016.

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

In March 2016 the Government set out plans to require all remaining maintained schools in England to convert to academy status in a White Paper, *Educational Excellence Everywhere*.<sup>15</sup> Further details on these plans can be found in a Library briefing paper:

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

In May 2016, the Government revised these plans. It said that while the aim was still full academisation, it would not pursue “blanket conversion”.<sup>16</sup> It would nevertheless introduce legislation that would provide for academy conversion in situations where:

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

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

In October 2016, Education Secretary Justine Greening said in a Statement that while the Government’s ambition remained that all schools would have academy status, it would not introduce any wider education legislation in this parliamentary session. The focus would instead be on “building capacity in the system and encouraging schools to convert voluntarily”.<sup>17</sup>

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

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

---

<sup>15</sup> DfE, [Educational Excellence Everywhere](#), CM 9230, 17 March 2016.

<sup>16</sup> [‘Next steps to spread educational excellence everywhere announced’](#), DfE press notice, 6 May 2016.

<sup>17</sup> Written Statement to Parliament, [Technical and Further Education, HCWS223](#), 27 October 2016.

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

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

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

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

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

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

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

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

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

## 3. Land and buildings

### 3.1 Who owns academy land and buildings?

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

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

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

- [DfE, Academy conversion: land transfer advice](#).<sup>18</sup>

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

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

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

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

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

- [DfE guidance, Advice on the protection of school playing fields and public land](#).<sup>19</sup>

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

---

<sup>18</sup> DfE, [Academy conversion: land transfer advice](#), April 2013.

<sup>19</sup> DfE, [Disposal or change of use of playing field and school land](#), May 2015.

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

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

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

- Peppercorn rent lease- the academy trust will rent the land on a long-term basis at near zero cost from a landowner such as a local authority.
- Commercial lease – can apply to a wide range of buildings not traditionally used for schooling.
- Outright purchase – land and buildings held on freehold basis.<sup>20</sup>

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

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

- [DCLG guidance, Plain English guide to planning for free schools, published January 2015.](#)<sup>21</sup>

Securing a site can be a challenging aspect of establishing a free school, especially in densely-populated urban areas with high land values and few vacant public buildings. In March 2017 the DfE launched LocatED, a property acquisitions company for free school sites. A press release explained LocatED's aims:

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

LocatED is a government-owned property company and will operate with a £2 billion budget, making it one of largest purchasers of land in the UK. Working directly with landowners, agents and developers across Britain, LocatED has been established to help overcome some of the challenges of securing sites and land for new free schools.<sup>22</sup>

---

<sup>20</sup> DfE, [Options for securing or acquiring a site](#), 1 March 2013.

<sup>21</sup> DCLG, [Plain English guide to site planning for free schools](#), January 2015.

<sup>22</sup> DfE press release, ['Government launches company to create more free schools'](#), 28 March 2017.

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

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

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

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

- [Gov.uk article, Complain about a school or childminder, updated 27 March 2017.](#)

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

- [DfE factsheet, Academy independent admission appeal panel complaints factsheet, published March 2014.](#)

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

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

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

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

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

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

#### **In-year admissions**

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

central co-ordination and applications need to be made directly to the preferred school(s). Again, the local authority should be able to provide information on how the system works in a particular area.

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

The DfE's model funding agreement for mainstream single academies and free schools requires academies to comply in full with the current DfE *School Admissions Code* and the law relating to admissions. The Secretary of State has the power to vary this requirement where there is "demonstrable need".<sup>23</sup>

The Code makes clear that, under an academy's funding agreement, the Secretary of State for Education has the power to direct an academy to admit a particular child.<sup>24</sup>

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

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

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

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

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

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

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

For new faith academies and free schools, the DfE currently 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.

---

<sup>23</sup> DfE, [School Admissions Code](#), December 2014. p4.

<sup>24</sup> *Ibid.*, p32.



In September 2016, the DfE launched a consultation on a number of proposals,<sup>25</sup> including the removal of the 50 per cent cap on faith places where a new faith academy is oversubscribed. If implemented, the Government's proposals would mean that new faith academies could admit up to 100% of pupils with reference to faith, if oversubscribed and subject to certain checks and balances. The consultation closed on 12 December 2016.

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

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

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

Academies must ensure they offer a broad and balanced curriculum, which includes English, mathematics, sciences, and religious education (RE). Requirements for RE in academies broadly reflect the provisions that apply to local authorities and schools in the maintained sector.

Secondary academies are not currently required<sup>26</sup> to offer sex and relationship education (SRE) but if they do, they must have regard to guidance issued by the Secretary of State on this issue.<sup>27</sup>

In March 2017, the Government [announced](#) that it intended to make relationships and sex education mandatory in all English secondary schools including academies.<sup>28</sup> Relationships education would be mandatory in all primary schools. Further background can be found in a linked Commons Library briefing paper, [Sex and relationships education in schools \(England\)](#).

## 4.7 Can academies teach creationism?

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

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

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

---

<sup>25</sup> DfE consultation, [Schools that work for everyone](#), 12 September 2016.

<sup>26</sup> Unless the academy has a clause in its funding agreement requiring it to offer SRE.

<sup>27</sup> See: [HL Deb 8 July 2013 c6](#).

<sup>28</sup> Written Statement, '[Sex and Relationships Education](#)', HCWS509, 1 March 2017.

2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.<sup>29</sup>

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

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

The DfE's School Admissions Code makes clear that schools "**must** ensure that [...] policies around school uniform [...] do not discourage parents from applying for a place for their child".<sup>30</sup>

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

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

When considering how the school uniform should be sourced, governing bodies should give highest priority to the consideration of cost and value for money for parents. The school uniform should be easily available for parents to purchase and schools should seek to select items that can be purchased cheaply, for example in a supermarket or other good value shop. Schools should keep compulsory branded items to a minimum and avoid specifying expensive items of uniform e.g. expensive outdoor coats.<sup>31</sup>

---

<sup>29</sup> DfE, [Mainstream academy and free school: single model funding agreement](#), updated April 2016, p. 26.

<sup>30</sup> DfE, [School Admissions Code](#), December 2014, para 1.8, p10.

<sup>31</sup> DfE, [School uniform](#), September 2013.

## 5. Employment in academies

### 5.1 Qualified Teacher Status (QTS)

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

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

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

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

- [ACAS website article on staff at schools transferring from maintained to academy status, undated](#)<sup>32</sup>

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

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

---

<sup>32</sup> ACAS website article, [Transferring staff \(TUPE\)](#), undated.

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).