



Department
for Education

A guide to the single academy model funding agreement

(December 2012 – version 7)

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Purpose of this guide

This is an introductory guide to the single academy model funding agreement.

It is aimed at governors of existing open academies and those considering converting to become a converter or sponsored academy. The intention is to provide governors with a clearer understanding of exactly what the funding agreement means for them in terms of the freedoms, obligations or requirements placed on academy trusts. This guide may also be of interest to head teachers (principals), sponsors and potential sponsors.

This guide is based on [version 7](#) of the single academy model funding agreement which was published on 19 December 2012. It is used by both converter and sponsored academies, and the model provides for a number of minor modifications to allow for specific circumstances. For example there are clauses that will apply depending on whether the academy has a religious designation, is wholly selective, or the land held by the academy is freehold or leasehold. We have highlighted these exceptions within this guide. There are separate single academy model funding agreements for special academies; alternative provision academies; free schools; studio schools; university technical colleges; and 16-19 academies.

If you have responsibility for an open academy, you should also refer to your own funding agreement, as that is your contract with the Secretary of State¹. Each agreement may also differ slightly in content so you may wish to consider seeking your own legal advice on the meaning of your own funding agreement.

As a governor you are also a director of your academy trust and a charitable trustee. You have day-to-day responsibility for governing your academy trust which is a charitable company limited by guarantee.

This guide includes references to the articles of association (articles) and the academies financial handbook:

- The articles set out your academy trust's charitable object(s). The object(s) describes and defines the purpose for which your academy trust has been set up. The articles also set out your academy trust's governance arrangements.
- The [academies financial handbook](#)² sets out the requirements and guidance relating to the financial management of your academy trust. Your academy trust must comply with the handbook which is updated for the start of each academy financial year³ (or in-year exceptionally).

¹ All references in this guide to the 'Secretary of State' are to the Secretary of State for Education.

² References in this guide are to the 2013 edition which came into effect from 1 September 2013.

³ The academy financial year runs from 1 September to 31 August the following year

In this guide:

- ‘must’ – is used to identify a requirement for your academy trust;
- ‘should’ – is used to identify obligations or requirements which are regarded as minimum good practice;
- ‘may’ – is used where your trust has discretion whether to do something or not, taking into account what is appropriate in your circumstances.

Purpose of the funding agreement

The funding agreement is a legal contract between your academy trust and the Secretary of State. It sets out funding arrangements, obligations of both parties and the termination provisions.

The funding agreement is a legally binding contract, and is drafted using clauses. The following explains the purpose of the clauses in the model funding agreement. It is intended to help you understand what they mean for you and your academy trust.

Introductory clauses

Clauses 1 to 8 (Introduction) – This explains who the contract is between; states the name of your academy trust; and defines the terms used in the funding agreement.

The reference to the [Interpretation Act 1978](#) in clause 5 means that any reference to an Act or Regulations in the funding agreement includes amendments that are made to that Act or those Regulations. For example references to the Academies Act 2010, include the amendments made to the Academies Act by the Education Act 2011.

Clauses 9 and 10 (Legal agreement and academy requirements) – This explains that your academy trust must run the academy, meeting the requirements set out in [Section 1A of the Academies Act 2010](#), and the Secretary of State must fund your academy trust in accordance with the conditions of the funding agreement.

Section 1A of the Academies Act 2010 sets out that your academy must be an independent school which has a balanced and broadly based curriculum; provides education for pupils of different abilities drawn wholly or mainly from the area in which it is situated; and it is not an alternative provision academy (there is a separate model funding agreement available for this type of academy).

Clause 11 (Academy opening date) – This sets out the date on which the academy opens as a school, and is usually the first day of the month in which your academy opens rather than the first day which children attend. For example: 1 September rather than 3 September. This is also the date upon which your school will cease to be maintained by the local authority.

Conditions of grant – clauses 12 to 33C

Clause 12 (General) – This sets out your academy trust's other conditions of grant and grant requirements:

- your academy must be at the heart of its community;

- the external assessment of pupils' performance must mirror the arrangements for maintained schools;
- your academy is its own admissions authority;

Your admissions policies and arrangements must comply with admissions law and the Department for Education's codes of practice relating to admissions (the [School Admissions Code and the School Admission Appeals Code](#)).

Your admissions arrangements will be set out in annex B of your funding agreement. See also the 'annexes to the funding agreement' section of this guide (pages 19 and 20).

- your academy trust is responsible for setting teachers' pay and conditions;
- your academy trust must place an emphasis on the needs of individual pupils, including those with special educational needs, following the [law and guidance on special educational needs](#) as it applies to maintained schools;

Your arrangements for pupils with special educational needs will be set out in annex C of your funding agreement. See also the 'annexes to the funding agreement' section of this guide (pages 19 and 20).

- your academy trust must not charge for admission to your academy and can only charge where the law allows [maintained schools to charge](#) for example music tuition;

For example, your academy trust must not charge for school visits that take place during school hours, or outside school hours if part of the syllabus for a prescribed public examination, or as part of religious education.

- your academy trust must be set up in a way which enables you to receive and manage donations to fulfil your charitable object(s) and use reasonable endeavours to raise donations⁴.

Clauses 13 and 14 (Governance) – These explain that your governing body is responsible for governing your academy trust on a day-to-day basis. Your governing body should have regard to any guidance about the governance of academies published by the Secretary of State (for example, the [governors' handbook](#)). Your governing body has responsibility for directing your academy trust's affairs and for ensuring that it is solvent, well-run, and delivering the charitable outcomes for which it has been set up.

⁴ The Charity Commission has published [guidance](#) about what charities and their trustees need to consider when raising funds.

The three priorities for your governing body are to set the vision of the school, hold the head teacher⁵ to account for educational performance and ensure that the academy's money is well spent.

Clause 15 (Conduct) – Your academy trust must conduct the academy in keeping with your articles of association, relevant legislation including the [Independent School Standards](#), and your funding agreement.

The Independent School Standards apply to all academies regardless of when they opened. However, Part 1 – the quality of education provided – does not apply to academies. The other requirements are: Part 2 – spiritual, moral, social and cultural development of pupils; Part 3 – welfare, health and safety of pupils; Part 4 – suitability of staff, supply staff and proprietors; Part 5 – premises and accommodation at schools; Part 6 – provision of information (not all of this applies to academies, the exceptions are set out in regulation 3(3)(b) and (c)); and Part 7 – manner in which complaints are to be handled.

Clauses 16 to 16A (Disclosure and barring service checks) – These set out your requirements for carrying out enhanced Disclosure and Barring checks and further checks as required for members of staff (including non-teaching staff), supply staff, governors including the chair. If the Secretary of State asks your academy trust for information contained within an enhanced Disclosure and Barring certificate, then you must provide it in line with [section 124 of the Police Act 1997](#).

The Independent School Standards require your academy trust to obtain disclosure and barring service checks for staff and governors. Where a check is needed for the chair of governors of the academy trust, this must be sought through the Department. Information on this process can be found [here](#).

Clause 17 (Pupils) – This sets out the capacity and age range of your academy and explains it is an all-ability inclusive school (unless selective arrangements are in place). This clause also refers to the admissions and special educational needs arrangements which are set out in annex B and C to the funding agreement. It also refers to the [regulations for pupil exclusions](#) that apply.

Your academy's planned capacity should be the physical capacity of the building as measured by the local authority, rather than the published admission number (which may be lower or higher).

Clause 17A (Designated teacher for looked after children) – This sets out the requirement for your academy trust to have a designated teacher for registered pupils who are looked after by a local authority. This also applies to maintained schools.

Clauses 18 to 21A (Teachers and other staff) – These allow your academy trust to

⁵ The staff and senior leadership team at your academy will be held to account through the head teacher.

employ anyone it considers to be suitably qualified as a teacher, with the exception of a special educational needs co-ordinator and a designated teacher for looked after children, who must hold qualified teacher status. They also require your academy trust to give staff access to the relevant pension scheme⁶; and to advise certain other education providers (if requested) whether a teacher's capability has given cause for concern in the past two years.

If your academy is a former voluntary-controlled or foundation school with a religious designation and foundation governors defined in the articles, then alternative clauses must be used. See the explanation of "Appendix A – former VC or foundation schools" on page 21 of this guide for further information.

Clauses 22 to 28A (Curriculum, curriculum development and delivery, and religious education and collective worship) – Your academy's curriculum up to the age of 16 must be broad and balanced, and include English, maths and science. Although your academy is not required to follow the national curriculum, it may choose to do so if you wish. Your academy must provide religious education and a daily act of collective worship. The obligation on maintained schools to provide [careers guidance](#)⁷, [avoid political indoctrination and secure the balanced treatment of political issues](#)⁸ applies to your academy. Otherwise the curriculum is the responsibility of your academy trust, and key information about it must be published. Clauses 25 to 28 set out the requirements for religious education and collective worship (this will vary depending on whether or not your academy is designated with a religious character and on whether your predecessor school was voluntary aided, voluntary controlled or foundation).

If your academy is a former voluntary controlled or foundation school with a religious character you must use the alternative clause 26 contained within the main body of the funding agreement and mark clause 25 as not used.

Clauses 29 and 29A (Assessment) – Your academy trust must:

- ensure pupils take part in assessments (also applies to maintained schools);
- report to any assessment body (also applies to maintained schools);

⁶ All employees of an academy proprietor, other than teachers, are automatically eligible to be members of the Local Government Pension Scheme.

⁷ The duty to provide careers guidance applies to your academy if you have secondary-aged pupils.

⁸ The Charity Commission has also published [guidance](#) about what charities and their trustees need to consider when campaigning or engaging in political activity.

- submit your academy to monitoring and moderation of your key stage assessment arrangements;
- publish key stage results on your website; and
- let parents and prospective parents, know where they can find Ofsted's latest report and the school performance tables.

Your academy trust may offer any education or training course leading to a qualification approved by the Secretary of State under [section 96](#) of the Learning and Skills Act 2000. Your academy trust may also offer any other education or training course. But the Secretary of State's written permission is required if the course will be funded from your general annual grant.

Clause 30 (Exclusions agreement) – When a pupil is excluded, funding follows the pupil. Your academy trust, if requested to do so by the local authority, must enter into an agreement with a local authority to enable the payment for a pupil excluded by another school to be made to your academy trust if that pupil attends your academy or to the local authority if that pupil has been excluded from your academy and is being education at a maintained school.

This requirement is separate from the £4,000 that an academy trust may be required to pay to the local authority following an independent review panel. For further detail on this payment see the [statutory guidance on exclusion](#).

Clauses 31 and 32 (School meals) – If a pupil or his or her parent(s) ask your academy to provide school lunches for the pupil, your academy must do so, unless it would be unreasonable. Your academy must provide free school lunches for [eligible pupils](#), but may otherwise charge for lunches or fund them from your general annual grant.

Clause 33 (Charging) – Your academy trust must comply with the same requirements and prohibitions in relation to charging for school activities that apply to maintained schools. See also clause 12 (general) in this guide (sixth bullet).

Clause 33A (International education surveys) – The Secretary of State may require your academy trust to participate in [international education surveys](#). For example, the Programme for International Student Assessment (PISA).

Clause 33B (Pupil premium) – Your academy trust must publish information about your pupil premium⁹ funding allocation. This includes the amount received, how you intend to spend the premium this academy financial year, how it was spent in the last academy financial year and what impact that spending has had on the educational attainment of those pupils in respect of whom the funding was allocated.

⁹ Further guidance can be found [here](#) on Pupil Premium including examples of reports produced by schools.

Clause 33C (Duration of school day and year) – Your academy trust is responsible for setting the duration of the school day and the length of the school year. There is no legal obligation for pupils to be educated for a certain number of days or a requirement that the school day should be of a certain length.

Grants paid by the Secretary of State – clauses 34 to 64

Clauses 34 and 35 (General) – These explain that the Secretary of State will pay grants towards recurrent expenditure and may pay grants towards capital expenditure.

Recurrent expenditure covers the normal running costs of your academy. This is paid in two ways: general annual grant (GAG, the main source of income for your academy trust – see clause 41) and earmarked annual grant (EAG, which may be paid by the Secretary of State to your academy trust for a specific purpose – see clause 54).

Clauses 36 to 39 (Capital grant) – Clause 36 defines what is meant by capital expenditure. The Secretary of State may pay capital grant to your academy trust in respect of capital expenditure items listed under clause 36, which include costs incurred to enable you to open in new premises or substantially refurbish existing premises. The capital grant is subject to the conditions set out in clauses 38 and 39 which include getting the prior written consent of the Secretary of State.

Clause 40 (Arrangements for payment of capital grant) – This covers the basis upon which capital grant will be paid and what happens if there is a dispute.

Clauses 41 to 53 (General annual grant) – These set out:

- that general annual grant covers your normal running costs and lists typical areas of expenditure, such as salary and administration costs;
- that your general annual grant must include funding equivalent to that which a maintained school with similar characteristics would have received; and funding for functions which the local authority would carry out, if your academy were a maintained school;
- that, at the Secretary of State's discretion and on the same basis as maintained schools, general annual grant may also include funding for matters for which it is necessary for your academy to incur extra costs as well as payments in respect of specific grants.
- that in the academy financial year in which your converter academy opens, your general annual grant will be calculated on the same basis as that used by the local authority for determining the budget share of your predecessor school unless all year groups are not present or census shows less than 90 per cent of planned capacity. In subsequent years, your general annual grant for Year 11 and below will be calculated according to the pupil numbers shown in the schools census, but for Years 12 and above the general annual grant will be calculated on the same basis as that used by the local authority for these year groups (unless all year groups are

not present or census shows less than 90 per cent of planned capacity).

- that where all year groups are not present or census shows less than 90 per cent of planned capacity, your general annual grant will be calculated on the basis of pupil count determined by the Secretary of State.
- that where the general annual grant is calculated on the same basis as that used by the local authority, no adjustment will be applied to the following year's general annual grant.
- that the Secretary of State may pay a further general annual grant to your academy during the start-up period¹⁰ or to meet transitional costs of pupils transferring from closed maintained schools or if a notice to terminate the funding agreement is served.

Alternative funding clauses would be added to your funding agreement if you are a sponsored academy with an approved academy action plan. See the explanation of "Appendix E – Sponsored academies" on page 22 of this guide for further information.

Clauses 54 and 55 (Earmarked annual grant) – These set out how your academy trust may ask the Secretary of State for earmarked annual grant (either for capital or recurrent expenditure). If the request is agreed, the terms and conditions of grant will be set out in the relevant funding letter from the Secretary of State.

Clauses 56 to 60 (Arrangements for payment of general annual grant and earmarked annual grant) – The Secretary of State will notify your academy trust before the start of each academy financial year¹¹ of the amounts of general annual grant and earmarked annual grant which he intends to pay. Provision is made for the correction of overpayments or underpayments in the event that your general annual grant is calculated incorrectly. General annual grant will be paid in monthly instalments.

Clauses 61 to 64 (Other relevant funding) – These:

- cover the Transfer of Undertakings (Protection of Employment) (TUPE) costs that the Secretary of State may meet. Any payment of grant to meet these costs will be agreed on a case by case basis and your academy trust should obtain specific agreement prior to entering into any commitments;
- allow your academy trust to receive top-up funding from a local authority for pupils with a statement of special educational needs, or other pupils with high needs. (Your academy trust will be required to enter into a contract with the local authority

¹⁰ Start-up period is defined in clause 49 of the funding agreement

¹¹ The academy financial year starts on 1 September.

in respect of this funding, which will set out what your academy will do in return.)

Clause 61 (redundancy payments) will only to be included in your funding agreement if you are a sponsored academy with an approved academy action plan. See the explanation of “Appendix E – Sponsored academies” on page 22 of this guide for further information.

Financial and accounting requirements – clauses 65 to 88

Clauses 65 to 68 (General)

Your academy trust must appoint an accounting officer and inform the Secretary of State of that appointment. The individual must be a fit and suitable person for the role. In a single academy trust this should usually be the principal (head teacher). The essence of the role is a personal responsibility for regularity, propriety and value for money Further information on the role of the accounting officer is in the [academies financial handbook](#).

Your academy trust must comply with the academies financial handbook¹², in relation to the grant paid to you by the Secretary of State.

You (the governing body) must approve a formal budget plan each year. Under the academies financial handbook your approved annual budget must be submitted to the EFA in a form specified annually by the EFA, and by a date that will be notified by the EFA. In practice the EFA produces an annual pro-forma budget template for trusts to submit electronically. Clause 79 of the funding agreement provides that your approved budget must balance from financial year to financial year (1 September to 31 August).

Clause 68 sets out conditions which must be fulfilled to the satisfaction of the Secretary of State before he will agree to pay any grant. These are that your academy trust:

- a) applies financial and other controls which conform to the requirements of propriety and good financial management;
- b) has arrangements to maintain proper accounting records and ensures that statements of income and expenditure and balance sheets are produced in such a

¹²Issued by the [Education Funding Agency](#) (EFA) and describes the responsibilities of all academy trusts for sound financial management and governance, in accordance with their funding agreement.

form and frequency as directed by the Secretary of State¹³;

c) prepares its financial statements, directors' report, annual accounts and annual return for each academy financial year in accordance with the [Statement of Recommended Practice](#) ('SORP') as issued by the Charity Commission and in such form and by such a date as directed by the Secretary of State. These shall be filed with the Secretary of State each academy financial year. The SORP describes the required form and content of a charity's report and accounts, consistent with the requirements of the Companies Act 2006, which also requires publication of an annual report and accounts ('financial statements')

The EFA has produced (on behalf of the Secretary of State) an [accounts direction](#) that helps academy trusts to interpret and apply the SORP. Your academy trust's accounts must therefore be prepared in accordance with the accounts direction. The accounts direction stipulates that the annual report and accounts must be submitted to the EFA by 31 December each year.

d) sends a statement of the accounting policies used to the Secretary of State with the financial statements, and an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of your academy trust's affairs and that the grants were used for the purposes intended. Your trust's accounting policies should be submitted as an integral part of the notes to the annual accounts, in accordance with UK accounting standards, rather than as a separate document. The EFA's accounts direction explains that your trust's external auditor must produce two audit reports. One report addresses the duty under the Companies Act 2006 to confirm whether the accounts are true and fair. The other report is called a 'report on regularity' and considers whether the trust's money has been spent for the purposes that its funders intended;

e) ensures that your accounts are audited annually by independent auditors. The requirement for an annual audit of the accounts flows from the requirements of the Companies Act 2006. The person who conducts the audit must be registered to do so;

f) prepares and files with the Companies Registry the annual accounts which are required by the Companies Act 2006. Filing arrangements are described in the EFA's accounts direction. Generally accounts must be sent to Companies House within 9 months of the end of the accounting period. For academy trusts this is 31 May;

¹³ Under the [Companies Act 2006](#) your academy trust has a legal duty to keep adequate accounting records that are sufficient to explain your trust's transactions and disclose your financial position at any time.

g) publishes on its website your annual accounts, annual report, memorandum of association, articles, funding agreement and a list of the names of the governors of the academy trust. To promote transparency and accountability, publication should be as soon as the documents are available and, in the case of annual accounts by 31 May at the very latest;

h) insures its assets in accordance with normal commercial practice or under the terms of any leases in respect of the leasehold interest of your academy's site.

Clauses 69 to 71 – The Secretary of State may at his expense appoint auditors to report to him on your academy trust's accounting systems and internal controls. Your academy trust must make records available for inspection to officials of the Department for Education and the National Audit Office.

Clauses 72 to 79 – These clauses:

- allow your academy trust to carry forward unspent general annual grant from one academy financial year to the next, subject to any limit specified in the academies financial handbook or conditions set by the Secretary of State.

General annual grant is intended to meet your trust's ordinary running costs during the year. In practice you may wish to maintain a portion of your general annual grant at the end of each academic year as a working float, and to provide a savings fund for cyclical purchases such as ICT. The funding agreement provides your trust with the flexibility to do this. The academies financial handbook has removed the general annual grant carry forward limit with effect from September 2012 which means that your trust can currently carry forward unspent general annual grant from financial year to financial year. However, the model funding agreement does refer to this power being subject to any limit which is specified in the academies financial handbook or otherwise specified by the Secretary of State. Therefore any future carry forward limit contained in the handbook, or separately specified by the Secretary of State will apply. To note, the academies financial handbook also specifies that this freedom does not apply to some older academy trusts which have carry forward limits set out in their funding agreements. You will need to check your funding agreement if it pre-dates September 2012.

- allow your academy trust to carry forward additional grants made in the start-up period (as defined in clause 49 of the funding agreement).

This means that if you receive a start-up grant from the EFA, you can carry forward any unspent element of it from one academic year to the next, without the carry over restrictions that may apply to your general annual grant, until the end of your start-up period.

- enable any unspent general annual grant which is not allowed to be carried forward under clauses 72 and 73 to be taken into account in the payment of future grant. This means that if your trust carries forward more general annual grant at the

end of the academic year than is permitted under your funding agreement, the Secretary of State reserves the right to recover the excess from your trust by deduction from future grant payments;

- require your academy trust to use its general annual grant only for your charitable education purpose of advancing for the public benefit education in the United Kingdom, including by operating an academy¹⁴;
- allow your academy trust to accumulate and spend funds from private or other public sources. Any surplus must be separately identified in your academy trust's balance sheet;
- place various restrictions on your academy trust in relation to assets or property funded wholly or partly by the Secretary of State.

These restrictions mean that your trust cannot carry out certain transactions above certain values without the consent of the Secretary of State. These transactions include:

- giving guarantees, indemnities and letters of comfort;
- writing off debts and liabilities;
- making ex-gratia payments;
- acquiring and disposing of property.

The monetary values beyond which the Secretary of State's approval is required are set out in the academies financial handbook.

- require your academy trust to give the Secretary of State 30 days' written notice of its intention to make certain financial transactions (this relates to the transactions in the previous paragraph);
- require your academy trust to report suspected fraud or theft to the Secretary of State. The academies financial handbook provides further information about the duty to investigate fraud and irregularities;
- require your academy trust to balance its budget each year.

For these purposes a balanced budget is one which is in cumulative surplus or breaks even. It must not be in cumulative deficit.

Clauses 80 and 81 (Borrowing powers) – Unless permitted by the academies financial handbook, your academy trust must obtain the Secretary of State's approval before entering in to a borrowing agreement (whether short-term borrowing, including overdraft facilities, and medium to longer term loans including taking up a finance lease). Approval

¹⁴ As specified in your articles of association.

will only be given in very limited circumstances. Your academy trust must provide 30 days' written notice to the Secretary of State of your intention to borrow. The academies financial handbook describes borrowing arrangements in more detail.

Clauses 82 to 88 (Disposal of assets) – These set out what your academy trust needs to do in terms of obtaining consent for the sale or disposal of any assets it acquires. Your academy trust must give the Secretary of State 30 days' written notice if it intends to dispose of an asset at a price less than the highest price that can be obtained.

The academies financial handbook describes the classes of asset that require the consent of the Secretary of State before they are disposed of. In particular the disposal of publicly funded land and buildings within the meaning of Schedule 1 to the Academies Act 2010 will always require the consent of the Secretary of State. These clauses also provide for the Secretary of State to be repaid some or all of the proceeds of sale of any asset funded by a capital grant from the Secretary of State, unless he directs otherwise.

Termination – clauses 89 to 110

Clause 89 – The Secretary of State or your academy trust may terminate the funding agreement by giving at least seven years' notice.

The seven years' "no fault" termination notice period allows either party to give notice to terminate the funding agreement. This notice period provides security for your academy trust and staff and allows existing pupils at the time of the issue of the notice to complete their education at your academy during the course of the notice period. Unless terminated by either party, the funding agreement has no end date.

Clauses 90 to 93 (Termination warning notice) – The Secretary of State can issue your academy trust with a written notice of his intention to terminate the funding agreement where he considers:

- a) your academy no longer meets the requirements of an academy as defined in section [1A of the Academies Act 2010](#);
- b) the conditions and requirements set out in clauses 12 to 33B (see pages 5 to 9 of this guide) of the funding agreement are no longer being met;
- c) your academy's pupils' standards of performance are unacceptably low;
- d) there has been a serious breakdown in the way your academy is managed or governed;
- e) the safety of pupils or staff is threatened; or
- f) there is a material breach of the provisions of the funding agreement.

Clause 91 allows the Secretary of State to specify in the termination warning notice the

remedial measures he requires your academy trust to take in order to rectify the identified defaults, and the date by which your academy trust must respond to the notice.

Clause 92 sets out the process for your academy trust to respond to the notice; the Secretary of State's powers to specify further measures that your academy trust needs to take to remedy the defects; and if he is not satisfied with your academy trust's compliance with these measures, his powers to notify the academy trust of his intention to terminate the funding agreement. Clause 93 allows the Secretary of State to make a final decision on whether or not to terminate the funding agreement.

Clauses 94 to 96 (Notice of intention to terminate) – The Secretary of State may give notice of his intention to terminate your funding agreement where Ofsted judges it to be inadequate (i.e. in category 4). There are two statutory definitions for schools within this category: a school that requires 'special measures', and a school that 'requires significant improvement' (commonly referred to now by Ofsted as 'serious weaknesses'). Your academy trust will be given the opportunity to make representations to the Secretary of State within a specified timescale. The Secretary of State will then make a final decision on whether to terminate your funding agreement.

If you are a sponsored academy then there is an alternative clause 94. See the explanation of "Appendix E – Sponsored academies" on page 22 of this guide for further information.

Clauses 97 to 99 (Termination with immediate effect) – The Secretary of State may terminate your funding agreement with immediate effect if your academy has been struck off the register of independent schools, or if your academy trust becomes insolvent or is otherwise in serious financial difficulties, or there is a serious risk that it may become insolvent or be in serious financial difficulties.

Clauses 100 to 102 (Change of control) – Your academy trust must notify the Secretary of State in writing of any change, or proposed change of control¹⁵ (of your academy trust or the organisation that controls your academy trust) as soon as possible after becoming aware of the change or proposal. The Secretary of State can terminate your funding agreement in the event of any change of control but may choose not to do so if he is satisfied that the person or organisation assuming control is suitable.

A person is treated as controlling a company either because of the size of their shareholding, or because they are otherwise able to ensure that the company acts in accordance with their wishes by, for example, being entitled to appoint or remove a majority of the academy trust's governing body.

¹⁵ Clause 4 of the funding agreement provides a definition of "control".

An example of a change of control would be where there is a change in the identity of the organisation entitled to appoint a majority of the governing body (such as a change of sponsor).

Clauses 103 to 110 (Effect of termination) – These clauses say that upon termination of your funding agreement, the school will legally cease to be an academy. They also set out the circumstances in which the Secretary of State shall, or may, indemnify or compensate your academy trust for terminating the funding agreement. In addition, they deal with what happens to capital assets on the termination of the funding agreement and grant the Secretary of State the power to require your academy trust to transfer these assets to a person nominated by the Secretary of State, or pay a proportion of the value of the assets to the Secretary of State.

General – clauses 111 to 119

Clauses 111 and 112 (Information) – These list the type of information the Secretary of State may request from your academy trust (for example, information about class sizes, details of outreach work with other schools and financial controls); and details the information the Secretary of State will provide to your academy trust for the running of the academy.

Clauses 113 to 115 (Access by the Secretary of State’s officers) – These allow the Department for Education’s officials reasonable access to the premises and to records, files and reports relating to the running of your academy. They also allow them access to attend and speak at meetings of your governing body and/or your academy trust (with exceptions). They detail your academy trust’s responsibility for ensuring that certain papers are made available at your academy for inspection by any interested party and are sent to the Secretary of State upon request.

Clauses 115A to 115E – LAND – These additional clauses are used if your academy trust holds freehold or leasehold land. (See also “Appendix B – Land clauses” on page 21 of this guide.)

Where land occupied by your academy is held by a trust the arrangements for land will be set out in either a supplemental (land) agreement or a separate lease and is subject to the terms of the trust on which that land is held.

Clauses 116 to 117 (Notices) – These set out how the Secretary of State and your academy trust will give any notice or communication to the other. This does not apply to any legal proceedings or action. Your academy trust may continue to admit pupils to the academy, and receive grants in respect of them, after a notice of termination has been served.

Clauses 117A to 117D (Complaints) – Your academy trust must abide by legislation that applies to maintained schools in relation to any complaint that was being, had been or could have been investigated by the [Local Government Ombudsman](#) before your

school became an academy. The Secretary of State may investigate such complaints as though they had taken place post-conversion and your academy trust must abide by any order and/or direction he makes. Your academy trust must complete investigations (using the predecessor school's complaints procedure) where they had not been completed by the governing body of the predecessor school; and carry out an investigation (using your complaints procedure) where the matter being complained about took place in the 12 months before the school became an academy.

The Education Funding Agency (EFA) is responsible for ensuring your academy complies with its funding agreement. [The EFA will consider complaints](#) about academies that fall into the following three areas:

- a) where there is undue delay or the academy did not comply with its own complaints procedure when considering a complaint.
- b) where the academy is in breach of its funding agreement with the Secretary of State.
- c) where an academy has failed to comply with any other legal obligation.

The EFA's role is to check whether the complaint has been dealt with properly. It is not to overturn an academy's decision about a complaint.

If the EFA finds an academy did not deal with a complaint properly, it will request the complaint is looked at again from the appropriate stage, following a process which meets the regulations. If the academy's complaints procedure does not meet the regulations, the EFA will ask the academy to put this right. If appropriate the EFA may seek to enforce the decision under the terms of the funding agreement on behalf of the Secretary of State.

Clauses 118 to 124 (General) – Your academy trust must not assign the funding agreement to another party. If the Secretary of State delays enforcing any provision or right under the funding agreement, then he does not waive his right to do so. Your academy trust and the Secretary of State agree to co-operate to deal with unforeseen situations in good faith. Any rights, remedies, obligations or liabilities of the parties existing upon termination of the funding agreement will continue. The funding agreement may be entered into by each party signing separate but identical copies of the contract. Any disputes or claims will be dealt with under the law of England and Wales before the courts of England and Wales.

Annexes to the funding agreement

Annex A – Memorandum of association and the articles of association

The memorandum sets out the name of your academy trust and lists each subscriber.

Subscribers are the ‘founding members’ of the company (i.e. your academy trust). Although there is no limit, we would expect your company/academy trust to have at least three people. The articles are described on page 3 of this guide.

Annex B – Admissions requirements

This sets out the admissions requirements for your academy, whereby your academy trust will take responsibility for acting in accordance with the [School Admissions Code and the School Admission Appeals Code](#). The admissions annex describes how your academy trust will set its criteria for oversubscription and admission numbers and sets out the process of consultation, determination and objections for these. The admissions annex will also list the relevant religious authority if your academy is designated as having a religious character.

Annex C – Arrangements for pupils with special educational needs and disabilities at the academy

This sets out the duties your academy must comply with for pupils with special educational needs including the duties with regard to admissions for children with or without a statement of special educational needs.

Annex D – Wholly selective school to remove selective admissions arrangements

This annex sets out the process for your academy trust (or parents) to remove selection if you are one of the designated grammar schools that have become an academy. This closely resembles the process which such schools were subject to in the maintained sector. If you wish to become non-selective you must ballot parents to see if they are in favour. If the parents vote to remove the selective admissions arrangements, your academy must become non-selective by amending your admission arrangements immediately.

The main difference between a maintained school’s process for parental ballots to remove selection and an academy’s process is that a ballots agency handles the process in the maintained sector. Once you become an academy, you become responsible for conducting your own process. However, it is recommended that if at all possible, you appoint a contractor well in advance of an actual ballot.

If you are a partially selective grammar school that admits only a proportion of your intake by ability, then this annex does not apply. It would be covered by your admissions annex instead (Annex B).

Appendix of additional or alternative clauses

These are clauses which depending on your circumstances, will need to be added to your funding agreement. For example if your academy has a special educational needs unit or provision reserved for pupils with special educational needs, then the clauses in Appendix F will need to be included.

Appendix A – former voluntary-controlled or foundation schools - These are used if your academy trust is a former voluntary-controlled or foundation school with a religious designation and you have foundation governors defined in your articles.

Clauses 21B and 21C – These clauses allow your academy trust to employ teachers or staff on the basis of their fitness and competence to give religious education in line with the [School Standards and Framework Act 1998](#) as they would apply to a voluntary-controlled or foundation school designated with a religious character.

Appendix B – Land clauses – These are used where freehold or leasehold land will be held by your academy trust.

Clause 4 – These insertions into the definitions clause provide the meaning of ‘insured risks’ and ‘the Land’ (i.e. publicly funded land on which your academy is based).

Clauses 115A to 115E – These cover:

- the restrictive terms which need to be entered on the Land Registry’s proprietorship register when publicly funded land is transferred to your academy trust;
- the repair and upkeep of the land;
- the obligation on your academy trust to insure the land; and
- the conditions under which the land is transferred on termination of the funding agreement.

In most cases, an academy will take a lease of the land from the local authority.

Appendix C – Selective schools – If your academy is a wholly selective academy you need to insert additional wording into your funding agreement. These changes append annex (D) that provides for the removal of your academy’s selective admission arrangements and clarify which sections of the Academies Act 2010 apply to your academy.

If you are a partially selective grammar school that admits only a proportion of your intake by ability, then this appendix does not apply. It would be covered by your admissions annex instead (Annex B).

Appendix D – Academies with private finance initiative (PFI) arrangements –

a number of [PFI specific clauses](#) need to be inserted into the funding agreement if you are, or will be a PFI academy. These clauses take account of the underlying PFI structure and the terms of the PFI project agreement. They allow the Secretary of State to recoup money from your academy trust that the Secretary of State has paid to the local authority on your academy trust's behalf. The clauses give the Secretary of State power to terminate your funding agreement, if your academy trust acts in a way that threatens the continuance and steady operation of the PFI project and potential termination of the PFI project agreement. Your PFI academy will also require additional documents such as the PFI school agreement and PFI principal agreement.

Appendix E – Sponsored academies

Clauses 44 to 48 – *These clauses would be used if you are a sponsored academy with an approved academy action plan.*

These allow sponsored academies to be funded on estimates of pupil numbers until a) all year groups are present and the academy reaches at least 90 per cent of its planned capacity or b) the end of the first five academy financial years' of operation¹⁶. When the earlier of these two points is reached, your academy will be funded on census figures. If your academy overestimates its pupil numbers, the Secretary of State will be able to reclaim the overpaid money from your academy trust.

Clause 61 – *This clause would be used if you are a sponsored academy with an approved academy action plan.*

This allows a sponsored academy to apply to the Secretary of State for financial assistance in relation to redundancies it may make, prior to opening as an academy.

Clause 94 – *This clause would be used if you are a sponsored academy.*

This provides a two year “grace period” from the date of opening for a sponsored academy where Ofsted judges the academy to require special measures or significant improvement. During this time the Secretary of State will not exercise his right to terminate the funding agreement on the basis of this judgement.

¹⁶ If your academy opened on 1 August 2013, 1 August to 31 August 2013 would count as the first of the five academy financial years' of operation. The second year of operation would be from 1 September 2013 to 31 August 2014 and so on.

Appendix F – Academies with special educational needs units/provision reserved for pupils with special educational needs – This ensures your academy trust cannot make changes to, or cease to operate this provision without the Secretary of State’s consent.

Appendix G – Academies with 16 to 19 provision – This requires your academy trust to abide by the 16 to 19 funding guidance published by the Secretary of State.

Useful Links

Single model mainstream funding agreement v7 published 19 December 2012 <http://www.education.gov.uk/schools/leadership/typesofschools/academies/primary/steps/b00204874/supporting-documents/single-academies>

Academies Financial

Handbook <http://www.education.gov.uk/aboutdfe/executiveagencies/efa/efafundingfinance/b00212647/external-assurance/academies-financial-handbook>

Interpretation Act 1978

<http://www.legislation.gov.uk/ukpga/1978/30>

Section 1A of the Academies Act

2010 <http://www.legislation.gov.uk/ukpga/2011/21/part/6/enacted>

The School Admissions Code, admissions law and the Department for Education's codes of

practice <http://www.education.gov.uk/schools/adminandfinance/schooladmissions/a00195/codes-regs>

Law and guidance on special educational

needs <http://www.education.gov.uk/schools/pupilsupport/sen>

Guidance on charging

<http://www.education.gov.uk/aboutdfe/advice/f00213976/school-charging>

The governors'

handbook <http://www.education.gov.uk/schools/leadership/governance/b00224781/govhandbook>

Charity Commission guidance – Charities and fundraising

(CC20) <https://www.charitycommission.gov.uk/detailed-guidance/fundraising/charities-and-fundraising-cc20/>

The Independent School

Standards <http://www.legislation.gov.uk/ukxi/2010/1997/regulation/1/made>

Section 124 of the Police Act

1997 <http://www.legislation.gov.uk/ukpga/1997/50/section/124>

Guidance on Disclosure and Barring Service

checks <http://www.education.gov.uk/schools/leadership/typesofschools/academies/primary/steps/b00204874/supporting-documents/dbs-checks>

Guidance and regulations for pupil

exclusions <http://www.education.gov.uk/aboutdfe/statutory/g00210521/statutory-guidance-regs-2012>

Legislation on careers guidance

<http://www.legislation.gov.uk/ukpga/1997/44/part/VII>

Legislation on avoiding political indoctrination and securing the balanced treatment of political

issues <http://www.legislation.gov.uk/ukpga/1996/56/part/V/chapter/IV/crossheading/politic>

S

Introduction to section 96 qualifications

<http://www.education.gov.uk/section96/>

Charity Commission guidance – Speaking out guidance on campaigning and political activities by charities (CC9)

<http://www.charitycommission.gov.uk/Publications/cc9.aspx>

Statutory guidance on

exclusion <http://www.education.gov.uk/aboutdfe/statutory/g00210521/statutory-guidance-regs-2012/guidance>

Universal credit and free school

meals <http://www.education.gov.uk/schools/pupilsupport/pastoralcare/b00202841/fsmcriteria/eligibility-checking>

Guidance on international education

surveys <http://www.education.gov.uk/schools/careers/traininganddevelopment/research-informedpractice/a0064759/international-evidence>

Guidance on Pupil

Premium <http://www.education.gov.uk/schools/pupilsupport/premium/a0076063/pp>

About the Education Funding

Agency <http://www.education.gov.uk/aboutdfe/executiveagencies/efa/b00199952/educationfundingagency/the-education-funding-agency>

Charity Commission guidance - Statement of Recommended

Practice http://www.charitycommission.gov.uk/Charity_requirements_guidance/Accounting_and_reporting/Preparing_charity_accounts/sorpfront.aspx

Guidance about academies accounts

direction <http://www.education.gov.uk/aboutdfe/executiveagencies/efa/efafundingfinance/b00212647/external-assurance/academies-accounts-direction>

The Companies Act 2006

<http://www.legislation.gov.uk/ukpga/2006/46/contents>

Local Government Ombudsman – how to make a

complaint <http://www.lgo.org.uk/making-a-complaint/>

Guidance on making a complaint about a school / free school /

academy <http://www.education.gov.uk/aboutdfe/complaintsprocedure/b00212240/making-complaint-school/complaints-free-schools-academies>

School Standards and Framework Act

1998 <http://www.legislation.gov.uk/ukpga/1998/31/contents>

Private Finance Initiative (PFI) model clauses

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/secondary/steps/b00209699/supporting-documents/pfimodeldocs>



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