



Department  
for Education

# **Becoming a 16 to 19 academy: advice for sixth-form colleges**

**October 2016 (replaces 08 March 2016)**

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## Introduction

Advice for sixth-form colleges considering becoming a 16 to 19 academy was first published in February 2016. Since then there have been a number of developments both in areas of policy relating to, and the process of, sixth-form colleges becoming academies.

This revised document sets out more detail on the criteria and process for making an application. It also includes updated practical and operational information and advice which colleges need in order to judge whether becoming a 16 to 19 academy is the right option in their individual circumstances.

1. Sixth-form colleges (SFC) have a well established and distinctive identity and mission within the further education (FE) sector. As part of the post-16 restructuring through area reviews, the Government wants to preserve and build on the strengths which the diversity of providers can bring to provision in their area. In particular, by enabling all providers to work in partnerships which build on their particular strengths whilst also realising the educational and financial benefits of sharing resources, expertise and administration.
2. For some sixth-form colleges, with their particular focus on high quality academic courses, collaboration with schools will be a natural partnership, which can improve value for money through efficiencies and economies of scale, whilst preserving the distinctive character of their offer.
3. Sixth-form colleges themselves have identified both the potential for building more effective relationships with schools, and the organisational and cultural obstacles to such partnerships which can be challenging to overcome under current arrangements. The Government has responded by offering sixth-form colleges the opportunity to apply to become academies as part of the area review programme.

## A. Definition and scope

### Definition of becoming an academy

4. The term ‘becoming an academy’ is used throughout this advice to describe the process through which a sixth-form college will become a 16 to 19 academy. This ‘conversion’ will be achieved through provisions of the Further and Higher Education Act 1992, which enable a sixth-form college corporation to dissolve and transfer its property, rights and liabilities to a new or existing academy trust.

### Colleges in scope

5. All sixth-form colleges in England will be able to apply. Applications will need to show, amongst other things, that the college will meet the statutory definition of a 16 to 19 academy as “principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19”. As a minimum, colleges will need to meet the criteria already in place for General FE colleges to become sixth-form colleges – i.e. that 80% of their students are 16 to 19 year olds.

6. Exceptionally, on a case-by-case basis, applications may be considered from other FE colleges which can meet the statutory definition of a 16 to 19 academy and the other criteria for becoming an academy set out in this advice; and can show why their future and educational provision in the area would be best served by joining the academy sector. Judgements will be made on the basis of the age range of their students and the balance of their existing offer between academic and technical education. As a minimum such colleges would need to meet the same 80% criteria as sixth-form colleges. We would also expect a majority of these students to be following academic study programmes.

## B. Phasing of application

7. The first step a sixth-form college should take is to consider in detail whether to develop a proposal to become an academy. This is covered in section C of this advice. Proposals will usually be considered and decided at the same time as other options and recommendations from the relevant area review, to ensure that area review recommendations for each area are considered as a coherent package. This will involve the SFC successfully passing an educational, governance, financial health, sustainability and value for money assessment on the same basis as other recommendations from individual area reviews.

8. The latest information on the [timing of individual area reviews and the colleges included in each review](#)<sup>1</sup> has been published on GOV.UK.

9. There are five key stages to the process of becoming an academy. These are:

- i) expression of interest to the Joint Area Review Delivery Unit (JARDU) in line with either developing or confirmed area review recommendations
- ii) 'in principle' approval by the Regional Schools Commissioner (RSC) and the Sixth-Form College Commissioner (SFCC)
- iii) financial assessment by the Transactions Unit (TU)
- iv) final sign off by SFCC and RSC
- v) implementation.

10. Each of these stages is covered in more detail in Section D of this advice. In addition, there is further information on the assessment criteria, current academies framework and other issues to consider in annexes 1 to 3.

11. If the area review covering your college has not started yet, or is in the early stages, you can still begin to consider in detail whether to become an academy, which is covered in the next section, and start to develop your proposal but you cannot opt out of, or pre-empt the area review process. You may wish to begin early discussions with potential partners and key stakeholders, particularly with the RSC on the type of model you are considering and who your potential partners are. The process for considering your application will not progress until the final steering group has confirmed a recommendation for your college to consider becoming an academy.

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<sup>1</sup> <https://www.gov.uk/government/collections/post-16-education-and-training-area-reviews>

## Timing of the overall process

12. The process set out in this document covers only the approval of an application to become an academy. Implementation will take longer and will include managing the dissolution of the existing sixth-form college, in parallel with setting up the new academy (in a new or existing academy trust). The timetable for dissolution of sixth-form colleges is set out in regulations and will help you to arrive at a realistic proposed opening date for the proposed new academy. The time needed for implementation will vary according to your individual circumstances but we estimate that you will need a minimum of four to six months from the point your application is approved as per paragraph 39. Academies can be opened at any point in the year but the overall transition, including the dissolution of the SFC, may take up to an academic year to complete.

## **C. Considering becoming an academy – steps to take**

13. This section sets out more information about the points you should consider when deciding whether becoming a 16 to 19 academy is the right option in your individual circumstances and the steps you should take.

### **Consider whether the college would be able to meet the approval criteria**

14. Annex I sets out the educational and value for money criteria against which any applications will be evaluated.

15. In particular you should note the need, set out below, to develop partnership arrangements with schools. You should begin exploring potential partnerships as early as possible in developing your application to maximise the time available before your application is submitted. Your EFA contact may be able to advise further on support for brokering potential partnerships via the relevant RSC office. It will help you to talk with the RSC's office at an early stage about the model and partners you are considering.

16. As independent statutory corporations, sixth-form college corporations will require independent legal advice to complete the process so you may wish to consider this at an early stage to support you through the process.

### **Become familiar with the governance, funding and operation of 16 to 19 academies and the implications of becoming an academy**

17. Annex II sets out the key features of the framework for governance, operation and funding of academies and academy trusts and provides links to more detailed information.

18. Annex III provides further information on the approval criteria and the implications for sixth-form college corporations of dissolving and transferring their property, rights and liabilities to an academy trust. Your EFA contact can arrange further support, if appropriate, from across the department if you have questions which are not answered in this annex.

### **Complete due diligence on the financial and legal aspects of becoming an academy**

19. Before a proposal can go ahead, both you and, where applicable, any existing multi-academy trust which the new academy will join, will need to complete due diligence on the financial and legal aspects of the transfer. This does not have to be completed in



full before an application is submitted for 'in principle' approval, but the TU assessment will require sight of completed due diligence documentation. Your final application will need to set out sufficient information to provide assurance that the new academy (and MAT where applicable) will be financially solvent and viable, and to identify:

- the financial and physical assets which will transfer to the new academy, and any potential obstacles to transfer, such as shared use agreements, charitable trust or diocesan arrangements, or covenants which might affect how the existing land and buildings can be used. As an indication of the kind of information which you should collect and the issues you should consider in relation to land and buildings, please read the [guidance for maintained schools converting to academy status<sup>2</sup>](#)
- any assets which the college currently uses, but does not own, and whether and how this use will be maintained after you become an academy
- any liabilities currently held by the college which would transfer to the academy trust, including commercial borrowing and loans. It is essential that you contact existing contractors and lenders, and your current bankers, to establish the terms, if any, on which they will consent to transfer of obligations to the academy, and any charges or conditions they will impose as a condition for their consent. You should discuss any potentially problematic obligations or requirements with your EFA contact as early as possible when developing your application
- any contracts or agreements between the college and other parties which will need to be transferred, re-negotiated or terminated as part of the process of becoming an academy, and the steps you will need to take in each, including consent to alteration or transfer where required from the other party
- any Local Government Pension Scheme (LGPS) deficit which would transfer to the academy. You should also contact your local scheme to establish the process and requirements for transferring LGPS pensions of your staff to a new employer or scheme. Colleges will need to make contact with their LGPS scheme early in the application process.

## Consult stakeholders

20. In implementing your proposals, you will need to comply with consultation requirements for dissolution of a sixth-form college corporation as set out in the relevant

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<sup>2</sup> <https://www.gov.uk/government/publications/academy-land-questionnaires>

regulations (link in Annex II). You can combine this with your consultation on becoming an academy.

21. In addition, you should consider providing a range of consultation and discussion opportunities for your stakeholders. Staff members, parents and students, and other key local stakeholders will want to know that your governing body is considering applying for your college to become an academy; and is providing opportunities for discussion and feedback. This will not replace any other requirements to consult, but will help to inform your decisions and plans.

22. As well as the sixth-form college corporation consulting on dissolution of the college, new or existing academy trusts are required to consult on setting up a new academy. The consultation process is set out in Part 10 of the guidance targeted at free schools, but this applies equally to academy trusts setting up a new 16 to 19 academy in place of a sixth form college. You should discuss with your proposed partner schools and/or multi-academy trusts how they are consulting on the proposed arrangements.

23. Any commercial lenders, other creditors and some contractors will need to agree the changes before any liabilities, contracts or other obligations can be transferred from the college to an academy trust. We recommend that you engage early with them to establish their potential requirements and conditions.

## Get agreement for your proposals

24. For your application to be considered, you will need evidence that you have secured the full range of consents for becoming an academy. Depending on the circumstances of the college and the substance of your application, these will include consent from:

- your existing sixth-form college corporation, which must agree to any proposal to dissolve the corporation
- the trustees of any multi-academy trust which you will be joining and/or the governing bodies of any school or other provider with which you propose to develop a partnership or collaboration
- the relevant diocese in the case of catholic sixth-form colleges
- the underpinning trust, where relevant
- banks and other commercial lenders
- contractors and service providers

- any Higher Education (HE) providers on whose behalf you provide franchised HE courses to your students; or who validate HE courses you offer in your own right.

## Assess the implementation costs of becoming an academy

25. In addition to establishing the position in respect of assets and liabilities, you will need to establish the full costs associated with implementing your application. Relevant costs might include:

- project management
- consultancy, legal advice and legal/financial due diligence
- alignment of IT systems with proposed partners
- branding and communications
- early repayment charges, break fees and/or other costs associated with termination or renegotiation of the colleges' existing loans and contracts.

26. You will be eligible to apply for a [Transition Grant](#)<sup>3</sup> to support some of these exceptional costs associated with becoming an academy.

## Consider whether to apply for support from the post-16 Restructuring Facility

27. Sixth-form colleges which are applying to become academies as part of the area review can apply for support from the Restructuring Facility via the Transactions Unit to cover some or all the costs on the same basis as other FE providers who are implementing restructuring options recommended by the relevant area review steering group

28. Applications for support from the facility should be considered in parallel with development and submission of your application to become an academy. Guidance and criteria for applying for support from the [Restructuring Facility](#)<sup>4</sup> are available on GOV.UK.

29. Provision of funding from the Restructuring Facility will only occur where published

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<sup>3</sup> <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-transition-grants-for-area-reviews>

<sup>4</sup> <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-apply-for-financial-support-for-area-reviews>

criteria are met, including strong evidence that the costs are required and that you are unable to fund the change through existing resources, including, where relevant, exploration of asset sales. Because support for implementation of the recommendations of area reviews is available through the Transition Grant and Restructuring Facility, sixth-form colleges will not also have access to the DfE grants which are provided to support the establishment of new free schools and the conversion of local-authority-maintained schools to academy status. However, any schools converting at the same time that will be joining a new MAT with the SFC will be able to access the standard DfE grant.

## **Seek legal and financial advice**

30. Whilst the department can provide support on the process of becoming an academy, sixth-form colleges are responsible for securing the professional advice they will need and rely upon during the process. You will need access to a range of legal and financial expertise during the application and implementation process. We advise you to consider early in developing your application how and when you will engage the advice you will need.

## **Transfer of staff: discuss the TUPE process with staff**

31. Staff transferring from the sixth-form college to the academy trust will generally be protected under the Transfer of Undertakings (Protection of Employment) regulations (TUPE). [Guidance on the TUPE process<sup>5</sup>](#) is available on GOV.UK.

32. You should ensure that you are familiar with the TUPE process and legal obligations and have discussed them with your staff and any recognised trade unions or employee representatives. This is something about which you may wish to seek legal advice.

## **Test your application as it develops**

33. You should feel free to discuss your application with your EFA lead as it develops. We encourage you to raise any issues as soon as they arise so that the department can provide timely support where appropriate.

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<sup>5</sup> <https://www.gov.uk/transfers-takeovers/overview>

## D. Preparing your application to become an academy

### Expression of interest

34. If you think you may be interested in becoming an academy at any time before or during your area review, you should express your interest by contacting the Joint Area Review Delivery Unit (JARDU) ([area.reviews@education.gov.uk](mailto:area.reviews@education.gov.uk)). Once your area review has concluded, you should contact your Education Funding Agency (EFA) territorial case lead who will discuss your interest with you. Subsequently they will coordinate any support you need from the department, including the relevant RSC office. An expression of interest does not require or indicate any commitment from you, but will facilitate the process of applying.

### 'In principle' approval

35. Once the area review has been completed, and has recommended becoming an academy as an option for your college, you will be eligible to apply for a [Transition Grant](#)<sup>6</sup> to help take forward your application. The grants are to ensure colleges can access the best change management skills and have the capacity to make the changes at the pace required.

36. You will also need to start to complete the formal [application form](#)<sup>7</sup> to become an academy. Your EFA lead will be able to assist with any queries. Once you submit your form to EFA, the Sixth-Form College Commissioner (SFCC) and RSC (as advised by their Head Teacher Board (HTB)) will make an initial assessment of the viability of your proposed model. They will consider both the educational benefit of your proposal, and the likely financial viability of the model proposed. This will cover both the sixth-form college alongside any proposed partners (schools, academies, MATs etc.) and is based on information in the application form, the initial budget and information already held by the EFA. If successful, this provides for 'in principle' approval for the application to be considered more fully by the Agencies' Transactions Unit.

### Transactions Unit assessment

37. The Transactions Unit will assess all applications from SFCs which wish to become academies. This process will:

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<sup>6</sup> <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-transition-grants-for-area-reviews>

<sup>7</sup> <https://www.gov.uk/government/publications/16-to-19-academies-application-process-for-sixth-form-colleges>

- i. Include a detailed financial appraisal of your proposal, to ensure that any institution becoming part of the public sector will be sustainable in the long term;
- ii. Ensure that relevant changes to VAT are processed, including reimbursement of non-business VAT to all academies and, where relevant, of VAT which becomes payable as a result of a change of ownership of a building; and
- iii. Assess any application for funding not relating to VAT to support the change against the published criteria.

38. The requirements to complete this process are set out in the [Restructuring Facility Guidance](#)<sup>8</sup>. In summary, you will need to provide:

- i. A Restructuring Facility application form;
- ii. A completed Restructuring Facility financial template, which includes a 36 month financial forecast. The template is currently being finalised, so please email: [RestructuringFacility@sfa.bis.gov.uk](mailto:RestructuringFacility@sfa.bis.gov.uk) to request a copy, which will be issued once available; and
- iii. An implementation plan, supported by due diligence where relevant.

39. Once the TU is satisfied with the information provided, it will seek approval from Ministers for Restructuring Facility funding. Once approved by Ministers, the RSC/SFCC will be able to confirm the application to become an academy. The proposal can then move into implementation, this will include the academy trust entering into any necessary agreements for funding.

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<sup>8</sup> <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-apply-for-financial-support-for-area-reviews>

## Further information

40. Before and during an area review, colleges should contact JARDU if they have any questions about this advice [area.reviews@education.gov.uk](mailto:area.reviews@education.gov.uk). Once your area review has concluded, you should contact your EFA lead.

# Annex I: Becoming a 16 to 19 academy: Objectives and assessment criteria

## Objectives of proposals to become an academy

1. All applications will need to meet the overall objectives of the post-16 area review programme by:

- contributing to higher standards in the area through more effective partnerships and sharing of good practice and high quality teaching expertise and resources; and
- securing the financial health and stability of the provision, especially those sixth-form colleges which are currently at financial risk, and improving the efficiency and value for money of the provision it offers for young people in the area.

## Assessment criteria

2. In order to justify the additional costs that would need to be borne by the department when a college becomes an academy, applications should demonstrate the added value of becoming an academy, beyond that which can be achieved by sixth-form colleges which remain in the FE sector. In particular, proposals should include clear evidence that, if approved, the application will lead to stronger partnership and collaboration between the college and schools with which they will work.

3. We therefore advise colleges to begin exploring potential partnerships with schools early in the process of developing their applications.

4. Collaboration could include, but would not be limited to:

- sharing of specialist and other excellent teaching expertise, resources and practice between the college and partner schools to improve standards and educational outcomes across the partnership as a whole
- better financial resilience, lower costs and better value for money within the partnership, for instance through economies of scale, sharing or pooling of administrative services and other costs and facilities, and more efficient deployment of teaching staff
- improved management and leadership across the partnership, for instance by drawing on the particular strengths in management and leadership of one of the partners to benefit other partners



- clearer progression pathways and routes for students from key stage 4 to post-16 education.

## Partnerships within a multi-academy trust

5. Sixth-form colleges which are proposing to establish or join a multi-academy trust (MAT) should be well placed to meet the partnership criteria above. The role and contribution of the sixth-form college within a MAT will need to be considered in relation to the existing strengths of both the college and the trust.

6. We envisage four main scenarios in which a sixth-form college could become part of a MAT:

- an educationally strong sixth-form college(s) with strong finances (i.e. “good” or “outstanding” both from Ofsted and for financial health) becoming a sponsor and establishing a new MAT
- an educationally strong college with sound finances (satisfactory or better) joining an existing MAT as a partner
- an educationally weak (i.e. “requires improvement” or “inadequate”) sixth-form college joining a strong MAT which has the capacity to drive improvement in the 16 to 19 education offer
- a financially vulnerable (i.e. inadequate, borderline satisfactory or at significant risk) sixth-form college joining a financially strong MAT. This might include colleges under a Financial Notice to Improve/Notice of Concern, where such a proposal would help ensure that the matters identified in the notice would be rectified under the leadership of the MAT.

7. In judging whether a proposed MAT arrangement is appropriate to the circumstances of the various partners involved, the department will use existing sources of financial and educational performance data, information provided in the application and other relevant information gathered from other sources, such as through the area review process.

8. In all cases the application will need to include clear evidence that the proposals submitted for consideration have been agreed with the relevant MAT and/or the schools involved in the proposed partnership.

## Partnerships outside MAT arrangements

9. Where a college’s proposal does not involve joining or establishing a MAT, the sixth-form college will need to be financially and educationally strong (assessed by the

department and by Ofsted as good or outstanding for both) and will need to set out in detail the range and scale of partnership arrangements between the new 16 to 19 academy, partner schools and other education providers in the area which will be developed if the proposal were to be approved.

10. It will be particularly important to provide evidence that those schools and other education providers included in the proposed partnership have been engaged with, and agreed to, the arrangements set out in the application and to be able to set out the added value the proposed arrangements will bring.

## **Financial health, value for money and sustainability**

11. All proposals will be subject to scrutiny, using data held by the EFA, and where applicable SFA, information in the application and any other relevant information, to ensure that the proposals meet the criteria set out in paragraph 1.

12. Paragraph 36 in the main guidance above explains we will review existing information held by the EFA together with that submitted in the application form to enable an 'in principle' decision to be taken. Where a positive 'in principle' decision is made, a detailed financial review will be undertaken by the TU.

### **'In principle' decision review:**

#### **Financial health**

13. We will review the last set of audited accounts and auditors' management letter. Where auditors have raised concerns or issues, it would be helpful for your application to set out what actions have been taken to address these. Where there are financial health concerns / deficit, we will want to know what actions have been (or are being) taken to address the issues.

14. We will review the last submitted financial plan / budget forecast to understand whether financial health issues (if any) exist, are being dealt with or are emerging. Academies account for funds differently to sixth-form colleges. In particular, we will look to calculate what the academy equivalent cumulative revenue reserve is at the college by taking net assets and adjusting it for:

- Total non-current assets (fixed assets)
- Defined benefit obligations (pension)
- Capital grants

## Sustainability

15. For the review to enable an ‘in principle’ decision to be made there is no set format for the financial projections and it may be easiest to prepare your own budget template based on the model of becoming an academy. The TU review in the latter part of the process will require a financial model to be completed. This model will be available from your TU or EFA contact and will meet the requirements of the process below. Alternatively, the [academy budget forecast](#)<sup>9</sup> template contains the information that will help with our assessment, or the college financial plan template could be used as long as there is clear narrative/commentary. The way you present your budget may vary depending on the anticipated conversion date. In summary, we will need:

- The forecast outturn for the prior financial year (we will use the submitted financial plan / budget forecast or (when available) financial statements)
- A budget for the current financial year, split between pre and post conversion (assuming the planned conversion date is during the year)
- A consolidated budget for the following two years, including a split of fund year-end balances per academy (for a multi-academy trust)

16. Please remember that as an academy, VAT can be reclaimed and netted off expenditure, depreciation will not be charged to the non-staff budget (the academy budget forecast has a separate section to capture depreciation) and there is no deferred capital / release of capital grants.

## Value for Money

17. In addition to the educational case for the change the application will also need to include evidence of the financial benefits of the proposal for the college and/or its proposed partners. It would help our assessment if applications include the anticipated value and timescale of financial benefits that are assumed within the future year’s budgets.

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<sup>9</sup> <https://www.gov.uk/government/publications/academies-budget-forecast-form>

## Annex II: Background information and reference material on the current operational framework for academies

### 16 to 19 academies

1. Under the Academies Act 2010 a 16 to 19 academy is an academy “principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19”.
2. 16 to 19 academies are not schools. They are a legally distinct category of institution within the academies sector.
3. The Further and Higher Education Act 1992 enables a sixth-form college corporation which is dissolving to transfer its property, rights and liabilities to a new or existing academy trust.
4. Establishment of a new academy is subject to the Secretary of State entering into an academy arrangement with the relevant academy trust in respect of the particular academy.

### Academy governance, operation and finance

5. Sixth-form colleges which dissolve and transfer their property, rights and liabilities to an academy trust will operate within the established policy, financial and operational framework for academy trusts and the academies sector as a whole.

### Academy trusts

6. Like all academies, 16 to 19 academies are run by an academy trust. There are two main types of academy trust:
  - multi-academy trusts, which run more than one academy. Multi-academy trusts may delegate some of their functions to “local governing bodies” for individual academies or for groups of academies within the trust
  - single academy trusts, which oversee one academy.
7. Further guidance on the role, composition and accountability of [multi-academy trusts](#)<sup>10</sup> and [single academy trusts](#)<sup>11</sup> is published on GOV.UK.

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<sup>10</sup> <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-multi-academy-trust>

<sup>11</sup> <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-single-academy-trust>

## Memorandum and articles of association

8. All academy trusts must adopt a memorandum and articles of association.
9. The memorandum of association sets out the name of the academy trust. It provides for details of the subscribers who wish to form the academy trust and become its members under the Companies Act 2006.
10. The articles of association set out the internal management, decision-making and running of the academy trust and its liability. We have published [model articles of association](#)<sup>12</sup> for different types of academy.

## Academies governance handbook

11. DfE advice on the governance of academies is set out in the department's [Governance Handbook](#)<sup>13</sup>.

## Academies financial handbook

12. EFA publishes the [academies financial handbook](#)<sup>14</sup> which sets out the responsibilities and requirements relating to academy trusts' financial governance and management. Once you become an academy, you will need to comply with the handbook to meet the terms of your funding agreement.

## Academy funding agreements

13. The funding agreement between the Secretary of State and the relevant academy trust provides the framework within which an academy or free school will operate. You may wish to read present versions of the [model funding agreements](#)<sup>15</sup> for multi-academy trusts, single academy trusts and 16 to 19 academies.

## Business planning

14. The [annual business cycle](#)<sup>16</sup> for academies is set out in an online calendar on the EFA Information Exchange.

## Admissions

15. 16 to 19 academies and free schools are educational institutions rather than schools. Because of this they are not required to comply with the [School Admissions](#)

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<sup>12</sup> <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association>

<sup>13</sup> <https://www.gov.uk/government/publications/governance-handbook>

<sup>14</sup> <https://www.gov.uk/government/publications/academies-financial-handbook-2015>

<sup>15</sup> <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-single-academy-trust>

<sup>16</sup> <https://www.gov.uk/government/publications/efa-information-exchange>

[Code](#)<sup>17</sup> but their admission arrangements do need to be fair, objective and transparent. Parents/prospective students still need a clear understanding of how and when places are offered, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process and what criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and be clear how they are to be applied. In general, sixth-form colleges' existing admissions arrangements will already meet the requirements which apply to 16 to 19 academies.

## Accountability

16. **Inspection arrangements.** 16 to 19 academies are inspected under the [Common Inspection Framework and the FE & Skills Handbook](#)<sup>18</sup>. These are the same inspection arrangements as for sixth-form colleges and therefore colleges will be familiar with the requirements. However, if they join a multi-academy trust that has within it academies with sixth-forms they should be aware that there is a different handbook for school inspections, although the sixth-form is inspected against exactly the same 16 to 19 study programme requirements as colleges.

17. **Performance measures.** 16 to 19 academy performance is reported in the [16 to 18 performance tables](#)<sup>19</sup> in the same way that sixth-form college performance is reported. 16 to 19 academies established from sixth-form colleges as part of the area review process complete the ILR so there is no change in data collection processes. However, any 11 to 16 or 11 to 18 schools within a multi-academy trust will complete the school census. Qualification Achievement Rates (formerly success rates) will no longer be calculated by the Skills Funding Agency. A retention rate is calculated for 16 to 19 academies and school sixth-forms by DfE but this will cease after the 2014/15 data is circulated. This is because it will be replaced by the new retention measure, one of the five headline performance measures to be reported in 2016 performance tables.

18. Details of the headline measures to be included in 2016 performance tables are published in the [school and college performance tables 2016 statement of intent](#)<sup>20</sup>

19. **Intervention.** The same triggers are applied to determine if a 16 to 19 academy is underperforming as those applied to sixth-form colleges. These triggers are:

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<sup>17</sup> <https://www.gov.uk/government/publications/school-admissions-code--2>

<sup>18</sup> <https://www.gov.uk/government/publications/common-inspection-framework-education-skills-and-early-years-from-september-2015>

<sup>19</sup> <https://www.compare-school-performance.service.gov.uk/>

<sup>20</sup> <https://www.gov.uk/government/publications/school-and-college-performance-tables-2016-statement-of-intent>

- an overall Ofsted judgement of inadequate (or, in the case of a maintained school sixth-form or an academy sixth-form if the separate sixth-form grade states the sixth-form is inadequate); or
- performance below the National Minimum Standard set each year
- RSCs are responsible for monitoring educational standards in academies in their area. If a 16 to 19 academy is judged inadequate by Ofsted, RSCs will consider appropriate improvement action in the first instance
- EFA monitors and intervenes on financial performance in academies.

20. Further guidance on [16 to 19 accountability](#)<sup>21</sup> is published on GOV.UK

## Proposals for the dissolution of a sixth-form college corporation

21. The process to [dissolve a sixth-form college corporation](#)<sup>22</sup> and the [associated transfer of assets](#)<sup>23</sup> are set out in section 33N and 33P of the Further and Higher Education Act 1992, the Sixth-Form College Corporations (Publication of Proposals) (England) Regulations 2012, SI 2012/1158 and the Dissolution of Further Education Corporations and Sixth-Form College Corporations (Prescribed Bodies) Regulations 2012, SI 2012/1167.

22. Proposals for dissolving the existing college will need to be developed and run concurrently with those for establishment of the new 16 to 19 academy to avoid any unnecessary delays in implementation once the application is approved. Proposed opening dates for the new academy will need to reflect a realistic assessment of the time it will take to complete both elements of the process.

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<sup>21</sup> <https://www.gov.uk/guidance/16-to-19-education-accountability>

<sup>22</sup> <http://www.legislation.gov.uk/uk/si/2012/1158/introduction/made>

<sup>23</sup> <http://www.legislation.gov.uk/uk/si/2012/1167/contents/made>

## **Annex III: Supplementary information**

### **Becoming an academy outside the area review process or after the reviews are complete**

1. The option to become an academy is currently linked to the area review process. We intend that all sixth-form colleges in England will have the opportunity to apply as part of the relevant area review, and their applications will be considered alongside other recommendations from the review in their area. All proposals will be considered in the context of the relevant area review and the post-16 educational needs of the area. It is therefore essential that academy proposals link effectively to other aspects of the review in the area.
2. We will consider in the light of experience from the area reviews whether further opportunities to apply should be available once the reviews are complete. But this opportunity does not exist at the moment, and colleges which wish to submit an application will need to do so as part of the relevant area review.

### **Quality and performance criteria**

3. Whatever the college's starting point, proposals should demonstrate that after becoming an academy it will be financially stable and contribute to higher educational standards for itself, its partner schools and the local area.

### **Academy arrangement open to sixth-form colleges**

4. There are three broad routes for sixth-form colleges to become academies:
  - establish and lead a multi-academy trust
  - join an existing multi-academy trust
  - establish a single (standalone) academy trust
5. In legal terms, under each of these models the sixth-form college corporation would be dissolved and transfer its property, rights and liabilities to the relevant academy trust.



## **Scope for two or more sixth-form colleges to combine to form a MAT**

6. Sixth-form colleges may apply in combination to form a MAT as long as the proposals satisfy the criteria which will apply to other proposals to become an academy, including for collaboration with schools as well as between the colleges involved.

## **Joining a geographically distant MAT**

7. Colleges are not limited to joining a MAT close to them. All proposals must show how the college would establish better partnership and collaboration with schools by becoming an academy. We would expect the college to be able to demonstrate how it will work closely with its partners to raise standards in the MAT irrespective of the geography and how this would benefit the RSC region in which it is located.

## **Maintaining distinct post-16 character in a MAT**

8. We expect the colleges to retain their distinct 16 to 19 role in providing high quality progression options from key stage 4 into 16 to 19 education. As 16 to 19 academies within a multi-academy trust they will be well placed to strengthen progression routes for pupils of other academies in the trust and collaborate to raise standards across the trust as a whole.

## **Adult and SFA-funded provision**

9. 16 to 19 academies are defined by law as institutions principally concerned with the education of young people above compulsory school age and below 19. As a minimum, the department will expect at least 80% of the students to be aged 16 to 19. Sixth-form colleges with a higher proportion of provision for people outside this age range would not be able to convert in their present form.

10. For colleges with a relatively low proportion of adult and SFA-funded provision, it will be possible on a case-by-case basis to enable sixth-form colleges to continue to contract with the SFA to provide apprenticeships and other 19+ training after becoming an academy. Colleges which wish to retain SFA funding will need to set this out as part of their application.

## Higher education

11. Under [existing regulations](#)<sup>24</sup>, colleges which offer [franchised courses](#)<sup>25</sup> on behalf of a designated HE provider will continue to be able to do so, and students enrolling on these courses after becoming an academy will be eligible for student support. However, franchising is a contractual relationship between the college and the HE provider, which will be affected by the dissolution of the college and establishment of the 16 to 19 academy in its place. Colleges will need agreement from the HE institution to put in place new contractual arrangements to maintain the franchise arrangement, between the HE institution and the academy trust, after becoming an academy. In developing proposals to become an academy, SFCs providing franchised HE courses should therefore consult the relevant HE institution to confirm whether or not they are prepared to maintain the franchise arrangements and under what conditions.

12. Sixth-form colleges which currently offer [validated HE courses](#) in their own right will be in a different position in relation to HEFCE funding and student support for HE courses:

- the new academy would no longer have access to any direct funding which the SFC currently receives from the Higher Education Funding Council for England (HEFCE)
- The automatic designation for student support which currently applies to HE courses provided by FE sector institutions will cease once the college dissolves and is replaced by a 16 to 19 academy. Students enrolled on a validated course provided by the college would continue to be eligible for the student loan until they have completed the course even if the college becomes an academy part way through the course. But students enrolled after the college becomes an academy will no longer have automatic eligibility student loans
- In place of automatic designation, a 16 to 19 academy is able to apply to the Secretary of State for [specific course designation](#)<sup>26</sup> for its validated HE courses, which if granted would enable students on these courses to receive student support. Any application will be considered on its merits in the light of wider policy in relation to specific course designation.

13. Those SFCs who choose to apply for specific course designation should review the guidance and note, in particular, that students on designated courses will generally only be able to draw the maximum of £6000 per year in tuition loan fee support from the Student Loans Company.

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<sup>24</sup> <http://www.legislation.gov.uk/ukxi/2011/1986/contents/made>

<sup>25</sup> <https://www.gov.uk/government/publications/higher-education-franchise-arrangements-for-2015-to-2016>

<sup>26</sup> <https://www.gov.uk/government/publications/alternative-higher-education-providers-designation-guidance>

## Banking arrangements

14. Colleges are advised to engage with their banks at an early stage to ensure that all potential changes to terms and conditions of banking arrangements are explored and agreed during development of the proposal to become an academy.

## Impact of commercial borrowing

15. Current [legislation](#)<sup>27</sup> allows a sixth-form college corporation to transfer its existing debts and liabilities to the new academy trust or existing academy trust when the college is dissolved. Any applications involving transfer of existing liabilities will be considered on their individual merits. In most cases this will be subject to approval of the transfers from existing lenders such as banks; and in the case of colleges joining a MAT, the existing trust will need to agree to take on the debts. However, no new commercial borrowing is likely to be permitted.

16. In all cases, applications will need to show that the academy will be financially healthy and viable. The impact of any transferred debt on the financial health of the academy and any multi-academy trust will be considered in deciding whether the application to become an academy will be approved and the existing position should be discussed with the Transactions Unit.

17. Colleges which wish to become an academy will be able to apply for funding from the post-16 Restructuring Facility to support implementation of the recommendations of area reviews on the same basis as other post-16 providers. Colleges are advised to engage with their bank at an early stage and, where relevant, your EFA lead can facilitate engagement of support from the Transactions Unit.

18. Where a college wishes to transfer a loan to another lender (for instance to acquire more favourable repayment terms or to align with the banking arrangements for a MAT which it is joining) as part of a package of measures relating to becoming an academy this may be possible providing:

- it does not over complicate the conversion
- there are demonstrable value for money or operational reasons why the transfer
- would be beneficial for the new academy or its partners.

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<sup>27</sup> <http://www.legislation.gov.uk/ukxi/2012/1167/contents/made>

19. However, the college must not sign or enter into any agreement in advance of the Transactions Unit's assessment of the proposal and EFA's express agreement to the transfer.

## VAT status

20. Like other academies, 16 to 19 academies are able to reclaim non-business VAT on the goods and services they buy.

21. Sixth-form colleges which incur a retrospective VAT charge on zero-rated buildings when choosing to become an academy as part of area review recommendations will be reimbursed for the VAT charge through the [restructuring facility](#)<sup>28</sup> so long as they continue to use the premises for the same charitable purposes.

## Revenue funding

22. Colleges which become academies will continue to be funded through the national funding formula for 16 to 19 year-olds, which applies to colleges, school sixth-forms and other 16 to 19 providers. This includes access to Free School Meals funding.

## Land and capital issues

23. Capital grants will not generally be available to fund implementation of new proposals to become an academy. But once the new academy is operating, the academy trust will have access to the same sources of DfE funding as other academies on an ongoing basis. Any proposal for new capital spending from a 16 to 19 academy would be judged on their individual merits and in line with the department's current priorities and guidelines for capital investment.

24. Some colleges may use land and/or buildings that are held on trust by another body. Colleges should ensure that they seek appropriate legal advice as part of the due diligence process, to identify any potential implications.

## Access to the academies Risk Protection Arrangement

25. Colleges which become academies will be able to opt-in to the [Risk Protection Arrangement](#).<sup>29</sup> The detailed arrangements are currently being considered by the department to ensure that they reflect the circumstances and background of these new academies, which are typically different from those envisaged when the RPA was

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<sup>28</sup> <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-apply-for-financial-support-for-area-reviews>

<sup>29</sup> <https://www.gov.uk/guidance/academies-risk-protection-arrangement-rpa>

established. We will ensure that colleges which are becoming academies receive full information as soon as it is available.

## **Local Government Pension Scheme**

26. The academies guarantee on LGPS liabilities applies to all academies, including those which were previously sixth-form colleges.

27. Colleges should engagement with their pensions administrators early to establish how long the process will take, and what costs will be incurred.

## **Access to JISC/JANET**

28. Discussions are ongoing regarding the level and nature of DfE funding support for SFC connectivity going forward. This will involve dialogue with the sixth-form college Association with the aim of reaching a conclusion well before the start of the 2017-18 financial year.

## **Sponsorship of Tier 4 (non-EEA) students**

29. Under current immigration rules, 16 to 19 academies, unlike sixth-form colleges, are not permitted to hold a Tier 4 licence to enable them to sponsor Tier 4 students. If a college already holding a Tier 4 licence dissolves, the subsequent 16 to 19 academy will not be able to enrol any new non-EEA students requiring Tier 4 sponsorship. Any Tier 4 students who are already studying with the college at the time it becomes an academy are permitted to continue studying until their existing leave expires. They will therefore be able to complete any course on which they are enrolled when the college dissolves and transfers its provision to a 16 to 19 academy, but they will not be able to embark on a new course at the college. This is equivalent to the transitional arrangement which currently applies to independent schools which become free schools.



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