



Department  
for Education

# **Making significant changes to an open academy and closure by mutual agreement**

**Departmental advice for all types of  
academy trust**

**October 2018**

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# Part A: Making significant changes to an open academy

## 1: Summary

### About this departmental advice

This document provides advice to academy trusts on what they need to do to make a significant change to an open academy (which in general has an impact on the number, type and/or location of school places).

Academy trusts should read this advice in full to ensure that they are aware of the circumstances in which their proposal can follow the 'fast track' application process or requires a 'full business case'. Where a local authority (LA) has instigated the change, there is still a requirement for academy trusts to go through the significant change process.

The purpose of this advice is to ensure that additional good quality school places can be provided quickly where they are needed. Academy trusts should work collaboratively with LAs, dioceses and other schools in the area, to ensure that there is a co-ordinated approach to place management and the strategic needs of the area.

We expect academy trusts to only propose to create new places in academies that have an overall Ofsted rating of 'good' or 'outstanding'. If, however, there are no other feasible ways to create new places in the area, the academy trust should submit a 'full business case' to the department, and set out its justification for expansion and how education will be improved.

### Expiry or review date

This advice document will be reviewed in October 2019.

### Who is this advice for?

Academy trusts considering a change to the characteristics of open academy schools (as defined in section 1A of the [Academies Act 2010](#)). This includes free schools, studio schools and university technical colleges (UTCs).

Separate advice is available on [how to make changes to a maintained school](#).

Please refer to the [Further Information](#) section for full website addresses should you be unable to access documents via the hyperlinks provided.

## Terminology

Definitions of common terms used in this advice:

**Academies** - includes free schools, studio schools and UTCs.

**Academy trusts** - includes single academy trusts (SATs) and multi-academy trusts (MATs). Academy trusts are set up as charitable companies limited by guarantee.

**Trustees of the school** - the foundation which established the school.

For schools with a religious character this could be the:

- Church of England
- Catholic Church
- other religious authorities.

The term 'trustees' is usually used in Department for Education (DfE) documents to refer to those who sit on the board of directors of an academy trust.

In church academies the term trustees refers to the legal trustees, known in law as the 'trustees of the school'. The directors of church academies are always referred to as the directors and not trustees.

**Schools with a religious character** - all schools designated with a religious character in accordance with the [School Standards and Framework Act 1998](#).

**Parent(s)** - The Education Act 1996 defines 'parent' as including someone who has care of, or legal responsibility for, the child. Therefore, a parent can include, for example, a grandparent, other family member or foster carer if they have care of or responsibility for the child.

## Main points

- Academy trusts proposing to make a significant change which will affect clauses in their funding agreement, **MUST** submit a proposal for change, and follow the required process, in advance of the change being made. **Failure to do so could constitute a breach of their funding agreement.** This includes changes requested by the LA.
- Proposals for change must be submitted to the department through either a ['fast track'](#) application or a ['full business case'](#). A decision on the proposal will be made by the relevant [Regional Schools Commissioner](#) (RSC), on behalf of the Secretary of State, or by a Minister as appropriate. See [part four](#).

- Some changes can be fast tracked: adding boarding provision; increasing the capacity of an academy (with the exception of satellite expansions and changes to UTCs and studio schools) and age range changes of up to two years (with the exception of age-range changes to UTCs and studio schools, adding or removing a sixth form and any cases of a contentious nature).
- In addition, to be eligible for the fast track route, the academy must: be rated as 'good' or 'outstanding' following their last inspection by Ofsted; have a latest Progress 8 score of at least the national average; be in good financial health and have the capacity to make the change without jeopardising the academy's performance. Academy trusts are also required to provide evidence that the LA, and where a school is designated with a religious character, the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, does not object to the proposed change. The [table of changes](#) and the advice in [part two](#) set out which changes can be made via this route.
- Changes which do not meet the fast track criteria will require a full business case. The RSC will make a decision based on consideration of the factors and evidence relating to the academy trust(s) as set out in [part four](#).
- Academy trusts proposing to make a significant change to an academy which has been designated with a religious character should engage the trustees of the school, diocese or relevant diocesan board at the earliest opportunity.
- For any proposals for significant change, full consideration should be given to their potential impact on, or the potential impact of, imminent pipeline free schools. These schools may well have been approved to meet the same need as the proposed significant change. A list of [pipeline free schools](#) can be found on GOV.UK.
- Academy trusts will need to undertake a fair and open local consultation, ensure the change is aligned with local pupil place plans, that all required funding is in place and that appropriate planning permissions and other consents (e.g. trustees of the school for any dealings with land) have been secured. **All unfunded proposals, without exception, will require a full business case.**
- Where a proposed change sets a precedent, or is considered [contentious](#) a full business case will be required, irrespective of the school's Ofsted rating. RSCs may choose to escalate such proposals to the Secretary of State for decision.
- All proposed significant changes requiring alterations to [admission arrangements](#) must ensure that a fair and open local consultation on the school's proposed admission arrangements has been completed, in accordance with [the School Admissions Code](#), and a request to vary the admission arrangements must be submitted at the same time as the significant change request. Only those

admission changes necessary to implement the significant change should be made. The significant change process should not be used to request a variation of the admission policy to make wider changes to the policy. Wider changes should be consulted on according to the normal process and timescale for changing admissions set out in paragraphs 1.42 - 1.49 of the School Admissions Code. See [part four](#).

- For cases where a significant change will require [admission arrangements](#) to be varied to implement the proposal; if an existing point of entry will be removed, or the published admission number (PAN) reduced, the change must be agreed in advance of the closing date for the application for places (31 October for secondary schools or 15 January for primary schools) unless exceptional circumstances apply. See [part four](#).
- Academy trusts considering any changes that are not listed in this guidance must contact the department at the earliest point via an [enquiry form](#).
- Academy trusts are responsible for updating the school's details on the department's [Get information about schools \(GIAS\)](#) database. Further guidance is available on the GIAS website. These changes must be made no later than the date of implementation and can be input in advance, once a decision is made. Ofsted use GIAS as part of its inspection scheduling so it is important that significant changes are recorded accurately and promptly.

## 2: Types of changes

This section provides details of significant changes which require approval, either through a [fast track](#) application or [full business case](#). The academy trust should respond promptly to requests for additional evidence, clarification or further information.

### Potentially contentious proposals: full business case required

Where a proposed change sets a precedent or is potentially contentious, a full business case is required, regardless of the school's Ofsted rating and whether the type of change being proposed is eligible for the fast track process. Examples, which are not exhaustive, include:

- reducing places in an area of basic need;
- where objections have been received (from the LA and/or neighbouring schools; from the trustees of the school where the school is designated with a religious character; from the diocese or relevant diocesan board in the case of Church schools), that the proposed change could potentially undermine the quality of education provided by other 'good' or 'outstanding' schools in the area, by creating additional places where there is surplus capacity;

- seeking to set up a satellite site to the school;
- any changes to UTCs and studio schools.

Where proposals are particularly controversial and could attract public or press attention, RSCs may choose to escalate such proposals to ministers for a decision.

## **Governance changes to an academy trust**

Applications to make governance changes, such as a SAT joining or becoming a MAT or a SAT or MAT adding a new free school, are not required to follow the significant change process, and this guidance does not apply.

There are different routes to becoming a MAT; depending on what route a SAT takes, they will need to access the appropriate link and follow the process below. The case will be assessed and the RSC makes a final decision. The change will need to be reflected in funding agreements and articles of association as necessary.

All applications must be submitted to [academy.questions@education.gov.uk](mailto:academy.questions@education.gov.uk) for:

- SATs thinking about [setting up a MAT to become a sponsor](#);
- SATs/MATs wishing to [add a new free school to their trust](#);
- The [SAT to MAT application form](#) must be used in the following situations:
  - MATs who are taking responsibility for an existing SAT;
  - Two or more SATs coming together to set up a MAT;
  - A SAT working with other schools who want to form a MAT; and
  - SATs becoming MATs where there are no other schools involved at all and where the change does not relate to becoming a sponsor.

Any structural changes to a MAT need to be approved by a RSC. Please speak to your RSC's office if you are planning any of the following changes:

- A MAT planning to take responsibility for an academy or academies that are transferring from another academy trust;
- Two existing MATs planning to come together to form one MAT;
- A MAT planning to make major changes to its governance, for example removing or adding a principal sponsor.



## Table of changes

The following table shows whether changes are eligible for the fast track or full business case process;

Type of proposal	Fast track route possible?	Full business case needed?
<a href="#">Expansion of physical capacity</a>	Yes	Possibly – if the change meets the expansion criteria but does not meet the fast track criteria, or the proposal could be considered contentious
<a href="#">Expansion onto an additional or satellite site</a>	No	Yes
<a href="#">Changes to the number of pupils in a special school</a>	No	Yes – if the increase is for 10% or more or 20 pupils or more (whichever is the smaller number)
<a href="#">Change of lower or upper age limit of up to 2 years (including adding a nursery but excluding adding or removing a sixth form)</a>	Yes – if the fast track criteria are met	Possibly – if the fast track criteria are not met or where the proposal could be considered contentious
<a href="#">Change of lower or upper age limit by 3 years or more</a>	No	Yes
<a href="#">Adding a sixth form</a>	No	Yes
<a href="#">Removing a sixth form</a>	No	Yes
<a href="#">Change of age range of UTCs and studio schools</a>	No	Yes
<a href="#">Amalgamating with another academy</a>	No	Yes – case should address TUPE and land issues, as applicable
<a href="#">De-amalgamating an existing academy</a>	No	Yes

Type of proposal	Fast track route possible?	Full business case needed?
<a href="#">Gaining or changing faith designation</a>	No	Yes
<a href="#">Changing a Church of England academy's characteristics</a>	No	Yes
<a href="#">Transfer to another site</a>	No	Yes
<a href="#">Change of gender composition – single sex to co-educational or vice versa</a>	No	Yes
<a href="#">Change in type of SEN provision</a>	No	Yes
<a href="#">Changes affecting provision reserved for SEN pupils</a>	No	Yes
<a href="#">Adding or increasing boarding provision</a>	Yes – however other legislation applies and will need to be complied with	No
<a href="#">Decrease in or removal of boarding provision</a>	No	Yes – if proposal is to remove at least 50% or 50 pupils (whichever is greater) or entire boarding provision

## Expansion of physical capacity

A significant expansion is defined as an enlargement that increases the overall physical capacity of an academy (as recorded in its funding agreement) so that it can provide places for more than 30 additional pupils<sup>1</sup>. Changing the internal configuration of a building to accommodate more pupils would also be classed as an increase in capacity.

**If this threshold is not met, schools do not need to seek approval via the**

<sup>1</sup> This is primarily to allow for an emergency one off bulge class to be introduced.

**significant change process, but will need to seek agreement to amend the capacity<sup>2</sup> figure in their funding agreements.**

Under section 14 of the [Education Act 1996](#), LAs have a statutory duty to provide sufficient school places for primary and secondary education in their area. Both academy trusts and LAs should manage the school estate efficiently and should reduce or find alternative uses for high levels of spare capacity, in order to avoid detriment to schools' educational offer or financial position. As part of this, we would expect academy trusts and LAs to consider all options for the reutilisation of space, including, for example, increasing the provision of early education and childcare, and reconfiguration, including via remodelling, amalgamations and closure where this is the best course of action.

The department is working with LocatED to look at how academy trusts and LAs can improve the efficient use and management of the school estates. This work is currently being piloted on a small scale, but, subject to the outcomes and lessons learned, LocatED and the department will be looking at how they can potentially support a wider range of schools in future.

The department has a strong expectation that academy trusts should work collaboratively with LAs, and where the school is designated with a religious character the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, on pupil places planning, taking into account the increases or decreases in pupil numbers forecast in the area, especially in areas of basic need. Academy trusts should consider how they can best support their LA in meeting this need. To help achieve this, academy trusts can propose either an expansion of their capacity, increase their PAN<sup>3</sup> or admit over PAN. In areas with high levels of surplus capacity and where forecasts do not demonstrate a future need for places, schools should not normally be expanded, although the quality and diversity of provision should be taken into account to assess the strategic needs of the area.

We expect academy trusts to have considered a range of performance indicators and financial data, before proposing the expansion of an academy. Where schools are underperforming, we would not expect them to expand unless there is a strong case that such an expansion would help to raise standards. We expect academy trusts to propose to create new places in academies that have an overall Ofsted rating of 'good' or 'outstanding'. If, however, there are no other feasible ways to create new places in the area, the academy trust should submit a full business case application to the department, and set out why the expansion is necessary.

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<sup>2</sup> Capacity - This is the number of pupils that can be taught within the physical space available.

<sup>3</sup> Published Admission Number (PAN) - as part of determining their admission arrangements, all admission authorities must set an admission number (PAN) for each 'relevant age group'. So, if a school has an admissions number of 120 pupils for Year 7, that is its PAN. Further details can be found in the [School Admissions Code](https://www.gov.uk/government/publications/school-admissions-code--2) <https://www.gov.uk/government/publications/school-admissions-code--2>

Academies that are rated 'good' or 'outstanding' at their last inspection, have a latest Progress 8 score of at least the national average, are in good financial health and are proposing a change that is not contentious or subject to objections from the LA may propose to expand their physical capacity by following the fast track process, with the exception of:

- Proposals to expand onto a satellite site;
- Proposals to expand sixth form provision.

Where the fast track requirements are not met, expansion proposals will require a full business case.

[Part four](#) explains the steps to making a significant change and the information needed for both a fast track application and full business case.

## **Physical expansions onto satellite sites**

Where academy trusts wish to expand onto an additional site they will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school.

The establishment of new selective maintained schools and academies is prohibited by statute. Expansion of any existing academy onto a satellite site will only be approved if it is a genuine continuance of the same school and the academy has the financial resources to create the satellite site.

When deciding whether to approve an expansion onto a satellite site, the RSC on behalf of the Secretary of State will consider factors including:

### **The reasons for the expansion**

- What is the rationale for this approach and this particular site?

### **Admission and curriculum arrangements**

- How will the new site be used (e.g. which age groups/pupils will it serve)?
- Are any changes to admission arrangements necessary?
- Will there be movement of pupils between sites?

### **Governance and administration**

- How will whole school activities be managed?
- Will staff be employed on contracts to work on both sites? How frequently will they do so?

- What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body/academy trust board and the same school leadership team)?

### **Physical characteristics of the school**

- How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
- Is the new site in an area that is easily accessible to the community that the current school serves?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change can be considered to be an expansion.

In relation to Church of England and Catholic schools, the consideration by the RSC will take place in light of the respective Memorandum of Understanding and this guidance should be read alongside those documents.

Academy trusts proposing to expand onto a satellite site will always be required to submit a full business case, to enable the department to ensure the proposal is a genuine expansion and does not in effect constitute [a new academy](#). See [part four](#) for more detail.

### **Changes to the published admission number (PAN) where an enlargement of premises has not taken place**

Mainstream schools must set a PAN for each relevant age group for admission in their determined admission arrangements. If an admission authority for a mainstream academy wishes to change its PAN, without increasing the overall physical capacity of the buildings, this is not a significant change. Such changes should be made under the procedures and to the timescale set out in the School Admissions Code, unless an in-year variation of the admission policy needs to be requested at the same time the significant change is requested.

It would be helpful for admission authorities to discuss their plans with the LA, and where the school is designated with a religious character the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, to consider whether there is a need for additional places in the area when considering increasing a school's PAN. When considering reducing a PAN, again, admission authorities should consider the need for places in the area. An admission authority must carry out a full consultation in accordance with the School Admissions Code when reducing a PAN.

## Changes to the number of pupils in a special school

The School Admissions Code does not apply to special schools but the academy trust responsible for special academies may seek to increase the number of places by following the significant change process if the increase is by:

- 10% or more; or
- 20 pupils or more (whichever is the smaller number), with the exception of special boarding schools where the limit is 5 pupils.

The significant change process does not need to be followed where a special school is established in a hospital.

## Age range changes

A school's recorded age range should reflect provision at the school correctly. If the change relates to pupils of non-compulsory school age; for example if nursery or sixth form provision is to be added or withdrawn, then a proposal for an age range change must be submitted (as set out below).

Academies that were rated as 'good' or 'outstanding' at their last Ofsted inspection, have a latest Progress 8 score of at least the national average, are in good financial health, have the capacity to make the change, and have evidence to show that the LA, and where the school is designated with a religious character, the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, does not object to the proposed change, can propose to change the age range of their school by up to two years (including adding nursery provision but excluding adding or removing a sixth form) by following the fast track process.

Academy trusts proposing to change the age range of their schools by three years or more, those which want to add or remove a sixth form, make any age range change which is contentious, or which will set a precedent for schools in their local area, must submit a full business case.

Where proposals are likely to have a significant impact on other local provision, a full business case will be required to provide evidence that the education of children in the area, as a whole, will not be compromised. Where local provision is organised in three tiers and the aim is to move to two tier age range, the department expects academy trusts, LAs and where the school is designated with a religious character; the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, to work together to ensure an appropriate co-ordinated implementation, and will only approve any individual proposal in that context.

The addition or removal of a relevant age group must be actioned in accordance with [the School Admissions Code](#).

If fast track conditions are not met, a full business case is always required, see [part four](#).

## Proposals to add sixth form provision

Proposals to add a sixth form will require a full business case and should only be put forward for existing academies rated as 'good' or 'outstanding'.

Applications for the addition of a sixth form will be assessed against the following criteria:

- **Quality:** The quality of pre-16 education must be good or outstanding (as rated by Ofsted) and the school must have a history of positive Progress 8 scores (above 0);
- **Size:** The proposed sixth form will provide places for a minimum of 200 students;
- **Subject Breadth:** The proposed sixth form should - either directly or through partnership - offer a minimum of 15 A level subjects. Academy trusts/LAs may wish to consider the benefits of delivering a broader A level curriculum through partnership arrangements with other school sixth forms. Working with others can offer opportunities to:
  - Improve choice and attainment for pupils;
  - Deliver new, improved or more integrated services;
  - Make efficiency savings through sharing costs;
  - Develop a stronger, more united voice;
  - Share knowledge and information.

Schools proposing a partnership arrangement must include evidence of how this will operate on a day-to-day basis, including timetabling and the deployment of staff;

- **Demand:** There should be a clear need for additional post-16 places in the local area (including evidence of a shortage of post-16 places and a consideration of the quality of Level 3 provision in the area). The proposed sixth form should not create excessive surplus places or have a detrimental effect on other high quality post-16 provision in the local area;
- **Financial viability:** The proposed sixth form should be financially viable (there must be evidence of financial resilience should student numbers fall. The average class size should be at least 15, unless there is a clear educational argument to run smaller classes – for example to build the initial credibility of courses with a view to increasing class size in future.

Not all changes in age range to add a sixth form will necessitate a change to the school's admission arrangements, for example a school may set up sixth form provision solely for its own pupils. However, if the intention is to also admit external applicants to the sixth form the school will need to adopt a sixth form PAN and, potentially, academic entry requirements on changing its age range. A request for a variation to admission arrangements, in line with [the School Admissions Code](#), must be made at the same time as the school requests the significant change.

## **Proposals to remove sixth form provision**

When removing a sixth form, either temporarily or permanently, the significant change process must be followed and a full business case submitted.

When an institution closes or stops ESFA-funded 16-19 provision, either on a temporary or permanent basis, this will have implications for sixth form funding. Further details on this are included in paragraphs 9-13 of the [Funding Guidance for Young People 2018 to 2019](#) which is available on GOV.UK.

## **Proposals to change the age range of university technology colleges (UTCs) and studio schools**

As for other academies, UTCs<sup>4</sup> and studio schools may make a proposal to change their age range. Due to the differences associated with UTCs and studio schools, including an atypical age range and a specialist/technical and vocationally related curriculum, a full business case is required, accompanied by an education plan that sets out the overall strategy for KS4 and KS3 where appropriate. The requirements for a full business case are as set out in [part 4](#). These include the requirement to set out the local context, and UTCs and studio schools should ensure that their business case fully addresses how the age range change proposal fits within the local school system and any specific local arrangements for KS4.

A comprehensive education plan is required that looks across the whole of KS4 (and KS3 if appropriate) and fully articulates the approach to a different age range in relation to teaching, learning and resourcing. It should therefore include details on the following:

- [Curriculum](#) - overall curriculum strategy and how it applies to different year groups (including technical/vocational subjects and enrichment activities);
- [Staffing](#) – revisions to staffing structure, details of the resourcing of curriculum delivery, and plans for staff support;

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<sup>4</sup> University technical colleges (UTCs) are academies which focus on delivering technical education to meet the needs of businesses. UTCs follow a very specific model developed by the [Baker Dearing Educational Trust](#) <https://www.utcolleges.org/>.



- Quality of teaching - approaches to pedagogy, differentiation for different groups of students, monitoring and improving the quality of teaching;
- Student attainment and progression – approaches to setting standards and targets: systems for tracking individual student performance; assessment, recording and reporting.

Before submitting a proposal, UTCs and studio schools considering an age range change should contact their department lead/contact to discuss in further detail what would be expected in the business case and education plan.

All decisions on age range changes for UTCs will be taken by ministers after seeking the view of the RSC (for studio schools the decision maker will be the RSC in line with the process for all other academies).

## Amalgamations

In **ALL** cases, proposals to amalgamate an academy with another academy/academies will require a full business case. There are two ways to do this:

- I. The academy trust may propose to close one (or more) academy and expand the remaining academy to accommodate the displaced pupils. The amalgamated academy will retain its school number, as it is not a new school, even if its age-range has changed.
- II. Alternatively, the academy trust may propose to close all the academies involved and replace them with a new school.

An amalgamation may also require an in year variation of the school's admission policy by the decision maker on the proposal (i.e. the RSC or the Secretary of State if the proposal is contentious).

As these proposals will involve the closure of at least one school, academy trusts should be mindful of TUPE implications. The issue and implications of excess land will be dealt with by the department as part of an amalgamation case.

## De-amalgamations

In exceptional circumstances, academy trusts may propose to split ("de-amalgamate") existing provision into two or more separate, distinct schools. This change will require a full business case and should only be put forward by good and outstanding schools<sup>5</sup> where there is a clear education or organisational benefit in doing so.

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<sup>5</sup> Any request to de-amalgamate an academy rated as "requires improvement" or "inadequate" will be referred to a minister for a decision.

Where proposals seek to establish provision that is significantly different to the existing provision; for example, offering a significant increase in places or covering a wider range of year groups, the proposer will need to submit a proposal to establish a new school. Legislation prohibits the establishment of new selective schools, so selective academies will not be allowed to establish additional provision through this process.

Academy trusts that seek to propose this change must submit a full business case, clearly demonstrating that the proposal is based on a clear vision to deliver a high-class education that delivers value for money and is supported by strong management and governance structures. Academy trusts proposing such a change would need to demonstrate:

- The original school site will remain open;
- The provision delivered by the existing and additional school, collectively, should not deviate from the provision of the original school (basically the same size, delivering the same curriculum and not looking to add any new special units);
- Splitting the school would represent a good and lawful use of the existing site and any new/additional sites (if applicable);
- The clear educational or organisational benefits that would be delivered/addressed through splitting the school;
- The additional school(s) will meet all of the departmental expectations for new schools;
- Admission policies may require variation where the de-amalgamation involves; setting up two single sex schools from the de-amalgamation of a co-educational school, the de-amalgamation of a primary into an infant and junior school or any demerger of all-through schools;
- It is not possible for a 16-19 academy to be created by a de-amalgamation.

When deciding whether to approve a split in provision the RSC, on behalf of the Secretary of State, will consider the case for the split including;

**Educational vision:**

- Does the proposal deliver a strong educational vision based on the delivery of high standards?
- Will the split in provision meet the needs of all children?
- Does the proposal demonstrate a commitment to excellent teaching and learning?

**The curriculum and teaching:**

- Has the academy trust demonstrated a commitment to an ambitious, broad and balanced curriculum?
- What strategies have been put in place for measuring pupil performance and setting challenging targets?
- Does the proposal detail enrichment and extended services?

### **Capacity and Capability:**

- Has the academy trust correctly identified and secured the resources needed to support the development of the new school?
- Is there clear evidence of the range of skills and abilities needed to set up a new school?
- Does the proposal clearly demonstrate strong school organisation and governance arrangements?

### **Funding and Costs:**

- Does the proposal deliver value for money on all areas of build, site costs and ongoing delivery of provision?
- Have issues surrounding the ownership, control, future/alternative use of the land and transfer of leave been explored?
- All legal, planning and related costs in advance of a decision would need to be funded by the academy trust.

### **Admissions:**

- Where splitting a school would result in a change to the age or gender of pupils that the original school would admit, the application to split provision must be supported by a request to vary the admission arrangements to such an extent as is necessary to implement the proposal, to ensure that both schools have fair and lawful arrangements and remain in line with the Admissions Code. The same applies where the split establishes two schools with different age-ranges.
- Where the proposal is to establish a single sex school or change single sex schools to be co-educational; decision makers should ensure the proposal complies with equalities legislation and does not create a significant imbalance of either girls or boys places in the area.
- Evidence that the bodies in paragraph 1.44 of the Admissions Code have been consulted for 6 weeks must be submitted.

### **Registering the new school:**

As a state funded independent school, any new academy resulting from a de-amalgamation of an existing academy must be registered before it can start to operate. As part of the full business case, academy trusts will also need to provide:

- A plan showing the layout of the premises and accommodation of all buildings;
- Detailed curriculum plans, schemes of work for every subject and year group taught and pupil assessment procedures;
- A copy of the school's written policies on:
  - The written behaviour policy setting out, amongst other matters, the sanctions to be adopted in the event of pupil misbehaviour;

- Particulars of the school's arrangements to safeguard and promote the welfare of pupils at the school and how those arrangements have regard to guidance issued by the Secretary of State;
- Particulars of the school's anti-bullying strategy;
- Health and Safety;
- The school's complaints procedure.

On receipt of the documents listed above and following all necessary internal checks, the department will forward the application to Ofsted with a request that they arrange a visit to the school. If the school intends to admit boarding pupils, it will also be subject to inspection of the boarding facilities. Ofsted will report to the DfE on their findings and, in order to register the school as a state funded independent school, the Secretary of State must be satisfied it is likely to meet all the [Independent School Standards](#) once registered.

If the Secretary of State is not satisfied that the standards are likely to be met on opening, the application to de-amalgamate the school will be rejected.

## **Faith-related changes**

Gaining or changing a faith designation requires approval based on a full business case (changing a faith designation would require a new funding agreement). Academies designated with a religious character have specific freedoms which permit them to take faith into account when admitting pupils, appointing staff and in the teaching of religious education and delivery of collective worship. These freedoms differ according to whether the academy was previously a voluntary aided (VA) school, voluntary controlled (VC) school or free school.

Before they may apply to be designated as having a religious character, academy trusts are required, by their funding agreements, to seek the Secretary of State's consent.

The academy trust must clearly set out, as a minimum, in their business case: their proposed new governance and staffing arrangements; the basis on which they believe the change is needed; and, why it will benefit the academy and the wider community. They must show that there is support for this change from their school and wider local community and have the express consent of the relevant religious body to become a school designated with a religious character. If faith based admission arrangements are proposed these must be consulted upon too, in accordance with the requirements set out in [the School Admissions Code](#). The academy trust should also consider if an Equalities Impact Assessment should be completed, and include this with the business case.

Once approval has been given, the academy trust must then formally apply to have the school designated as having a religious character. A school can only be considered a school with a religious character with a completed religious designation order. A school

will not be permitted any of the freedoms associated with this status until the designation process has been completed. Please approach your project lead for details of the documentation that will need to be provided.

### **Process for former VC Church of England schools to gain the same characteristics as VA schools**

It is possible for an academy that was formerly a voluntary controlled school to alter certain characteristics; i.e. their governance structures, approach to employment of staff; teaching of religious education and collective worship, so they are akin to those of a VA school.

This gives the academy greater freedoms in relation to how they maintain and develop their faith ethos. Therefore, the academy trust is required to undertake a local consultation, including with staff and parents, and submit a summary of the results with their application. Once the RSC is satisfied there is sufficient support, changes are made to the funding agreement and articles of association. If the school wishes to have VA style freedoms in relation to employment of staff, an Order will be issued to ensure compliance with legislation.

### **Other change proposals**

**Temporary changes:-** In the vast majority of cases the significant change process will have to be followed when making a temporary change. Academy trusts wishing to make a temporary significant change must contact the department in the first instance via an enquiry form.

**Changes to deliver a different type of provision:-** academy trusts wishing to make changes to the type of provision offered, e.g. from mainstream to special or alternative provision, or providing pre-school childcare, should contact the department at the earliest point via an enquiry form.

**Removal of or changes to early years provision:-** is subject to the significant change process.

**Transfer to another site:-** can mean an enlargement of the premises, but might also affect the catchment area. If so, the academy trust will need to seek a variation to their admission arrangements. A full business case is required in all cases.

**Change of gender composition:-** made via a full business case, allows a move from single sex to co-educational (or vice versa). A change from single sex to co-educational provision in post-16 provision can be made through the normal procedures for changing admissions. Academy trusts should remember that a co-educational school cannot change its nursery or post-16 provision to single sex. Whenever changes to co-educational from single sex provision are made, or vice versa, the decision-maker (i.e.

the RSC or Secretary of State) will consider whether the change complies with equalities legislation.

**Change in the type of SEN provision:-** proposals require a full business case and allow special academies to add/remove the designation and categories of SEN provision that they currently provide. The home and neighbouring LAs and affected parents should be consulted.

**Changes affecting provision reserved for pupils with SEN:-** proposals require a full business case to add or remove the reserved provision or increase/decrease the number for which the reserved provision caters. The characteristics of the reserved provision may also be changed so as to change the age range or type of SEN for which the reserved provision caters. Academy trusts should note that provision reserved for pupils with SEN includes both "resourced provision" (where pupils spend more than half of their time in mainstream classes with support) and "designated SEN units" (where pupils spend more than half of their time in special classes).

**Proposals for adding or increasing boarding provision:-** can be made through a fast track application. In these cases compliance with the [boarding schools national minimum standards](#), health and safety, fire, planning regulations will be required.

When adding new boarding or residential provision, following all necessary internal checks, the department will forward the application to Ofsted with a request that they arrange a visit to the school to inspect the boarding facilities, to ensure the [boarding schools national minimum standards](#) and [residential special schools national minimum standards](#) are met. The department will commission the inspection to check that the school is likely to meet the standards. Ofsted will normally contact the school two days prior to the inspection.

An inspection is not required where an academy trust is proposing to increase existing boarding provision.

Where an academy makes accommodation arrangements for boarders, for example with host families, the academy must still register as a boarding school. A fast track application will need to be made as well as a material change inspection.

**Decrease in, or removal of boarding provision:-** requires a full business case when the proposal is to decrease by 50 pupils or 50% (whichever is the greater), or the entirety of boarding provision.

### **3: Funding**

Generally the department does not provide funding for significant changes or any associated legal or administrative costs. Academy trusts will need to consider how to

fund any associated costs in terms of capital funding. The proposal should include indicative costings and an explanation of how these will be met.

Where capital funding for expansion has been sought from the Condition Improvement Fund (CIF), academy trusts must state this in their business case. The decision on capital funding rests with the minister, taking into account the RSC's view on the proposed significant change. Academies will need to make a separate CIF application to demonstrate their ability to plan and deliver the proposed capital project.

Where an academy agrees to expand in response to a proposal by a LA to meet a local need for places, the LA should meet the capital costs. The department provides capital funding to LAs facing a shortfall of places (basic need), to help support them to meet their statutory duty to secure sufficient school places in their area. Academies should confirm that agreement has been reached with their LA.

It is expected that all academies that were rated as 'good' or 'outstanding' at their last Ofsted inspection and are situated in areas of population growth, will actively consider how they can best support LAs in meeting their duty to provide sufficient school places. This can include increasing PAN without expansion of the premises or an expansion of the premises alongside an increase in PAN.

LAs can fund expansion at academies either by allocating funding directly from a growth fund, whose size and criteria have been agreed by the schools forum, or by varying the pupil numbers on which the school is funded from the previous census to the estimated number for the following academic year. In both cases, they must treat academies on the same basis as maintained schools. Where the authority varies pupil numbers, the ESFA will use those figures to fund the academy's GAG, unless it is already funded on estimates in its funding agreement.

## **Selective Schools Expansion Fund**

The selective schools expansion fund (SSEF) is capital funding specifically to support the creation of additional places in existing fully selective or partially selective schools.

Applicants to the SSEF will be required to demonstrate that there is a need for new places, that they will increase accessibility for disadvantaged pupils, and that they will work with local non-selective schools to raise attainment.

Academies applying for the SSEF do not need to complete a separate significant change application, as this has been incorporated into the SSEF application form.

Further details on the latest round of the SSEF, including how to apply, can be accessed [here](#).

#### 4: What are the steps for making changes?

For **ALL** significant change enquiries and proposals, academy trusts will need to contact the department, via an [enquiry form](#), at least three months prior to the proposed change coming into effect. This is to ensure that there is time for the decision to be made and that the funding agreement and, if necessary, the admission arrangements can be varied **BEFORE** the change can take effect. **Failure to follow the correct procedure could constitute a breach of the funding agreement.**

#### Who should be consulted and how?

For both full business case proposals **and** fast track applications, the academy trust will need to demonstrate that a fair and open local consultation has been undertaken **with all those who could be affected by the proposed change**, and that the academy trust has considered all responses received. Comments or objections can be made on any grounds and opportunities for feedback should be given at all public and stakeholder meetings.

The LA will hold important contextual information on the requirement for places locally, and **must** be consulted in all cases and where the school has been designated with a religious character, the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, must be consulted. The RSC (or the Secretary of State as appropriate) will need evidence that they have been consulted, and will consider any reasonable objections from them.

Conditions of funding for any future capital are that the academy trust has conducted a consultation, that responses have been considered, and that any consents (including planning permission, land transfers, trustees of the school, diocese or relevant diocesan board) required have been given. Changes will **not** be agreed unless an appropriate consultation has taken place.

If you represent the governing body of a maintained school and are consulting on proposals to make a significant change as soon as it becomes an academy, this must be undertaken as part of your [section 5 \(conversion\) consultation](#). Decisions about significant changes immediately following conversion are separate to decisions about conversion, and may not be approved when conversion is approved.

The department considers that the stakeholders listed below must be consulted about proposals for change, but others may also be included:

- Each LA which maintains an Education Health and Care Plan (EHCP) or statement of SEN in respect of a child attending the school;
- Parents of children who attend the school;



- Parents in the area;
- Primary, secondary and special schools and sixth form and FE colleges in the area;
- The Admissions Forum for the academy's area, where one exists (if admissions are to be affected);
- Affected admission authorities, including those in neighbouring LA areas (if admissions are to be affected);
- Where a school is designated as having a religious character, the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board.

Where a significant change does not require a variation to the school's admission arrangements, the consultation should run for a minimum of **four weeks**. Where the significant change also requires a variation to admission arrangements there must be a **six week** consultation on the admission arrangements, with the parties set out in paragraph 1.44 of [the School Admissions Code](#). If appropriate the significant change and admissions consultations can be combined, so the entire consultation period would not exceed six weeks.

It is important to take timing into account in order to maximise responses to the consultation, including attendance at any public meetings, for example; consulting during term time rather than school holidays. The location of public and stakeholder meetings should also be planned to maximise responses; it is good practice to hold meetings in the academy or in a venue close to it. It is also important when making changes that affect admission arrangements, to ensure consultation is completed and the business case and variation request are submitted in sufficient time to ensure any changes to an admission policy can be implemented before parents submit their applications for school places.

Guidance is available from the Cabinet Office on [consultation principles](#), which are examples of good practice.

## Equality Impact Assessment

Academy trusts proposing a significant change must undertake an equalities impact assessment in order to consider the expected impact of the proposed change on all individuals with protected characteristics, under the [Equality Act 2010](#). Further guidance on how to conduct equality impact assessments can be found on the [Equality and Human Rights Commission's \(EHRC\) website](#).

## 5: Requesting a change: fast track and full business case

### Fast track application

Changes which can be made via the [fast track application](#) i.e. do not require a full business case, are academies, rated as 'good' or 'outstanding' in their last inspection by Ofsted, have a latest Progress 8 score of at least the national average, are in good financial health, have the capacity to make the change and can provide evidence that the local authority, and where a school is designated with a religious character, the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board, does not object to the proposed change. This evidence could be in the form of a letter, email or a formal record of a meeting. The types of changes that can be fast tracked are:

- any increase in the capacity of an academy (with the exception of satellite expansions and changes to UTCs and studio schools);
- an age range change (of up to two years) e.g. to extend existing nursery provision to two year-olds (with the exception of age-range changes to UTCs and studio schools, adding or removing a sixth form and any cases of a contentious nature);
- adding boarding provision.

When assessing a fast track application, the RSC will consider the impact that the proposed change will have on the quality and capacity of the academy. Proposers must provide evidence that:

- a fair and open consultation has taken place, including demonstrating that any consultation relating to admission changes has been undertaken, the number and percentage of people/bodies in favour of the change and against it have been considered, and if there are any objections, how the issues raised will be (or have been) managed;
- funding to cover the capital costs of the proposed change has been secured, and that there are no issues with the school's current budget and/or finances. In the case of expansions, academies must show they have sufficient funding for additional pupils, until lagged funding is received;
- the change is aligned with local pupil place plans, with supporting evidence from the local authority and it is unlikely to have a negative impact on educational standards at the academy or at other local schools or colleges;
- appropriate planning permissions and other consents required have been secured; and

- the proposal does not displace existing pupils, or where it does, that the LA has been engaged in good time to run a preference exercise to find displaced pupils a place in an alternative mainstream school or post 16 provider.

The department may need to request additional information to that requested above, depending on the complexity of the proposed change and may also request that a full business case is submitted.

## **Full business case**

For full [business case proposals](#), the RSC will make a decision based on consideration of all relevant factors and any evidence provided by the academy trust(s). These include:

- educational track record and current performance of the academy;
- the details of the change, including the rationale and impact on the school, any potential issues/risks relating to the proposals (e.g. changes to leadership and governance, any foreseen adaptations, additions, refurbishments or land transfers needed), and evidence of demand;
- when the change is to be implemented, and how (e.g. will it be done in stages?);
- evidence that the LA has been engaged to find places for displaced pupils including proposed arrangements for any pupils part way through their GCSE or post 16 studies where a change in age range or amalgamation will displace them;
- local context including supply of school places data, LA wider position data and the impact on the availability of places, the effect on other schools, academies, colleges and educational institutions within the LA;
- evidence of fair and open local consultation, including an overview of the responses to the consultation;
- evidence of the degree of LA support and what the academy has done in response to any consultation responses from it;
- financial health of the academy and funding arrangements for the proposed change, any indicative costings and an indication of how these might be met, including how the change will be sustained in terms of capacity and value for money;
- a request for a variation of the admission arrangements, where changes are necessary to implement an approved change. The request should flag whether it is proposed that a PAN will be reduced, or a relevant age group for admission will be removed;

- information on the consultation on the proposed change including any admissions consultation, including the number and percentage of persons/bodies in favour of the change and against it, and if there are any objections, how the issues raised will be (or have been) managed;
- when an academy is proposing changes to its SEN provision, the business case must demonstrate that the proposed change will not have a detrimental impact on local SEN provision or pupils with SEN currently in the school;
- details of financial and governance arrangements and if appropriate, confirmation that planning permission has been secured;
- where a school is designated as having a religious character, consent of the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board; and
- any implications for other statutory requirements e.g. under TUPE, childcare (early years), equalities and health and safety legislation.

## 6: Decision making process

The RSC will consider the proposal and either approve or reject it. The RSC may also defer the approval pending further evidence. Where proposals are particularly controversial and could attract adverse public or press attention; the RSC may choose to escalate such proposals to the Secretary of State for a decision.

The department will notify the academy trust of the RSC's decision. The responsibility for amending academy trust documentation and registering the change on GIAS lies with the academy trust. GIAS can be updated any time after the decision date but must be done prior to implementation.

## 7: Admission related changes

Reductions in the PAN or the removal of a relevant age group, must be consulted on in accordance with [the School Admissions Code](#) or, if a variation is sought because of a major change in circumstances, the request must be made sufficiently in advance of the closing date for admission applications.

### Changes to admission arrangements

- All academies are contractually obliged to comply with [the School Admissions Code](#), including the timescale for changing admissions.
- The normal lead in time between beginning consultation on changing admission arrangements, as set out in the School Admissions Code, and determining those

arrangements as final, is 17 months which includes a six-week statutory consultation on the proposed revision to arrangements. However, this may not always be possible; for example, if the timing for a significant change does not align with the normal admissions consultation timetable.

- Where it is not possible to follow the normal admissions timetable, academies must seek a 'variation' of their admission arrangements at the same time as they submit their full business case for the significant change.
- A variation can only be agreed if there is a major change in circumstances necessitating the change to the admission arrangements or the change is otherwise necessary.
- All variation requests should be the minimum necessary to implement the significant change, if the change is approved.

### **The variation process**

- The academy trust must consult the relevant persons or bodies as set out in paragraph 1.44 of [the School Admissions Code](#).
- The consultation must cover the relevant changes to the admission arrangements.
- The consultation on admission arrangements should last six weeks.
- Evidence of the consultation should be submitted with the business case.
- Where a change reduces a PAN or removes a relevant age group, it is essential a decision is made before parents apply for a place. Submissions must be sufficiently in advance of the closing date for applications in order to allow the RSC, on behalf of the Secretary of State, to take a decision. The following deadlines apply:
  - Changes reducing a primary PAN or removing a primary relevant age group for admission – submission to the department by 1 November<sup>6</sup> in the year before the change will be implemented;
  - Changes reducing a secondary PAN or removing a secondary relevant age group for admission – submission to the department by 31 August<sup>7</sup> in the year before the change will be implemented.

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<sup>6</sup> The closing date for parents to submit an application for the following September is 15 January

<sup>7</sup> The closing date for parents to submit an application for the following September is 31 October

## **What changes to admission arrangements are likely to be necessary if the age range is changed?**

- Where, for example, a school changes its age range from 11-16 to 4-16, the department would normally expect the current oversubscription criteria to be used. However, a new PAN, to apply to reception as a new point of entry, should be determined and the year seven PAN may need to be reduced or removed depending on whether the change is also an amalgamation.
- Where a school adds boarding provision, a boarding admission number and boarding admission criteria must be adopted.
- Where a school adds a sixth form, there is no need for changes to be made to admission arrangements unless the intention is to admit external pupils, in which case a year 12 PAN must be requested through a variation and the school may also wish to add academic entry criteria for entry into the sixth form, although this is not mandatory. In most cases the existing oversubscription criteria for the school will be appropriate for the sixth form.

## **Part B: Departmental advice for academy trusts considering school closure by mutual agreement**

### **1: Summary**

#### **About this departmental advice**

This section provides non-statutory advice for academy trusts considering whether to close an academy by mutual agreement with the Secretary of State. It is not to be taken as providing legal advice and academy trusts should seek their own independent legal advice to ensure they are complying with their legal obligations. This advice sets out an expectation that academy trusts will work collaboratively with Regional Schools Commissioners (RSCs) and local authorities (LAs), and where the academy is designated with a religious character the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board. It emphasises the need for an area-based approach to pupil place planning. Just as it is important that academy trusts and, where relevant, dioceses, support LAs in providing additional places where they are needed, it is equally important that they support the removal of surplus capacity in the system, where there is no forecast increase in the need for school places in the medium or long term.

In some circumstances closure, alongside other changes such as amalgamations or mergers, a reduction in the Published Admission Number (PAN) and/or reorganisation of the school estate more broadly, can be the most appropriate course of action in order to deliver good school places, and support better educational outcomes, as well as long term financial sustainability.

This advice recognises the need for a clear and consistent approach to the consideration of academy closures by mutual agreement, and confirms the processes.

#### **Expiry or review date**

This advice document will be reviewed in October 2019.

#### **Who is this advice for?**

Academy trusts (including Free Schools, Studio Schools and University Technical Colleges) considering whether to seek agreement from the Secretary of State to terminate the funding agreement and close their academy.

## 2: Introduction

This advice will support academy trusts to understand when closure of an academy might be an appropriate solution to address standards and/or viability issues, including in areas where there are surplus places and there is no predicted increase in the need for places in the medium or long term. Managing surplus capacity is about considering a range of options for the reutilisation and reconfiguration of space, and in some circumstances, closure. Mutually agreed closure can curtail prolonged decline in standards and viability, and as such support better educational outcomes for pupils.

Academies where there are low pupil numbers with limited prospect of increasing numbers through recruitment, should consider area based solutions for removing surplus capacity; including mergers with other local schools, reduction of PAN, the reutilisation of the school premises for other purposes, such as nursery provision, or, where appropriate, school closure.

LAs have overall responsibility for local place planning and academy trusts play an important role in supporting LAs to effectively manage the school estate. In the case of Church schools the diocese will work in partnership with the LA in place planning. If an academy trust is considering the future viability of their school, they will need to work collaboratively with RSCs, LAs, other academy trusts and academies, dioceses and the governing bodies of other schools in the area to ensure that decisions are made in the best interests of pupils. This guidance sets out the processes academy trusts need to follow, and provides advice as to when academy trusts should talk to other parties.

## 3: Closure principles and processes

The closure of an academy may be undertaken in the following ways:

- Either party (the Secretary of State or the academy trustees) giving seven years notice of terminating the funding agreement;
- Where the Secretary of State (1) uses statutory powers to terminate the funding agreement on performance grounds or (2) uses termination powers in the funding agreement to intervene and close an academy because the academy trust is otherwise in breach of the terms of the funding agreement. This is referred to as 'closure directed by the Secretary of State'. The circumstances in which the Secretary of State can use these intervention powers is set out in the [Schools Causing Concern guidance](#).
- By mutual agreement with the Secretary of State. **This advice focuses on this type of closure**. In all circumstances, the Secretary of State must agree to the termination of the funding agreement before an academy can close. If the Secretary of State agrees to terminate the academy trust's funding agreement and decides not to re-broker the school to another academy trust, the school will close. This decision will be made based on evidence provided to



the Secretary of State setting out the case for closure and evidence that the academy trust has followed this advice.

## Academy closure by mutual agreement

The circumstances in which an academy trust might ask the Secretary of State to agree to the closure of an academy include:

- Where an academy has low numbers of pupils on roll, and there is no reasonable prospect of attracting additional pupils because there are surplus places in schools elsewhere in the local area, and no predicted increase in the medium and long-term need for places.
- Where an academy in an area with a need for additional school places has been underperforming for some time, and shows no realistic prospect of meeting the required standard. However, in these circumstances, as an alternative to proceeding to closure, the Secretary of State may agree to allow trustees to terminate their agreement early and seek an alternative sponsor or multi academy trust with the skills and capacity to improve standards.

## Process and factors to consider

### Stage 1: Consideration of closure

When considering a closure solution, it is important that the academy trust engages early with the relevant RSC and LAs, and quickly establishes an active working relationship, involving them in planning and decision-making right from the outset. Where the academy is designated with a religious character, and in the case of Church schools, these discussions would take place between the RSC and diocese. Early discussions should be handled sensitively with the interests of the pupils at the heart of the consideration.

### Factors to consider in closure discussions

- Are pupil numbers low? Is this due to a surplus of places in the area?
- Is the surplus of places likely to change in the future? If so, are there steps the academy trust can take in the meantime to improve viability of the school?
- If numbers are low for reasons other than surplus places, does the academy trust have the capacity to drive the necessary improvement to increase viability? If not, is there another academy trust willing and able to take over?

- If the school closes, will there be sufficient places in the area for the pupils affected? If places are in neighbouring LAs have their views been sought? Will any pupils be moved into underperforming schools?
- Are there any alternatives to closure, e.g. a merger.
- Has the academy trust exhausted all other options related to increasing income and achieving efficiencies?

## **Stage 2: Seeking in principle agreement**

If, in consultation with the LA and RSC, the academy trust comes to a preliminary view that closure is the best option, the trust should submit, in writing, a request to terminate the funding agreement by mutual consent and, its proposal for closure together with documentary evidence. Where the academy is designated with a religious character, and in the case of Church schools, consent of the Diocesan Bishop and the trustees is required. The request to terminate the funding agreement must not be conditional upon school closure.

### **The proposal should include (but should not be limited to) the following:**

- The primary reason for seeking agreement to terminate the funding agreement, and the rationale and evidence in support of a closure solution;
- Evidence that reasonable alternatives to closure have been considered;
- Evidence of discussions with and the views of the LA. Is the LA supportive or opposed to the closure of the academy and why?;
- Evidence of the impact the academy closure will have on the local community;
- Evidence to confirm the existence of other available provision for pupils within reasonable travelling distance, with particular attention to those pupils in exam years and finding a curriculum match in a replacement school. Consider whether partial closure is an option, and allow pupils in exam year groups to complete their studies. (It should be noted that a partial closure may result in a reduction in GAG funding);
- Where an academy provides early years provision, evidence of discussions with the LA to avoid a shortfall of nursery provision;
- An indicative closure timeline/calendar. This should evidence that where possible the timing of the proposed final closure date would be communicated as early in the academic year as possible to allow pupils, parents, and employees, to make informed choices about the options available to them in schools elsewhere in the local area. Every effort ought to be taken to minimise the disruption caused to pupils and any future pupils, including those in feeder and neighbouring schools with a reasonable expectation of attending the academy. A best practice example of a timeline can be found in the appendix below.

### **Stage 3: In principle decision**

The RSC will review the evidence and make a recommendation to the Secretary of State as to whether, in principle, the funding agreement should be terminated, and whether the school should close. Where the academy is designated with a religious character, and in the case of Church schools, the RSC will consider evidence and discussions with the diocese. The department will communicate the Secretary of State's decision to the academy trust.

### **Factors considered by the RSC/Secretary of State:**

- LA projections for future levels of basic need. These should be bespoke, rather than SCAP data;
- The viability of the school under the current academy trust (including the effectiveness of any previous attempts to improve educational standards and financial performance);
- The availability of other academy trusts to take on the school and their capacity to drive the necessary improvements (where the academy is designated with a religious character, the trustees and in the case of Church schools, the diocese will lead these discussions);
- The impact on those likely to be affected by the closure;
- Cost effectiveness of closure.

### **Stage 4: Submit closure plan**

If there is an agreement in principle, the department will work with the academy trust and the LA, and where the academy is designated with a religious character the trustees, and in the case of Church schools the diocese or relevant diocesan board, to manage the process to termination of the funding agreement and closure of the academy. The academy trust must first produce a communications and stakeholder plan and share this with the department. The plan must set out how they will undertake ongoing communications with pupils and parents, academy employees and their representatives and the LAs and schools affected by the closure throughout the closure period.

### **Once the plan is completed, the following actions should be taken:**

- Share the news that closure of the academy is under consideration with pupils, parents, staff, unions, relevant LAs and schools elsewhere in the local area at the earliest opportunity;

- Explore availability of alternative provision for pupils in the local area. Evidence that costs and transport arrangements to attend other schools have been considered and are reasonable and viable;
- Financial arrangements. When an academy closes and its funding agreement terminates, its general annual grant ceases immediately. Academy trusts are expected to meet the costs of closure from existing reserves. This includes any redundancy payments, the costs of appointing an independent auditor, of providing financial statements and an accounts return, any legal advice, or penalties incurred by the early termination of contracts or leases. The academy Accounting Officer **must** agree to provide a written commitment to comply with the checklist at **Annex B** and provide their final accounts.

This stage concludes with a substantive decision. The RSC will make a recommendation to the Secretary of State as to whether the funding agreement should be terminated. If the Secretary of State concludes that closure is the preferred option, the academy trust will be instructed to commence the listening period.

### **Stage 5: A listening period**

Following a substantive decision from the Secretary of State to proceed to closure, the academy trust should conduct a time-bound listening period. Academy trusts should take independent legal advice as to how the listening period should be conducted. Details of the listening period should be shared with the department in advance. The listening period is an opportunity for stakeholders and interested parties to submit their views on how the school closure process can be best managed. This will encourage positive levels of engagement with, and provide safeguards for, the local community.

- The academy trust should provide the department with a summary of responses received.
- A summary of the listening period responses will be shared with the Secretary of State. It is following the Secretary of State's consideration of these that **a final closure decision will be made.**
- Annex A sets out the expectations of a listening period in more detail.

### **Stage 6: Implementation**

The RSC will write to the academy trust to confirm the final consent to close the academy. The academy trust must then formally announce the closure decision. It is the academy trust's responsibility (seeking external advice (if required)) to ensure that all closure obligations are met. The Department will provide support to the academy trust throughout this process.

## **The key actions to be carried out by the academy trust include the following:**

### **Placement of pupils**

- Detailed work with the LA admissions office should be undertaken to ensure that suitable places are found for all pupils (excluding post-16 students). The LA should take responsibility for running a preference exercise and co-ordinating the process of identifying places and agreeing transfers with local heads. For post-16 students the academy trust should support students to find suitable alternative institutions to allow them to continue their courses;
- The academy trust must plan for the storage of pupil records, including access to coursework, until these can be transferred to the receiving institutions.

**Disposal of Academy Assets** (including its land, buildings, finance, fixtures and fittings)  
The memorandum and articles of association of the academy trust and its funding agreement influences how the assets are dealt with. In practical terms, the academy trust will work with the RSC to establish a method of distributing all assets including its land, building fixtures and fittings.

### **Redundancies**

The academy trust is responsible for meeting redundancy costs, unless the funding agreement (FA) states otherwise.

### **Pension liabilities**

The academy trust is responsible for meeting the costs of pension liabilities associated with closure. The academy trust should engage with the Local Government Pension Scheme (LGPS) fund manager as early as possible. The fund manager will need to know the proposed/actual closure date, which will enable the fund manager to request and provide the academy trust with a 'cessation report'. Further advice on the LGPS arrangements can be found [here](#).

### **Submission of final accounts**

It is important to note that the academy trust **must** submit final accounts after termination of the funding agreement and closure of the academy.

When an academy is closed or its management is transferred to a different academy trust, its trustees must ensure audited financial statements and an accounts return from the start of the reporting period (1 September) up to the date of termination of the funding agreement are prepared and submitted to the department no later than 4 months after termination.

### **Deed of Variation**

Once final accounts have been submitted, the academy trust should produce a Deed of Termination for agreement and sign off with the department.

Trustees must then undertake closure action with [Companies House](#) and the [Charity Commission](#) so that the academy trust can be removed from the register of Charities.

## **Closure of rural schools**

There is a presumption against the closure of rural primary schools. In respect of academies, this means that both the Department for Education and the LA need to agree to the closure of a rural academy, and where the school is designated with a religious character the trustees of the school, and in the case of Church schools the diocese or relevant diocesan board.

The presumption does not mean that a rural school will never close, but it does mean that the case for closure should be strong and that the proposals are clearly in the best interests of educational provision in the area.

When considering a closure solution for a rural academy, it is important that due regard is given to the factors below (in addition to those outlined above):

- the likely impact of the closure on the local community, including the loss of the building as a community facility;
- the availability, and likely cost, of transport to other schools;
- any increase in the use of motor vehicles which is likely to result from the closure of the academy, and the likely effects of any such increase;

## Annex A: Listening period

**This is provided as advice only. Academy trusts should seek independent legal advice to ensure they are fulfilling their legal obligations.**

1. The department's expectation, **in all cases**, is that academy trusts discuss their closure plans openly and transparently with all individuals and organisations likely to be affected by the closure, once a substantive decision has been given by the department.
2. The listening period should normally take place over a period of no less than four weeks (during term time, and not school holidays). It should set out the rationale for closure and plans the academy trust intends to put in place to transfer pupils to schools elsewhere in the local area. It should also propose a timeline for closure. A period of approximately 6 weeks should usually be allowed for representations to be made by any interested parties affected by these plans.

### **Information that should normally be provided to interested parties:**

- a) The name and the contact address of the academy trust considering closure.
- b) The likely date of closure or, where it is proposed that the closure be implemented in stages, the dates of and information about each stage.
- c) A statement explaining the reason why closure of the school is considered necessary.
- d) The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils at the school (distinguishing between boarding and day pupils) for whom provision is currently made.
- e) A statement and supporting evidence about the need for school places in the area including whether there is sufficient capacity to accommodate displaced pupils.
- f) In collaboration with the LA, agree a statement on the process for finding places at other schools or colleges for displaced pupils. Set out the provision that is to be made for pupils with special educational needs.
- g) A statement and supporting evidence about the impact on the community of the closure of the school and any measures proposed to mitigate any adverse impact.
- h) Where closure plans relate to a rural primary school; a statement that the trustees have considered the likely effect of the discontinuance of the academy on the local community, the availability and the likely cost to the LA of transport to other schools, any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase; and any alternatives to the discontinuance of the school (such as considerations around mergers/ amalgamations or community use).
- i) Where the academy has a religious character, a statement about the impact of closure on the balance of denominational provision in the area and its impact on parental choice.

- j) Where the plans for closure relate to an academy that provides sixth form education, what the likely impact of these plans will be on 16 to 19 year olds in the area in respect of their educational or training achievements their participation in education or training and the range of educational or training opportunities available to them.
- k) Where existing provision reserved for pupils with special educational needs may be discontinued, a statement as to how the trustees believe their proposals are likely to lead to improvements in the standard, quality and/or range of the educational provision for these children.
- l) The proposed arrangements for travel of displaced pupils to other schools including how the proposed arrangements will mitigate against increased car use.

**The department considers the following individuals and organisations to be interested parties:**

- The LA and any other LA likely to be affected by the closure, in particular any LA that maintains an EHC plan or statement of special needs in respect of a registered pupil at the academy or an academy with a looked after child. Where the LA is a County Council, the local district or parish council where the academy is situated;
- Local Authority County Councillors/Members;
- Pupils and the parents of pupils registered at the academy;
- Teachers and other staff at the academy;
- Parents of any pupils at other schools affected by the closure of the academy; including, for example the families of pupils at feeder schools;
- Any trade unions who represent staff at the academy;
- The MP for the constituency in which the academy is situated.



## **Annex B: Final account checklist**

The Secretary of State will not agree to the early termination of a funding agreement, without an assurance statement from the academy trust's Accounting Officer (AO) to confirm that funds received to the point of termination have been used for the purposes intended. The AO should also provide a written commitment that they will comply with the following checklist. They must:

- Make provision for the production of audited financial statements and accounts return (i.e. have tasked a member of the academy trust staff to produce the accounts and/or instructed their accountants to do so). This should be completed no later than 4 months after termination.
- Safeguard the academy's accounting records, evidence and systems to facilitate the production and audit of the financial statements and accounts return.
- Share the forecast costs and cash flows expected to the point of termination and ensure funds are set aside to meet the cost of producing the audited Financial Statements and an accounts return.
- Ensure the academy trust has appointed and instructed an independent auditor, and a member of finance staff (or a trustee) is available to respond to audit queries from the independent auditor and the department who will be available 'post closure' in case there are final queries.
- Ensure a representative of the Board of Trustees has committed to sign off the Financial Statements that the Board has approved - as required by the Companies Act 2006.

## Further Information

Queries can be submitted via the [online enquiry form](#)

- [Education Act 1996](http://www.legislation.gov.uk/ukpga/1996/56/contents) [www.legislation.gov.uk/ukpga/1996/56/contents](http://www.legislation.gov.uk/ukpga/1996/56/contents)
- [Childcare Act 2006](http://www.legislation.gov.uk/ukpga/2006/21/contents) [www.legislation.gov.uk/ukpga/2006/21/contents](http://www.legislation.gov.uk/ukpga/2006/21/contents)
- [Academies Act 2010](http://www.legislation.gov.uk/ukpga/2010/32/contents) [www.legislation.gov.uk/ukpga/2010/32/contents](http://www.legislation.gov.uk/ukpga/2010/32/contents)
- [Equality Act 2010](http://www.legislation.gov.uk/ukpga/2010/15/contents) [www.legislation.gov.uk/ukpga/2010/15/contents](http://www.legislation.gov.uk/ukpga/2010/15/contents)
- [Equality and Human Rights Commission](http://www.equalityhumanrights.com/en) [www.equalityhumanrights.com/en](http://www.equalityhumanrights.com/en)
- [School Standards and Framework Act 1998](http://www.legislation.gov.uk/ukpga/1998/31/contents)  
[www.legislation.gov.uk/ukpga/1998/31/contents](http://www.legislation.gov.uk/ukpga/1998/31/contents)
- [Pipeline Free Schools](http://www.gov.uk/government/publications/free-schools-successful-applications) [www.gov.uk/government/publications/free-schools-successful-applications](http://www.gov.uk/government/publications/free-schools-successful-applications)
- [Funding Guidance for Young People 2018 to 2019](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707885/Funding_rates_and_formula_201819_.pdf)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707885/Funding\\_rates\\_and\\_formula\\_201819\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707885/Funding_rates_and_formula_201819_.pdf)
- [Convert to an Academy: guide for schools](http://www.gov.uk/guidance/convert-to-an-academy-information-for-schools) [www.gov.uk/guidance/convert-to-an-academy-information-for-schools](http://www.gov.uk/guidance/convert-to-an-academy-information-for-schools)
- [Small Business Enterprise and Employment Act 2015](http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted)  
[www.legislation.gov.uk/ukpga/2015/26/contents/enacted](http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted)
- [The School and Early Years Finance \(England\) Regulations 2014](http://www.legislation.gov.uk/uksi/2014/3352/contents/made)  
[www.legislation.gov.uk/uksi/2014/3352/contents/made](http://www.legislation.gov.uk/uksi/2014/3352/contents/made)
- [The Education \(Independent School Standards\) Regulations 2014](http://www.legislation.gov.uk/uksi/2014/3283/contents/made)  
[www.legislation.gov.uk/uksi/2014/3283/contents/made](http://www.legislation.gov.uk/uksi/2014/3283/contents/made)
- [Regional Schools Commissioners](http://www.gov.uk/government/organisations/schools-commissioners-group) [www.gov.uk/government/organisations/schools-commissioners-group](http://www.gov.uk/government/organisations/schools-commissioners-group)
- [Charity Commission](http://www.gov.uk/government/organisations/charity-commission) [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)
- [‘Going Concern Basis of Accounting and Reporting on Solvency and Liquidity Risks’](http://www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting) [www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting](http://www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting)
- [Schools Causing Concern guidance](http://www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting) [www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting](http://www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting)

- [Establishing a new school: free school presumption](https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption)  
https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption
- [Opening a free school](http://www.gov.uk/government/collections/opening-a-free-school) www.gov.uk/government/collections/opening-a-free-school
- [Sponsor an academy](http://www.gov.uk/guidance/sponsor-an-academy) www.gov.uk/guidance/sponsor-an-academy
- [Academies: funding, payments and compliance](http://www.gov.uk/government/collections/academies-funding-payments-and-compliance)  
www.gov.uk/government/collections/academies-funding-payments-and-compliance
- [Condition Improvement Fund guidance](http://www.gov.uk/guidance/condition-improvement-fund) www.gov.uk/guidance/condition-improvement-fund
- [Selective Schools Expansion Fund - GOV.UK](http://www.gov.uk/government/publications/selective-schools-expansion-fund)  
www.gov.uk/government/publications/selective-schools-expansion-fund
- [The School Admissions Code](http://www.gov.uk/government/publications/school-admissions-code--2) www.gov.uk/government/publications/school-admissions-code--2
- [Governance Handbook](http://www.gov.uk/government/publications/governance-handbook) www.gov.uk/government/publications/governance-handbook
- [Change your charity's governing document](http://www.gov.uk/change-your-charitys-governing-document) www.gov.uk/change-your-charitys-governing-document
- [Boarding schools national minimum standards](http://www.gov.uk/government/publications/boarding-schools-national-minimum-standards)  
www.gov.uk/government/publications/boarding-schools-national-minimum-standards
- [Residential special schools national minimum standards](http://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards)  
www.gov.uk/government/publications/residential-special-schools-national-minimum-standards
- [Ofsted material change inspection](http://www.gov.uk/government/publications/national-minimum-standards-check-sheet-for-a-material-change-inspection-of-an-independent-school) www.gov.uk/government/publications/national-minimum-standards-check-sheet-for-a-material-change-inspection-of-an-independent-school
- [Get information about schools \(GIAS\)](http://www.get-information-schools.service.gov.uk/) www.get-information-schools.service.gov.uk/
- [How to make changes to a maintained school](http://www.gov.uk/government/collections/school-organisation)  
[www.gov.uk/government/collections/school-organisation](http://www.gov.uk/government/collections/school-organisation)

- [Opening and Closing LA maintained schools guidance](http://www.gov.uk/government/publications/school-organisation-maintained-schools)  
[www.gov.uk/government/publications/school-organisation-maintained-schools](http://www.gov.uk/government/publications/school-organisation-maintained-schools)
- [Consultation principles guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)  
[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)
- [Independent School Standards](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389467/Revised_independent_school_standards.pdf)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389467/Revised\\_independent\\_school\\_standards.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389467/Revised_independent_school_standards.pdf)
- [Local Government Pension Scheme](https://lgpsmember.org/) <https://lgpsmember.org/>
- [Companies House](http://www.gov.uk/topic/company-registration-filing/closing-company) [www.gov.uk/topic/company-registration-filing/closing-company](http://www.gov.uk/topic/company-registration-filing/closing-company)
- [Charity Commission](http://www.gov.uk/guidance/how-to-close-a-charity) [www.gov.uk/guidance/how-to-close-a-charity](http://www.gov.uk/guidance/how-to-close-a-charity)



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