



Department
for Education

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

July 2019

Contents

Introduction	3
Before you apply – develop your proposals	3
Guide to becoming an academy	4
Further guidance and advice	4
Application and Dissolution Process	5
Dissolving as independent institutions	5
Get agreement for your proposals	5
Application process	6
Support	6
Financial Assessment, financial health and sustainability	7
Financial health	7
Sustainability	8
Colleges with Commercial Debt	8
VAT status	9
Admissions	13
Post-19 students	13
Adult and apprenticeship provision	13
Higher education	14
Sponsorship of Tier 4 (non-EEA) students	15
Funding and miscellaneous issues	15
Revenue funding	15
Access to the academies Risk Protection Arrangement	15
Local Government Pension Scheme	16

Introduction

Sixth-form colleges have a well-established and distinctive identity and mission within the further education (FE) sector.

For some sixth-form colleges, with their particular focus on high-quality academic courses, becoming an academy and working more closely with schools within a multi-academy trust will be a natural development, which can improve value for money through efficiencies and economies of scale, whilst preserving the distinctive character of their offer.

Many sixth form colleges took up the opportunity to convert to academy status as part of the programme of area reviews. We are now extending this opportunity to enable other sixth form colleges to continue to apply to convert to academy status where the conversion will make a contribution to academy programme.

A sixth-form college can become a 16 to 19 academy using the provisions of the Further and Higher Education Act 1992, which enable a sixth-form college corporation to dissolve and transfer its property, rights and liabilities to a new or existing academy trust.

Before you apply – develop your proposals

From 2019, we expect sixth-form colleges wishing to become academies to form a multi-academy trust (MAT) with other schools, academies, free schools or colleges, or to join an existing MAT in order to add capacity to the system.

Effective MATs will need to have the capacity and ability to self-improve and to provide specific support to improve underperforming schools within their trust.

You should discuss your proposals from an early stage with your ESFA case manager, and with your main contact for the process – a DfE academy project lead from the relevant [Regional Schools Commissioner](#)'s region.

Guide to becoming an academy

Sixth-form colleges applying to become academies must also consider how to manage the dissolution of the existing sixth-form college, in parallel with setting up the new academy (in a new or existing academy trust). The timetable for dissolution of sixth-form colleges is set out in regulations and will help you to arrive at a realistic proposed opening date for the proposed new academy.

The time needed for implementation will vary according to your individual circumstances but we estimate that you will need a minimum of four to six months from the point your application is approved.

Further guidance and advice

The process by which SFCs become academies is broadly the same as for maintained schools, and you may find the [Guide to Converting to an Academy](#) useful as an overall guide.

However, there are key differences in the process for maintained schools and SFCs in these areas:

- dissolving as independent institutions
- admissions and admitting post-19 students
- commercial borrowing and loans
- VAT status
- zero-rated buildings.

Please refer to the later sections of this document for more information about key differences in these specific areas and any required action you need to take.

You may also wish to discuss your proposals with the SFCA, who may be able to offer

advice and support.

Application and Dissolution Process

Dissolving as independent institutions

Proposals for dissolving the existing college will need to be developed and run concurrently with those for establishment of the new 16 to 19 academy to avoid any unnecessary delays in implementation once the application is approved. Consultation must be published in line with the Regulations and must commence at least four months prior to the proposed implementation date. Proposed opening dates for the new academy will need to reflect a realistic assessment of the time it will take to complete both elements of the process.

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

Get agreement for your proposals

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

- your existing sixth-form college corporation, which must agree to any proposal to dissolve the corporation
- the trustees of any academy trust which you will be joining and/or the governing bodies of any school or other provider with which you propose to develop a partnership or collaboration
- any underpinning trust, where relevant

- banks and other commercial lenders¹
- contractors and service providers
- any Higher Education (HE) providers on whose behalf you provide franchised HE courses to your students; or who validate HE courses you offer in your own right.

Application process

You will need to complete an application to convert to begin the process to become an academy. Once you submit your form, the ESFA and the relevant Regional Schools Commissioner (as advised by their Headteacher Board (HTB)) will make an initial assessment of the viability of your proposed model. They will consider both the educational benefit of your proposal, and the likely financial viability of the model proposed. This will cover both the sixth-form college alongside the proposed partners (schools, colleges and academy trusts etc.) and is based on information in the application form, the initial budget, and information already held by the ESFA. If successful, the proposal can proceed to the next stages of delivery.

Support

Once the relevant Regional Schools Commissioner has given your application their approval in principle to proceed, you will receive a conversion support grant of £25,000 towards the cost of legal fees and other costs associated with becoming an academy.

¹ Any commercial lenders, other creditors and some contractors will need to agree the changes before any liabilities, contracts or other obligations can be transferred from the college to an academy trust. We recommend that you engage early with them to establish their potential requirements and conditions.

Financial Assessment, financial health and sustainability

As conversion to academy status means a move into the public sector all colleges that wish to convert will be subject to a viability and sustainability assessment.

This assessment will be carried out by the ESFA's Provider Market Oversight (PMO) team and will be proportionate to your financial position and the financial position of the academy trust that you are joining.

The assessment will use data already held by the ESFA, information in the application and any other relevant information, to ensure that the proposal is viable and sustainable. You may be required to submit additional information.

Financial health

We will review the last set of college audited accounts and auditors' management letter and the Annual Report of the Audit Committee.. Where auditors have raised concerns or issues, your application should set out what actions have been taken to address these. Where there are financial health concerns/deficit, we will want to know what actions have been (or are being) taken to address the issues.

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

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

Sustainability

The assessment has no set format for the financial projections and it may be easiest to prepare your own budget template based on your model of becoming an academy. Alternatively, the [academy budget forecast](#) template contains the information that will help with our assessment, or the college financial plan template could be used as long as there is clear narrative/commentary. The way you present your budget may vary depending on the anticipated conversion date. In summary, we will need:

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

The application will need to include evidence of the financial benefits of the proposal for the college and/or its proposed partners. It would help our assessment if applications include the anticipated value and timescale of financial benefits that are assumed within the future year's budgets.

Colleges with Commercial Debt

Sixth-form colleges should provide full details of their existing arrangements as part of the application process and speak to their bank about their proposal to convert to academy status. Sixth-form colleges will be required to utilise their excess cash reserves to pay down their commercial debt and other non-pension liabilities. Where this is your intention, you should confirm this in writing in a letter with your application.

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

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

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

VAT status

Disclaimer: The Department for Education cannot give VAT advice but the lines below have been agreed with HMRC. It is important that you contact HMRC/ follow the guidance and take the necessary action as outlined below. The teams in HMRC are fully aware of this process.

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

Sixth-form colleges which incur a retrospective VAT charge on zero-rated buildings when choosing to become an academy will be required to meet the cost of any arising liabilities. However it may be possible for the transfer of buildings to the academy trust to be zero-rated. This will depend on the nature of the transfer and is subject to advice and guidance from HMRC. HMRC have provided the information below:

Information about zero-rated VAT matters following the outcome of DfE conversations with HMRC about Sixth Form Colleges transferring to academy status

A Sixth Form College (SFC) that has benefited from the construction of a building being zero-rated will be treated as making a standard rated self-supply if, within ten years of completion, the building is sold. This charge will arise when the SFC disposes of the building (i.e. when it is transferred to the academy trust). As a result, the SFC may have to register (in some cases retrospectively) for VAT in

order bring any VAT due to account. OR in certain circumstances apply for an exception from VAT Registration.

If the entire interest held in a qualifying building is sold (or dispose of) to another person/organisation, of a building completed before 01/03/2011, and the other person/organisation will be using the building for a “relevant charitable purpose”, the self-supply charge is not triggered.

If the entire interest held in a qualifying building is sold (or dispose of) to another person/organisation, of a building completed on or after 01/03/2011, whether or not that person/organisation intends to use the building solely for a qualifying use, a change in use charge is due on the sale/disposal.

As well as accounting for the self-supply, the SFC should also account for the actual supply (i.e. the sale of the building).

[VAT Notice 742](#) contains the guidance necessary to decide if the VAT liability of the sale/transfer is exempt or taxable.

If the sale/transfer of the building is taxable, the VAT due on the self-supply can be deducted as input tax. Because the academy trust has exempt charitable status and will be using the building for a relevant charitable purpose (i.e. the provision of free education), the actual sale/transfer of the building could be a taxable zero-rated supply, subject to the academy trust providing the SFC with a certificate to that effect, and meeting the other conditions set out in [Section 4 VAT Public Notice 708](#).

The academy trust must provide the SFC with a copy of the certificate before:

1. the completion of the SFC’s VAT Return (if the SFC has registered for VAT); or
2. the SFC applies for an exception from registration

The SFC can then claim back any VAT charged on the self-supply as input tax, this will ensure that the SFC is in a NIL NET TAX situation. No money should need to change hands as the VAT Return (if the SFC has to register) would simply carry figures relating to the VAT owed by the SFC and an equal amount detailing the VAT they are entitled to claim back (nil net tax) i.e. the self-supply charge will be offset by a corresponding claim and the only supply being made by the SFC will be the zero-rated supply of the building.

If the building sale is exempt, none of the VAT will be deductible on the self-supply, in this scenario the SFC must register and account for VAT accordingly.

Registration

Subject to certain conditions being met the SFC can apply for an exception or a retrospective exception from VAT registration. Please see the GOV.UK [guidance](#) quoted below.

Get an exception

You can apply for a registration 'exception' if your taxable turnover goes over the threshold temporarily, but your net tax position is nil.

[Write to HMRC](#) with evidence showing why you believe your VAT taxable turnover won't go over the de-registration threshold of £83,000 in the next 12 months. HMRC will consider your exception and write confirming if you get one. If not, they'll register you for VAT.

<https://www.gov.uk/vat-registration/when-to-register>

Retrospective exception:

Asking for an exception if you've temporarily gone over the VAT threshold.

Write to HMRC if you've temporarily gone over the registration threshold and want to [ask for an exception](#) so you don't have to register for VAT.

HM Revenue and Customs –
VAT Registration Service
Imperial House
77 Victoria Street
Grimsby
DN31 1DB
United Kingdom

Admissions

16 to 19 academies and free schools are educational institutions rather than schools. Because of this they are not required to comply with the [School Admissions Code](#) but their admission arrangements do need to be fair, objective and transparent. Parents/prospective students still need a clear understanding of how and when places are offered, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process and what criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and be clear how they are to be applied. In general, sixth-form colleges' existing admissions arrangements will already meet the requirements which apply to 16 to 19 academies.

Post-19 students

Adult and apprenticeship provision

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

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

Higher education

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

Sixth-form colleges which currently offer validated HE courses in their own right will be in a different position in relation to Office for Students (OfS) funding and student support for HE courses:

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

Those sixth-form colleges which choose to apply for specific course designation should review the guidance and note, in particular, that students on designated courses will generally only be able to draw the maximum of £6935 per year in tuition loan fee

support from the Student Loans Company.

Sponsorship of Tier 4 (non-EEA) students

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

Funding and miscellaneous issues

Revenue funding

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

Access to the academies Risk Protection Arrangement

Colleges which become academies will be able to opt-in to the [Risk Protection Arrangement](#).

Local Government Pension Scheme

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

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



Department
for Education

© Crown copyright 2019

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: [DfE-00152-2019]



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk