

CONVERTING TO ACADEMY STATUS

AN ELIGIBILITY GUIDE FOR SCHOOLS

*The Academies Act passed in July 2010 enables **all** schools to become academies. Those schools which are judged by Ofsted to be outstanding or good with outstanding features are automatically eligible to apply for academy status. All other schools are able to apply if they are in partnership with an outstanding or good (with outstanding features) school.*

There are, however, issues that apply to specific types of schools converting to academy status. The aim of this guide is to provide a brief overview of these issues as they apply to four different types of schools:

1. *Voluntary Aided Schools*
2. *Voluntary Controlled Schools*
3. *Trust Schools*
4. *PFI Schools*

1. Voluntary Aided Schools (VA)

VA schools are maintained by the local authority but are supported by a charitable foundation, which is usually religious in character. The governing body of a VA school employs all the staff and acts as the school's admission authority. The land and buildings are normally owned by the foundation, although in many cases the playing fields are owned by the local authority.

The foundation appoints the majority of Governors and is also likely to have contributed financially to the costs of establishing the school and any capital projects.

Specific issues for VA schools considering conversion. Until recently foundations were reluctant to promote and support the conversion of VA schools into academies. They were concerned that the Academies Act did not contain sufficient assurances that the religious ethos and assets of VA schools would be protected.

However, the Department for Education has recently published legal documents which have been approved by the National Society and Catholic Education Service, that provide the assurances they sought, which means that there are likely to be a significant number of VA schools acquiring academy freedoms - either as a single entity or as part of a chain or federation - in the lifetime of this Parliament.

However, there are still some specific issues which the governing bodies of VA schools need to take into account when considering conversion to academy status.

Consultation. The Academies Act 2010 requires a VA schools to obtain the consent of its foundation, **before** it can apply to the Department for Education to become an academy.

Governance. A maintained school has only one level of governance - the governing body. However, an academy has two levels of governance - the members of the academy trust itself and governors of the academy trust, the body which actually runs the academy.

The foundation of a VA school is likely to have a role to play in both levels of governance. The extent of the involvement the foundation has in the academy trust is likely to match the level of involvement it had when the school was local authority maintained. The precise details for each individual will need to be discussed between the foundation and the school, but in general it is expected that the foundation will appoint:

A majority of the members

And

A majority of the governors of the academy trust

Retaining a religious ethos at the academy. Both the governing document of the academy trust and the funding agreement have been tailored by the Department for Education, the National Society and the Catholic Education Service to ensure that the religious ethos of a VA school is protected.

In addition, provisions in the School Standards and Framework Act 1998 which affect voluntary schools in relation to reserved teachers, the religious beliefs of staff, the teaching of religious education and the requirement to provide collective acts of worship have been carried over in the funding agreement.

Land. The freehold of land held by the foundation of a VA school is not expected to transfer to the academy trust on the school's conversion. Instead, as with community schools, a 125 year lease will be entered into by the foundation and the academy trust and the freehold ownership of the land will remain with the foundation.

Summary. The recent approval by the National Society and Catholic Education Service of the legal documents that protect the religious ethos and assets of VA schools, will lead to a significant number of VA schools converting to academy status in the next few years. However, governing bodies of VA schools considering conversion should open a dialogue with their foundations as early in the process as possible to gain the necessary consent and to identify and address potential problems prior to application.

2. Voluntary Controlled Schools (VC)

VC schools are similar to VA schools but differ in a number of important respects.

*In a VC school it is the local authority, **not** the governing body, which employs the staff working at the school and controls the school's admissions policy. The foundation supporting a VC school manages the school's land and buildings in the same way that the foundation of a VA school does, but it will normally only appoint a minority of governors and is unlikely to have supported the school financially.*

The issues facing a VC school considering conversion are the same as a VA school with the exception of the appointment of governors to the academy trust.

Whereas, the foundation of VA school will appoint the majority of the members and governors of the academy trust, a VC will only appoint a minority of the members and governors.

3. Trust Schools

Trust schools were enabled by the Education and Inspections Act 2006 and are maintained foundation schools with a charitable company (the trust) attached.

The governing body of the school invites individuals and organisations to form the trust, which supports the particular aim chosen by the governing body of the school.

The land and buildings are normally owned by the trust, although in many cases the playing fields are owned by the local authority. The trust does not get involved in the running of the school, which is run by the governing body, but the trust appoints either a minority or a majority of the governing body.

Trust schools are therefore able to formalise links and partnerships with individuals and organisations while still remaining within the local authority maintained sector.

Specific issues for trust schools considering conversion. Conversion is a logical next step for those trust schools which want the greater freedoms that academy status confers. However, there are some specific issues which the governing bodies of trust schools need to take into account when considering conversion to academy status.

Consultation. The Academies Act 2010 requires trust schools to obtain the consent of the trust as the owner of the schools land and assets before the school can apply to the Department for Education to become an academy. If the trust refuses to give its consent, the school can go through a consultation process to withdraw from the trust and revert to being a foundation school and then apply to become an academy. Usually it will be possible to run both the consultation on withdrawing from the trust and converting to academy status simultaneously.

Conversion process. Although trust schools already have a charitable company which is very similar to an academy trust, it is not possible to convert this trust into the academy trust.

In the case of trusts which support just one school, the school can go through the conversion process to become an academy with their trust attached. Once the school becomes an academy, the trust would no longer be able to support the school. This is because trusts set up under the trust school legislation can only support maintained schools and not academies. The trustees of the trust would therefore be expected to wind-up the trust, leaving the school as an academy.

In the case of shared trusts which serve several schools, the above would still apply with the exception that the trust would not be wound up but would continue to support any remaining maintained schools. It could not however continue to support any of the schools within the trust that become academies.

Dealing with existing trust partners. Trust schools will need to consider how to deal with their existing trust partners (i.e. those individuals and organisations who are currently involved in the trust). Some trust partners may wish to be involved in the new academy (either as members or governors), while others may not. It is important to consult all existing partners and explain the new roles and responsibilities that will result from an academy trust.

Land. On conversion to academy status, the secretary of state makes an order transferring the land and buildings of the school held on trust by the trust to the academy trust. For those schools which have not yet had their land transferred to the trust, negotiating with the local authority may cause a delay but will not prevent the conversion.

Summary. Many trust schools have registered an interest in becoming academies and their current status is not a barrier. However, governing bodies of trust schools considering conversion should open a dialogue with their trusts as early in the process as possible to gain the necessary consent and to identify and address potential problems prior to application.

4. PFI Schools

A PFI school is subject to a private finance initiative contract with a private sector contractor.

In a PFI school, the contractor charges a monthly fee and has responsibility for constructing new school premises and/or refurbishing existing ones. The contractor also provides a range of facilities management services including cleaning, catering and maintenance.

A PFI contract usually lasts 25 years and, at the end of the contract, the buildings built by the contractor are transferred back to the local authority, trustees or governing body, depending on the type of school.

Specific issues for PFI schools considering conversion. PFI schools have a governing body agreement with the local authority. This allocates certain rights and responsibilities to the governing body. The governing body agreement ensures that the governing body of the school is bound into the PFI for the full 25 year term. Because of this, conversion to academy status does not offer PFI schools an opportunity to extricate themselves from existing PFI contracts.

The Department for Education has stated it has no intention of buying out schools from PFI deals; it has also clearly stated that PFI contracts will not be barriers for schools wishing to convert to academy status. The Department for Education's proposal is that, as part of the conversion process, the PFI school will enter into a new school agreement with the local authority. Under this agreement, the academy will commit to meet its PFI obligations and will continue to receive the services it is entitled to under the PFI. The Department for Education accepts that the school may have to carry out further due diligence and will offer additional funding for this.

The funding agreement for the school will allocate financial risk to the school where it fails to comply with its PFI obligations and where this results in a cost to the local authority. The Department for Education recognises that local authorities may be concerned about the increased risk of contracting with an independent academy trust, and therefore offers an indemnity to the local authority which guarantees that its liabilities are not increased by the decision of the PFI school to become an academy. The Department for Education will also consider annual grant funding requests from an academy where it can show that its continued involvement in the PFI scheme has led to increased costs.

Given all of this, it is clear that financial risk of a PFI school which previously sat with the local authority is borne to a much greater extent by The Department for Education. Therefore, the business case underpinning academy conversion applications from PFI schools is likely to be scrutinised much more carefully than for other types of schools.

Conversion process. Given the potential complexities it is likely that the process of converting into an academy will take longer for a PFI school than for other types of schools. However, assuming the additional complexities are addressed and the financial consequences of ongoing PFI commitments are taken into account, there is no reason in principle that prevents a PFI school from converting to an academy.