Guidance for schools: 
Applying to become an academy 

May 2016
1. Introduction

This document is intended to support Governors in considering the implications of academy status. Further information is available on the Department for Education’s website at https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools

Think of becoming an academy?
Before making a decision to convert to an academy, the Governing Body must consult with such persons they think appropriate e.g. staff, parents, local community, and local schools – as per the Academy Arrangements of the Academies Act 2010.

Wakefield Council’s Academy Conversion Process
Resources within the Local Authority are limited and the Local Authority does not receive additional funding to project manage or undertake the duties associated with the conversion process, unlike the funding which is received by schools and Academy Sponsors. As such, Academy Conversion processes have to be managed alongside other key Local Authority priorities.

A conversion date must be agreed with the Local Authority and the DfE. In cases where schools have agreed a conversion date directly with the DfE without prior consultation with the Local Authority, it has led to schools working towards a date but which is not achievable for the Local Authority and has, unfortunately, caused a great deal of frustration for schools as well as disappointment for all concerned. However, in line with the DFE’s guidance, schools can expect the process for non-sponsored conversions to take 3 months, although this does not consider the impact of school holidays.

Wherever possible, the Local Authority will strive to meet agreed conversion deadlines. However, it is important to note that there are statutory timescales associated with particular processes such as the TUPE and Legal which are critical to meeting particular conversion deadlines mean that these deadlines are unfortunately sometimes not achievable. In order to avoid this situation, it is imperative that schools applying to the DfE to convert to Academy status contact the Local Authority prior to agreeing a conversion date, in order that the LA can agree to an achievable deadline. It is also important to note that the Local Authority does not commence the associated processes until an academy order has been received and any delay may result in a change to the conversion date.

With the implementation of the Academies Act 2010, Wakefield Council’s Cabinet Members and the Directorate Management Team of the then Family Services, now Children and Young People, agreed that a report would be presented through Cabinet for each academy conversion. The Recommendations of the report would be:

- That Members give the Corporate Director, Children and Young People, in consultation with the Portfolio Holder delegated powers to negotiate and conclude the terms of the Commercial Transfer Agreement and any ancillary legal agreement between Wakefield Council, the Governing Body and trust in
Guidance for schools: Applying to become an academy

relation to the transfers of assets, staff, pensions of teaching and support staff, service level agreements with Wakefield Council and third party contracts.

- That Members approve the City Solicitor or any authorised officer within Legal Services with delegated powers to sign contracts under Legal Services’ scheme of delegation to execute and complete the Commercial Transfer Agreement and any ancillary legal agreement for and on behalf of Wakefield Council.

2. What is an Academy?

An academy is a state-funded independent school, working in partnership with a multi-academy trust (MAT). It differs from a Local Authority (LA) maintained school in the following ways, by:

- receiving funding direct from the Education Funding Agency (EFA);
- directly employing staff and setting pay & conditions in agreement with the multi-academy trust;
- responsibility for land & buildings;
- being required to teach a broad and balanced curriculum including: English, maths, science and RE (not the national curriculum);
- not being linked to the Local Authority and therefore having greater statutory responsibilities
- setting its own admissions policy; and
- having the freedom to change lengths of terms and school days.

3. Do Academies carry greater liabilities?

An academy has greater responsibility as noted above. They are directly liable for matters such as insurance, employment liabilities, support staff pensions, health and safety, and property maintenance. As noted above, academies receive their funding directly from central government to help them meet these additional costs (see section 5 for more details).

4. Staffing

As a LA maintained school
Staff are employed by the LA and are part of national and local pay and conditions agreements. The LA is responsible for the administration of provisions e.g. pensions, redundancy, sickness and maternity schemes etc. (Not funding).

As a Voluntary Aided/Foundation school
Staff are employed by the Governing Body but are still part of the national and local pay and conditions agreements akin to the LA.

As an academy
If the school opts to convert to an academy, all staff working at the school immediately before the transfer will automatically transfer to the employment of the Academy Trust, unless their contract of employment is due to expire the day before the date of conversion.
Guidance for schools: Applying to become an academy

Other staff who are employed at the school but who do not work under the direction of the Governing Body for example Kingswood Catering & Cleaning staff will not transfer unless specified.

Academies are not required to follow national or local pay and conditions agreements and may in future choose, through consultation, to change staff terms and conditions. Governors should note that staff terms and conditions will be protected in law through TUPE regulations on transfer and any imminent changes would need to form part of the academy conversion consultation. If however, following a TUPE transfer there is a genuine need to make a change then it must fall within the following categories:

- organisational;
- economical; or
- technical

Many schools/academies choose not to migrate away from the national staff terms and conditions as this could have an impact on the recruitment and retention of staff within a competitive market place for the very best staff.

For maintained schools the Council will be responsible for ensuring the TUPE Regulation is met (as the exporting employer). This will be in collaboration with the converting school and the multi-academy trust involved.

For Voluntary Aided and Foundation schools the Governing Body will be responsible for ensuring the TUPE Regulation is met (as the exporting employer). This can be undertaken by the school or by their HR Service Provider who would undertake this on the Governing Body’s behalf dependent on the Service Level Agreement in place.

Pensions

Teachers working within an academy fall within the scope of the Teachers’ Pension Scheme (TPS), just as if they were employed in a LA maintained school. Staff transferring will continue their membership of the Scheme. As the employer, the Trust will be responsible for remitting pension contributions to the TPS and for all other administrative responsibilities that fall to employers who employs teachers who are subject to the Teachers’ Pensions Regulations.

Support staff fall within the Local Government Pension Scheme (LGPS). As the employer, the Trust will be responsible for meeting the employer contributions. Staff transferring will continue their membership of the Scheme. Unlike TPS, there are a number of component schemes within LGPS, with the Council acting as pension administrator. The employer contributions rate may be different from that payable by the Council.

On that basis the West Yorkshire Pension Fund (WYPF) will complete an actuarial analysis for the LGPS to determine whether or not the employer contribution needs to alter based on the staffing profile for the new academy/multi-academy trust. They will also calculate the contribution to the pension deficit which the Academy Trust will need to be responsible for.
Guidance for schools:
Applying to become an academy

Redundancy
Academies are covered by the ‘Redundancy Modification Order’ (RMO) therefore Continuous Local Government Service accrued before transfer will be maintained for existing staff although the liability for redundancy costs transfers to the academy from the school. This relates to newly appointed staff who join the academy after conversion and who have accrued Continuous Local Government Service. Such service will also be transferrable to other schools or LA’s under the ‘RMO’ therefore staff will not be disadvantaged through transfer to or from an academy.

Sickness
Staff entitlement to occupational sickness pay will transfer for existing staff under TUPE. However, the academy could choose to implement new terms and conditions for new staff in the same way they can in respect of pay and would need to negotiate this with the staff, the Academy Trust and trade unions as well as to amend policies/procedures to reflect this. This could mean however applying two schemes for the same provision within the academy.

Maternity
Staff entitlement to occupational maternity pay will transfer for existing staff under TUPE. However, the academy could choose to implement new terms and conditions for new staff in the same way they can in respect of pay and would need to negotiate this with the staff, the Academy Trust and trade unions as well as to amend policies/procedures to reflect this. This could mean however applying two schemes for the same provision within the academy.

Trade Union Facilities Time
Rights of trade union recognition do automatically transfer on conversion. The funding for Trade Union Facilities Time transfers from the LA (When de-delegated) to the Academy following conversion.

The LA offers academy the opportunity to contribute to the funding of trade union facilities time through the LA arrangements to avoid the need for separate agreements and increased funding. Please see the attached brochure.

Please see Trade Union attachment in the Attachment Panel.

5. Funding

Detailed below are some of the key issues that should be considered from a financial perspective when deciding whether to apply for an academy order:

Setting of the Dedicated Schools Grant schools block formula funding allocations
It is the responsibility of the local authority to consult and set the formula funding arrangements for the schools block element of the Dedicated Schools Grant (DSG) for all the schools and academies within the Wakefield district. Conversion to academy status does not change this; academies are issued with consultation papers each year (just like maintained schools), the only difference being that the consultation questions are limited to those that are relevant to academies.
Guidance for schools: Applying to become an academy

Top-slicing of school block for centrally retained services
This is consulted on each year and School Forum ratifies the decision. This is applicable to both maintained schools and academies so conversion to academy status would not impact this and your school would still have ‘top-slicing’ applied to their budget (if this is what School Forum agree to).

Please see attached illustration of how school and academy funding is presently calculated and therefore how top-slicing, de-delegation and SLA’s/contracts change upon conversion to academy status.

Please see Appendix-Funding Example attachment in the Attachment Panel.

As at 2015/16, the services that are presently funded (in part) by this are Music Services, Safeguarding, Youth Offending Team, School Forum and establishment of both falling rolls and pupil growth contingency funds.

De-delegation of schools block
Again, this process is consulted on each year and School Forum ratifies the decision. This is only applicable to maintained schools and maintained School Forum members.

De-delegation is currently in place for; Behaviour Support Services, Trade Union staff time, FSM eligibility and establishment of a maintained school contingency.

Deductions to maintained school budget allocations is done through application of a formula and by using pre-set rates (for consistency) and does not directly correlate to the level of service & charge that would be levied if an SLA was in place.

Your school can determine how much has been deducted for de-delegation by looking at your school block budget notification statement.

Upon conversion to academy status, this de-delegation would no longer take place so your academy would receive this funding as part of your school budget share. However, as a consequence, if your academy needs any support from these services then you would have to enter into an SLA for this and this would be at a cost to your academy budget. As advised above, it may be that the level of service needed equates to a value more or less than the amount previously deducted through de-delegation.

SLAs and provision of central support services
Within Wakefield, no top-slicing takes place across any maintained school for the funding of central discretionary services such as Accountancy, HR, Governors, and Premises Repairs etc.

It is each individual school and Governing Body’s decision what support they wish to procure and then SLAs are subsequently entered into. Your school can identify the cost of SLAs entered into by interrogating account code R7890.
Guidance for schools:  
Applying to become an academy

Under a multi-academy trust, it is usually the case that such services will be provided/commissioned by the Trust and as such, budget would be centrally retained for this and not passed on to the individual academy.

It would be for your school/Governing Body to assess if the central retention for such services by the MAT would be less/more than what is presently being incurred.

**Education Services Grant**
The ESG is a non-ring fenced grant but historically is linked to school related services. Upon conversion an amount would be recouped from the local authority and paid directly to the academy by the EFA.

However, upon conversion, the academy would then be responsible for procuring all the following (that are relevant):

- Education welfare service;
- Pupil support;
- Music services;
- Outdoor education including environmental and field studies (not sports);
- Therapies and health-related services, that aren’t funded by the health service;
- Visual and performing arts;
- Monitoring national curriculum assessment;
- School improvement such as CPD for staff;
- Determination of terms and conditions of service of staff;
- Early retirement and redundancy costs;
- Asset management;
- Producing financial accounts; and
- Internal auditing

Again, it would be for your school/Governing Body to determine whether the amount of ESG for your school would be sufficient to cover the additional duties identified above.

**Payment of funding allocations**
As a maintained school, DSG, Pupil Premium, UIFSM, PE & Sport grant funding streams are paid to the local authority and the local authority then devolve funding to each maintained school.

The ESG is retained centrally and the costs for the identified functions are also retained centrally and not charged to individual school budgets.

Upon conversion to academy, the EFA will enter into a funding agreement (with the MAT) and will allocate funding through the General Annual Grant (GAG). This is made up of the school block element of DSG (calculated by the LA as set out above) and the Education Services Grant.

The EFA would then become responsible for issuing other grants (such as Pupil Premium, UIFSM) directly to the academy. Other funding allocations such as High
Guidance for schools:
Applying to become an academy

Needs Top-Up payments and Early Years funding would continue to be paid through the local authority.

Academy start-up grant
Schools can apply to the EFA for a one-off none recurrent academy start-up grant (presently £25,000). This funding is towards meeting the set-up/legal costs of academy conversion.

Determination of a school balance upon conversion to academy status
The local authority is permitted 4 months following the date of conversion to determine the final balance of the maintained school at the date of conversion. Once calculated, the local authority notifies the academy and the academy has 1 month in which to review and respond either confirming their agreement with the balance or identifying queries.

Financial accounting & reporting arrangements
The financial year for an academy is 1st September – 31st August. Academies are required to comply with both the EFA funding agreement and Academies Financial Handbook which sets out the financial accounting and reporting requirements academies must adhere to. It should also be noted that academy final accounts have to be audited by independent external auditors.

Capital funding
The local authority receives capital maintenance funding allocations for maintained schools within the district. The Capital Programme Board review and agree how this funding should be utilised. As an academy, if capital maintenance works are required, the academy would have to submit a request for capital funding to the Education Funding Agency (EFA).

In addition, the authority receives a capital basic need allocation which is to be used by the local authority to address pupil place planning issues across the Wakefield district.

Each school receives a Devolved Formula Capital (DFC) allocation which is made up of a set amount of £4,000 plus £11.25 per primary pupil (for example & based on 2015/16 rates). Any unspent DFC monies after conversion to academy status are transferred to the academy.

6. Admissions

All schools and/or Academies are bound by the DfE’s School Admissions Code and must meet all its mandatory provisions including participating in the LA co-ordinated admissions process and the Fair Access Protocol which is in place in Wakefield.

All schools/Academies must have an over-subscription criterion for each relevant age group and the highest priority must be given, unless otherwise provided in the code, to looked after children and to previously looked after children. Relevant age group means the age group at which pupils are or will normally be admitted to the school, for example reception, year 7 or year 12. Where an Authority proposes changes to their existing admissions policy they must consult on these changes.
Guidance for schools: Applying to become an academy

As a LA maintained school

The Admissions Authority for all Community/Voluntary Controlled schools is the Local Authority, who set the Admissions Policy for these schools. The LA applies the following criteria for allocating school places:

a. Children in public care (looked after children), or a child who was previously looked after or fostered under an arrangement made by the Local Authority);

b. (i) Children who live in the school's catchment area, who have brothers and sisters attending the school at the time of admission;
   (ii) Other children who live in the school's catchment area;

c. Children who have brothers or sisters in attendance at the school;

d. Other children, with priority being given to those living nearest to the school.

Within each criterion the tie breaker is distance from home to school.

For Voluntary Aided/Foundation schools the Admissions Authority is the school’s Governing Body. Each Governing Body sets its own admissions policy, which in the case of Voluntary Aided schools is usually set following advice from the appropriate Church Diocese.

As an academy

For all Academies the Admissions Authority is the Academy Trust. The Trust may decide to adopt the LA’s admissions policy or set its own within the framework set out in the School Admissions Code.

7. Property

As a LA maintained school

The Governing Body is responsible for the day-to-day upkeep of the site and buildings and for devolved formula capital budgets. The LA usually owns the land and buildings and these are insured under the Council’s block insurance policy.

As an academy

All land and property that is used for the purposes of the school will be transferred from the LA to the academy at conversion, usually on a 125-year lease at a peppercorn rent based on the model provided by the DfE. The Academy Trust will be responsible for all repairs and maintenance of the property and for insuring the property.

A Commercial Transfer Agreement, based on the model provided by the DfE will include a list of the school assets that are to be transferred at conversion from the LA to the Academy Trust.

Service Tenancy Agreements

Where there is a property located on or near the school site and it is occupied by a caretaker under a service tenancy agreement, the LA will usually lease the property under a separate lease to the Academy/ Multi-Academies Trust. The separate lease
Guidance for schools: Applying to become an academy

will be on the same terms as the main academy lease but will state that the property must only be used as a caretaker’s dwelling house (service tenancy) or for educational purposes. If the Academy Trust no longer requires the property for any of those uses stated then there will be provision that the property may be transferred back to the LA.

8. Governance

As a LA maintained school
School Governors bring a range of experience and skills from many walks of life. They work closely with others to make informed decisions about school aims and policies. Governors work as a team of volunteers who are responsible for setting the strategies to make sure the school provides a good quality of education. They do this together with the Headteacher, who is responsible for the day-to-day management of the school. Every school has a Governing Body including:

- Parent Governors - elected by other parents in the school;
- One Staff Governor - elected by the teaching and non-teaching staff;
- The Headteacher – a member of the Governing Body by virtue of his/her office;
- One LA Governor – nominated by the Local Authority and appointed by the Governing Body;
- Co-opted Governors - appointed by the Governing Body; and
- Foundation Governors (voluntary controlled and voluntary aided schools only) – either appointed by the Diocese of take the role by virtue of an office that they hold.

The minimum size of a Governing Body is 7 Governors and there is no maximum size. Generally, Governors serve for a four year term of office.

As a single academy trust
An academy trust must be established. The Academy Trust (a charitable company limited by guarantee) enters into a funding agreement with the Secretary of State for the running of the academy. The Academy Trust has a strategic role in running the academy and would be responsible for appointing the Governors to the academy Governing Body (they can equally remove the Governors).

The Academy Trust has two layers of governance:

- Members – (akin to shareholders) establish the Trust and set out the constitution of the school through signing of the Memorandum and Articles of Association. They can appoint and dismiss Directors/Governors; and
- Governors – who are also Directors and Trustees of the charitable company and are responsible for the core strategic functions. Members may also serve as Governors. However, the most robust governance structures retain at least some distinction between the two groups.

The Articles of Association will set out the constitution.
Guidance for schools:
Applying to become an academy

Academy Governing Bodies become the direct employers of staff, have direct health and safety responsibilities, are the school's admission authority and are responsible for ensuring that the school undergoes an external financial audit. As the Academy Trust is a charitable company, the Governors would also be Directors and charitable Trustees, and would therefore need to comply with obligations under company and charity law.

There is a limit of 19.9% of the Governing Body that can be Local Authority Associated Persons (LAAP).

As a Multi-Academy Trust (MAT)
The legal basis and responsibilities of a multi-academy trust are similar to that of a single academy trust however it may have different tiers of governance, for example:

- Members – establish the Trust and set out the constitution of the school through signing of the Memorandum and Articles of Association. They can appoint and dismiss Directors/Governors;
- Directors (including the Chief Executive/ Executive Principal) – who set the strategic direction of the MAT and are accountable to the Secretary of State for the performance of schools within the MAT. They are also Governors and Trustees but are referred to as “Directors” to distinguish;
- Local Governing Bodies – the Trust Board can choose to have Local Governing Bodies for each academy. They act like “committees”. They support the work of the Directors through taking decisions/making recommendations. The Trust Board may wish to delegate responsibilities to the Local Governing Bodies that will be set out in a Scheme of Delegation. The level of delegation from the Trust Board to the LGBs may vary.

The Articles of Association will set out the constitution. The Trust Board is accountable for all academies in the group.

There is a limit of 19.9% of the Directors that can be Local Authority Associated Persons (LAAP).
Guidance for schools:
Applying to become an academy

Further information and guidance is available at http://www.gov.uk

For queries on this guide please contact:
Schools Organisation Team
Wakefield Council
Wakefield One, PO Box 400
Burton Street, Wakefield
WF1 2EB

schoolplaceplanning@wakefield.gov.uk
Telephone: 01924 305510

This guide does not replace guidance or advice provided by the Department for Education.