

## **Bath and North East Somerset**

### **Academies and Free Schools Background Information**

**June 2011**

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## 1. EXECUTIVE SUMMARY

The Academies Act received Royal Assent on 27 July 2010. Academies are publicly funded independent schools which enjoy a number of freedoms and flexibilities including:

- ability to set pay and conditions for all staff
- freedom from following the National Curriculum
- ability to change the lengths of terms and school days
- greater control over the school budget
- freedom to spend money the local authority currently spends on behalf of schools
- responsibility for all capital assets and their management.

Until recently only those state-maintained primary and secondary schools which were rated by Ofsted as outstanding or “good with outstanding features” could apply to become academies, as could maintained special schools rated “outstanding. From the beginning of April 2011, the Government will now consider applications from any school, including special schools that are performing well. The DfE will in particular look at:

- exam performance over the last three years;
- comparison with local and national exam performance;
- latest Ofsted reports with a specific focus on ‘capacity to improve’, ‘outcomes’, and ‘leadership and management’;
- for special schools, in addition to the above, other success in supporting the learning of pupils with special educational needs;
- any other matters that the school may rely on in order to demonstrate that it is performing well.

A list of those schools that have already converted to academy status or are due to do so shortly are listed on the website as are those that are planning to convert.

When considering about whether to apply for academy status, a wide range of issues and implications need to be considered, including:

### Finance

Academies receive the same level of funding as they would receive from the local authority as a maintained school. They will also receive top-up funding to pay for services which are no longer provided for them by the local authority. Funding will be in the form of a grant from the Young People’s Learning Agency (YPLA). A school becoming an academy will need to set up an Academy Trust, which is a charitable company limited by guarantee. B&NES total schools budget will be reduced to meet the cost of funds transferred to academies. It is important that the funding of Academies should not adversely affect other schools in B&NES.

### Traded Services

B&NES will continue to provide services to academies, wherever possible, since these services could become vulnerable if not bought back. Some of these services are currently provided at no direct cost to schools. We are currently developing a buyers’ guide for academies which will be available through Merlin.

### Human Resources

An academy is a separate legal entity to which existing staff are transferred under Transfer of Undertakings (Protection of Employment) regulations (TUPE). The current employer (B&NES for community and voluntary controlled schools, the governing body for voluntary aided and foundation schools) is responsible for carrying out a due diligence exercise for all transferring staff and to consult with them regarding the transfer. No minimum period for consultation is specified in the Academies Act.

### Transfers

When a school becomes an academy, the school's land and buildings either transfer to the Academy Trust if the school is currently the owner of the site (foundation) or transfer to the Academy Trust on a 125 year lease. The DfE has also provided a model transfer agreement to deal with the transfer of staff, contracts and non fixed assets, which needs to be signed before the schools can open as academies.

### School Organisation

When a school becomes an academy, the Academy Trust becomes the admissions authority. That means the academy will need to manage its own admissions process. It must ensure that its arrangements comply with the School Admissions Code. Schools converting to academy status will retain the current admissions arrangements on conversion and Governing Bodies would need to consult widely if they wanted to change these criteria.

### Vulnerable and Disadvantaged Pupils

The Academies Act places the same requirements on academies as maintained schools for vulnerable and disadvantaged pupils such as those with Special Educational Needs (SEN), Children Looked After, those from minority ethnic groups and at risk of exclusion. Academies also have a duty to promote social cohesion.

### School Improvement

Academies will be accountable directly to the DfE with regard to standards.

### Governance

The school's existing governing body will be responsible for establishing the academy trust and entering into a funding agreement with the DfE for the running of the academy. The trust's key responsibilities will be to:

- ensure the quality of educational provision
- challenge and monitor the performance of the academy
- manage the academy trust's finances and property
- employ staff

There is a limit on the number of governors associated with the Local Authority.

### Data

Academies will need to purchase their own licences for management information systems. B&NES has developed a data sharing protocol which will enable comprehensive comparative and transfer data to continue to be shared between the local authority and the academy.

### Health and Safety

As the employer, the governing body of an academy has overall accountability for health and safety for the school workforce and students and must ensure that the academy complies with health and safety legislation. The local authority carries no civil liability for health, safety and well being in academies. The governing body is therefore required to obtain appropriate Public and Employer's Liability Insurance.

## Early Years and Childcare

A number of primary schools have early years and childcare provision on their sites. Owing to the variety and complexity of this provision, each situation will need to be considered individually. The early years and childcare provision will not be transferred automatically

## Free schools

Free Schools are another aspect of the Government's school reform. They are all-ability, independent, state-funded schools set up by interested parties to meet local community needs. A Free School could be set up by any suitable proposer.

## **2. LEGAL CONTEXT**

### 2.1 The Academies Act

The Academies Bill was introduced into the House of Lords on 26 May 2010; it passed to the House of Commons in July and received Royal Assent on 27 July 2010. The purpose of the Academies Act is to enable more schools to become academies. It includes provisions to:

- Enable all maintained schools to apply to become academies, with schools rated "outstanding" by Ofsted being pre-approved
- Allow primary and special schools to become academies
- Give the Secretary of State the power to issue an Academy Order requiring the local authority to cease to maintain the school
- Require governing bodies of maintained schools to consult before converting to an academy (The act does not specify who should be consulted but suggests parents and the local community. There is no requirement to consult the local authority)
- Ensure that foundation and voluntary schools, with a foundation, obtain consent from that school's foundation (often a Diocesan Board of Education) before the school can apply to become an academy
- Prohibit the religious character of schools changing as a result of the conversion process
- Allow maintained schools that currently select to continue to do so as an academy
- Deem academy trusts to be exempt charities
- Ensure that a converting school will continue to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy.

### 2.2 Eligibility

#### ▪ Individual Schools

Until recently only those state-maintained primary and secondary schools which were rated by Ofsted as outstanding or "good with outstanding features" could apply to become academies, as could maintained special schools rated "outstanding. From the beginning of April 2011, the Government will now consider applications from any school, including special schools, which are performing well.

Each application will be considered on a case by case basis, with the decision being informed by various factors. The factors which will be taken into account, for mainstream schools, will be:

- The school's last three years exam results and the general performance trend.

- Comparisons, both locally and nationally, with exam performance in similar schools, for example, the percentage of pupils making expected progress in English & Maths with KS2 for primary schools and KS2-4 in secondary schools. The DfE will be looking at whether the results are above, or moving rapidly towards, the national averages in attainment and progression.
- The last Ofsted inspections, taking particular notice of the schools capacity to improve; its outcomes; and effectiveness of the leadership team.
- The DfE will also consider any other evidence of a school's performance which a school considers to be significant.

Factors that will be taken into account, for special schools, include:

- The last two Ofsted inspection grades, with focus particularly on judgements for overall effectiveness, capacity to improve and leadership and management
- Any available data on pupil attainment and progress.
- Comparison with other special schools pupil attendance and exclusions.
- The DfE also consider any additional evidence which the school feels is significant in proving their performance.

As before, the DfE will also take into consideration the financial management of the school, including any deficits.

These schools are not required to have a sponsor.

In addition, all schools can apply to convert in formal partnership with a school that is performing well.

Pupil Referral Units are governed by a different legal framework. The Government is looking to ensure they are able to apply for academy status "at the earliest possible opportunity."

- Federations and Groups of Schools

If an 'outstanding' or 'good' school with one or more outstanding features that wishes to convert is in a hard federation with another school (or number of schools), then that governing body may submit an application to convert covering all the member schools of that federation, even where some or all of the other schools are not outstanding in their own right.

Any school, regardless of their individual Ofsted ratings, can apply to join an existing Academy Trust. In addition, any group of schools can apply in partnership, as long as at least one of the member schools is 'outstanding' or 'good' with one or more outstanding features. Each application will be considered on its merits, and the Secretary of State will only approve those where he is satisfied there are appropriate accountability mechanisms in place to support the weaker schools to improve. Each school applying in partnership would need to submit a separate application and their governing body would need to pass a resolution to convert to become an academy.

### 2.3 The Importance of Teaching – The Schools White Paper 2010

The Schools White Paper was published on 23 November 2010. It sets out the Government's aspiration for all state schools to become academies. Not all schools are in a position to enjoy full Academy freedoms, but it is the Government's intention that all schools, whatever their status, are freed from bureaucracy and have their own funding, ethos and culture. The

direction of travel is towards schools collaborating with each other “on terms set by teachers not bureaucrats.”

To help schools enjoy great freedom to excel, the Government intends to:

- restore for all Academies the freedoms they originally had whilst continuing to ensure a level playing field on admissions, particularly in relation to children with SEN
- dramatically extend the Academies programme, opening it up to all schools, (see 2.2 above) using it to raise standards and narrow the attainment gap
- ensure that the lowest performing schools, attaining poorly and in an Ofsted category or not improving, are considered for conversion to become Academies to effect educational transformation
- support teachers and parents to set up new Free Schools in response to parental demand, especially in areas of deprivation
- ensure that there is support for schools increasingly to collaborate through Academy chains and multi-school trusts and federations
- ensure local authorities play a critical new role as strengthened champions of choice:
  - securing a wide range of education options for parents and families;
  - ensuring there are sufficient high-quality school places;
  - coordinating fair admissions;
  - promoting social justice by supporting vulnerable children;
  - challenging schools which fail to improve.

### **3. WHAT BEING AN ACADEMY MEANS**

Academies are publicly funded independent schools. The advantages of becoming an Academy are described by the Department for Education (DfE) as being:

- freedom from local authority control \*
- ability to set pay and conditions for all staff
- freedom from following the National Curriculum
- ability to change the lengths of terms and school days
- greater control over the school budget
- freedom to spend money the local authority currently spends on behalf of schools
- reduction in bureaucracy
- responsibility for all capital assets and their management.

*\* Local authorities do not control schools and have not done so for years. Most of the controls to which schools are subject come from central government.*

Unlike Academies in existence before last year’s election, no additional external sponsor will be required when a school which meets the DfE criteria converts to an Academy.

A requirement for schools wanting to convert is that they will be expected to commit formally to support another school to help raise that school’s performance.

## 4. IMPLICATIONS AND ISSUES

### 4.1 Finance: revenue

#### 4.1.1. Principle

Academies will receive the same level of funding per pupil as they would receive from their local authority as a maintained school. This means that the funding of academies in B&NES is dependent on the local authority's funding formula. Academies also receive top-up funding to pay for services which are no longer provided for them by the local authority. The DfE academies website states that:

“The Government is clear that becoming an academy should not bring about a financial advantage or disadvantage to a school. However, academies have greater freedom on how they use their budgets, alongside the other freedoms that they enjoy.”

#### 4.1.2 How funding is calculated

Academies will receive a General Annual Grant (GAG) from the Young People's Learning Agency (YPLA) made up of:

- Core funding – the same as the school's current budget share received from the local authority
- Local authority Central Spend Equivalent Grant (LACSEG) – additional money to cover services the local authority no longer provides.

The LACSEG will vary according to the amount the local authority holds back to pay for central services. It will be calculated by the YPLA using a formula based on pupil numbers and the amount spent by the local authority on services and costs.

#### 4.1.3 What academies will be responsible for funding themselves:

<b>Services and costs funded from a local authority's Schools Budget (recouped from the local authority Dedicated Schools Grant and included in LACSEG)</b>	<b>Services and costs funded from local authority (funding will be provided by the DfE as part of LACSEG – may be recouped from the local authority in the future)</b>
<ul style="list-style-type: none"> <li>• Behaviour support services</li> <li>• 14-16 practical learning options</li> <li>• School meals and milk</li> <li>• Assessment of free school meals eligibility</li> <li>• Repair and maintenance of kitchens</li> <li>• Museum and library services</li> <li>• Licences and subscriptions</li> <li>• Central staff costs</li> <li>• Costs of certain employment terminations.</li> </ul>	<ul style="list-style-type: none"> <li>• Costs of a local authority's statutory/regulatory duties</li> <li>• Asset management costs</li> <li>• School improvement services</li> <li>• Monitoring national curriculum assessment</li> <li>• Education welfare service</li> <li>• Pupils support e.g. clothing grants</li> <li>• Music services</li> <li>• Visual and performing arts services</li> <li>• Outdoor education services</li> <li>• Certain redundancy and early retirement costs</li> </ul>

#### 4.1.4 What local authorities will continue to be responsible for funding:

The local authority will retain funding for the following services which it has to continue to provide:

- Home to school transport (including SEN)
- Education psychology, SEN statementing and assessment
- Monitoring of SEN provision, parent partnerships, etc

- Prosecution of parents for non-attendance
- Individually assigned SEN resources for pupils with rare conditions needing expensive tailored provision (this is usually a top-up to formula funding)
- Provision of pupil referral units or education otherwise for a pupil who is no longer registered at an academy.

#### 4.1.5 SEN funding

A grant will be paid to the academy based on the numbers of children who are registered as School Action and School Action Plus attending the academy. ( The funding provided to all schools for pupils with SEN may change as a result of the proposals made in the recent Green Paper on SEN and disability: support and aspiration: A new approach to special educational needs and disability).

Some authorities retain little or no SEN funding centrally, choosing to delegate this funding for services to schools through the formula funding (budget share). For academies in these local authority areas, the SEN element of the central spend equivalent for these authorities will be much lower than for academies in other authorities, as the funds will already be included in their budget share.

The majority of SEN funding in B&NES is through the formula, resources for statemented pupils will continue to be funded by the local authority through the matrix allocations.

Funding for children with statements will continue to be paid as now through the local authority. The local authority will have a legal duty to ensure that statementing happens and will carry this out by paying the individually assigned funding and monitoring the arrangements made by the academy. B&NES is a low statementing authority.

Additionally. Resources allocated to schools through the Mainstream Additional Funding route will continue to be paid to academies as the resources will not be allocated to academies through the General Annual Grant process.

#### 4.1.6 VAT

Academies will become liable for VAT and will be unable to take advantage of the local authority's VAT reclaim facility.

Until now, academies have received grant funding from the DfE to meet the additional VAT they incur. This grant is based on historic spend information and covers recurrent funding. From next year, and subject to the necessary legislation, academies' non-business VAT costs will be reimbursed by Her Majesty's Revenue and Customs (HMRC) through a refund scheme similar to the scheme that applies to local authority maintained schools.

#### 4.1.7 Deficits, surpluses and carry forwards

New academies will inherit the closing financial balance of the predecessor maintained school. This will apply whether the balance is a surplus or a deficit. In the case of a surplus, the local authority will pay an equivalent amount to the academy. In the case of a deficit, the local authority will be paid an equivalent sum so that it can write off the deficit in its own accounts with no adverse effect on other schools in the local authority. Academies will not be able to run a deficit without remedial action, i.e. an agreed repayment plan with the YPLA.

At present schools can carry forward balances of 5% or 8% (secondary and primary/special respectively) uncommitted revenue and unlimited capital from one financial year to the next. Academies will only be able to carry forward 2% of revenue and 10% of capital budgets.

#### 4.1.8 Ready Reckoner

The DfE academies website contains a ready reckoner to enable schools to calculate the amount of funding they would receive as an academy and compare this with their current funding. Concerns have been expressed that the ready reckoner is unfair because it uses gross spend in some areas, and is derived from the Section 52 return which was devised for other purposes. The DfE is setting up a Technical Group to look at future academy funding and so it would be reasonable to assume that the ready reckoner only applies to funding in the current financial year.

<http://media.education.gov.uk/assets/files/xls/a/academy%20funding%20ready%20reckoner.xls>

#### 4.1.9 Accounting requirements

A school becoming an academy will need to set up an Academy Trust, a charitable company limited by guarantee. As an Academy Trust the accounting requirements will be very different. They include:

- Opening a new bank account to receive funding from the YPLA
- Production of annual accounts, audited by a qualified external auditor
- Financial year which runs from September to August (although there is an option to retain the current financial year)
- A financial system which complies with Companies Act accounting requirements
- Keeping financial records as set out in the Academy Financial Handbook
- Responsibility for managing own cash flow
- No access to capital and revenue loans from the local authority. An academy may not borrow funds without specific approval from the Secretary of State.

#### 4.1.10 Costs of conversion

Schools which have applied to convert to academy status can claim a grant of £25,000 as a contribution towards the costs of this process. The costs incurred by a school are expected to be higher, with the balance met from reserves. No additional funding is available to the local authority to cover the additional work and costs involved.

#### 4.1.11 Funding agreement

All academies established by the Secretary of State enter into a contract (the funding agreement) with a charitable company, which is often referred to as the academy trust. The funding agreement provides the framework within which the academy must operate, and a model funding agreement is available on the DfE website: [www.education.gov.uk/academies](http://www.education.gov.uk/academies) The ongoing funding of the academy trust is contingent upon the conditions in its funding agreement being met. The grant conditions cover a wide range of requirements such as community cohesion, assessment, curriculum, admissions, exclusions, teachers pay and conditions, SEN provision, governance, conduct, CRB checks, designated teacher for children in care, school meals and charging.

#### 4.1.12 Impact on other schools

B&NES Council's total schools budget (funded by the Dedicated Schools Grant) will be reduced to meet the cost of funds transferred to academies for services currently funded via the Dedicated Schools Grant (DSG).

It is important that the funding of academies should not be to the detriment of other schools in B&NES. In addition, the local authority currently has an important role, via the Schools Forum, in assuring the fair allocation of resources between schools and this should continue.

## 4.2 Finance: capital

Academy status does not automatically mean capital investment. The DfE has not taken any decisions on future capital programmes pending the outcomes of the review of capital funding in the Spring term 2011.

Academies will receive no capital funding direct from B&NES Council. They will be entirely responsible for all their own capital costs and major refurbishments, including health and safety, although they may seek grant aid from the DfE. They will also have to meet the cost of preparing grant bids and managing building contracts.

B&NES Council currently arranges capital loans to help schools achieve their capital ambitions. This facility will not be available to academies.

## 4.3 Traded Services

### 4.3.1 Services available to academies

Services can be divided into 4 categories:

- Services which the local authority has a statutory responsibility to provide (see paragraph 5.1.4 above)
- Traded services currently bought back by schools (e.g. finance, HR and payroll, SIMS support, cleaning, catering, governor services and admissions)
- Traded services no longer available to academies (possibly legal services owing to a conflict of interest)
- Core services which are currently provided at no direct cost to schools (e.g. school improvement, Children Missing Education Officers (CMEOs))

B&NES Council will continue to provide services to academies, wherever possible, because these services could become vulnerable if not bought back.

Most traded services currently operate on a cost recovery basis but not necessarily at individual school level. Services are reviewing or establishing pricing strategies to ensure costs reflect:

- The service specification
- The actual cost of delivery including all overheads and insurance

The services on offer to academies and the associated costs will be set out in a buyers' guide available to schools via Merlin from June 2011.

## 4.4 HR Issues

### 4.4.1 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

An academy is a separate legal entity to which existing staff are transferred under TUPE. This means that they are entitled to transfer under their current terms and conditions of employment.

Transferred employees also have protected employment rights under TUPE. When schools convert to academy status, teachers and support staff will retain their current contractual rights. This means that the statutory School Teachers' Pay and Conditions Document (STPCD) will be incorporated into their contracts, as will the Conditions of service for school teachers in England and Wales ('Burgundy Book') and any local agreements between the local authority and the recognised teacher unions. Similarly, whatever arrangements currently apply to school support staff will transfer (whether this is based on the national agreement

negotiated within the National Joint Council for local government services in respect of staff in community schools, or other local arrangements which apply to staff in foundation schools and voluntary aided schools). For newly-appointed staff, however, the academy will be able to determine new pay and conditions arrangements.

Staff are also entitled under TUPE to be provided with certain written information in relation to the transfer of their employment by their employer.

The employer is also responsible for consulting with staff regarding the transfer. No minimum period for consultation is specified in the Academies Act but it must allow sufficient time for meaningful consultation with staff. For voluntary aided and foundation schools the employer is the existing governing body. For voluntary controlled and community schools it is the local authority.

The employer must carry out a due diligence exercise for all transferring staff to verify information on contracts, terms and conditions, pension deficits etc before passing this information to the academy trust. It should be noted that where the local authority is the employer this results in a significant additional workload with challenging deadlines for HR teams.

Once the academy is open, the academy trust may be able to consult with staff and Trades Unions on limited changes to terms and conditions, for example, to vary the length of the school day or operate over different term times.

#### 4.4.2 Academies' responsibilities as employers

- HR, Payroll and Legal

The governing body of the Academy Trust becomes the employer and is therefore be responsible for managing staff and any liabilities arising from employment matters. The local authority will no longer provide indemnity so the governing body will need to arrange employers' liability insurance and will also need to secure professional HR and legal advice to ensure compliance with current employment legislation. HR and Payroll services will be available from the local authority for academies to buy (see section on traded services above) but the local authority's legal services are not be available owing to the potential for conflict of interest.

- Pensions

As the employer the academy will be responsible for making contributions to the Teachers' Pension Scheme (TPS) and for all other employers' administrative responsibilities relating to the teachers' pension regulations.

Non-teaching staff fall within the Local Government Pension Scheme (LGPS). As the employer, the academy will be responsible for making the employer's contribution. The contribution rate may differ from that paid by the local authority. Unlike the TPS, there are a number of component schemes operating within the LGPS, with the local authority acting as pension administrator.

Academies will be directly responsible for any pension costs associated with early retirement, efficiency or redundancy cases.

Academies will be responsible for any charges that apply to the conversion from a Local Authority employer to an admitted body employer. The charges will relate to the actuarial assessment of the individual school fund.

#### 4.4.3 Trades Unions position

Teaching Unions oppose the extension of the academies programme. They will want to be assured that all employers' responsibilities in respect of staff transfers and more general consultation requirements are met.

### **4.5 Transfer of local land and buildings**

When a school becomes an academy, the school's land and buildings transfer to the Academy Trust. The governing body is responsible for managing the land and property. They will be fully responsible for ensuring that the buildings and infrastructure are maintained in a safe condition and that all legal and statutory requirements are met.

Community school land is owned by the local authority and will be transferred to the Academy Trust on a 125 year lease. For foundation schools which hold public land there are two options:

- The land could be transferred from the foundation to the academy trust or
- It could be transferred back to the local authority before being transferred to the Academy Trust on a 125 year lease.

Local land owned by the diocese is usually wholly private land and it will be for the free holder to decide how and if the land should be held by the academy trust.

There may be a number of reasons why it is not possible to complete negotiations on a lease before the proposed opening date for the Academy. These could include issues associated with how the existing school was procured, or if the land and buildings are in multiple ownership, or if there are additional facilities such as leisure centres on school sites. In these circumstances, the DfE has proposed that, if all parties agree, a Licence to Occupy (also known as Tenancy at Will) can be used to enable the Academy to open on the preferred date. This is intended as a short term solution until the full lease can be agreed.

Schools will need to instruct their own lawyers to deal with the legal arrangements for the land transfer. They should also consider issues concerning facilities such as sure start centres; leisure centres and caretakers' houses which might be located on the school site.

### **4.6 Transfer of staff, contracts and non fixed assets**

The DfE has also provided a model transfer agreement to deal with the transfer of staff, contracts and assets, which needs to be signed before the schools can open as academies. However, B&NES Legal Services and the solicitors acting for the 2 schools who have converted to academy status have all advised that contrary to the view of the DfE, it is not simply a matter of "filling in the blanks". Considerable residual risks could fall to the Council and governors. These properly needed to be understood and so far as possible mitigated.

### **4.7 Church School Conversion**

The Department for Education, the National Society and the Catholic Education Service have agreed a set of model documentation for Church Schools converting to Academy status. This includes a model Memorandum and Articles of Association, a model Funding Agreement and a Supplemental Agreement which sets out the DfE's underpinning relationship with the dioceses.

## **4.8 School Organisation**

### **4.8.1 Admissions**

When a school becomes an academy, the Academy Trust becomes the admissions authority. For Foundation and Voluntary Aided schools this will mean little change, but for Community and Voluntary Controlled schools, the academy will need to determine its own admissions criteria and ensure that its admission arrangements comply with the School Admissions Code. Local authorities continue to have overall responsibility for ensuring that there are sufficient places to meet demand locally and all academies are required to participate in the local coordinated admission schemes. Applications for school places are made to the local authority, who will notify the academy of the application.

The Academy Trust will also be responsible for ensuring that appropriate appeal arrangements are in place, including appointing and running appeals panels. When schools convert to academy status, existing admissions appeals will still need to be heard by an independent appeals panel.

Academies will not be able to introduce academic selection. Converting schools which already select all or some of their pupils on the basis of ability will be able to continue to do so. Faith based schools which currently admit pupils or a proportion of them based on their religion will be able to retain these arrangements.

Schools converting to an academy will retain the current admissions arrangements on conversion. If the governing body of an academy wishes to change these arrangements, it would need to consult with the local authority, all other admissions authorities both within the local authority and in neighbouring counties, the Admission Forum, relevant parents' and other groups with an interest in the local community.

Admission arrangements primary and secondary schools for September 2011 are finalised by April 2010 and offers of places for September 2011 made in March 2011 so new academies will have to honour any offers made by their predecessor schools.

Admissions to a special academy will be by way of a statement of special educational needs. Parents may make representations for a placement at a special academy.

The local authority responsible for making the statement of special educational needs retains responsibility for deciding whether to name the special academy in the statement, based on the individual needs of the child and any representations made by parents. A local authority is required to consult with the special academy before naming it in a child's statement. Once the special academy is named in a child's statement, the academy is under a statutory duty to admit the child.

### **4.8.2 Planning and sufficiency of places**

Local authorities will still have overall responsibility for ensuring that there are sufficient places to meet demand locally. Where individual academies make a request to the Secretary of State to expand their pupil numbers and/or age range, this will only be done following local consultation. The decision taken will be informed by the views of the local authority, as the commissioner of pupil places.

### **4.8.3 Transport**

Local authorities retain responsibility for home to school transport, including pupils with SEN. If Academies decide to change the length of the school day, the local authority is seeking clarification from the DfE about who will be responsible for picking up any additional costs arising from changes which may need to be made to the transport contract as a result.

Maintained special schools wishing to convert to academy status will not be able to change their characteristics, including the number of places for which they are funded and the types of special educational needs they provide for, as part of the conversion process. The number of pupil places for which the academy will be funded will be based on the number of places for which the special school is funded currently. Likewise, the types of special educational needs the special academy will provide for will be based on the types of needs provided for currently by the special school.

There will be scope to change the characteristics of the special academy in the future, so as to ensure that provision for children with special educational needs or disabilities remains flexible and responsive to local need and parent choice. In such instances, the Young People's Learning Agency would consider the case for the change(s), with the final decision resting with the Secretary of State.

#### **4.9 Vulnerable Pupils and Disadvantaged Pupils**

The Academies Act places the same requirements on academies as maintained schools for vulnerable and disadvantaged pupils such as those with Special Educational Needs (SEN), Children Looked After, those from minority ethnic groups and at risk of exclusion. Academies also have a duty to promote social cohesion.

##### 4.9.1 Special Educational Needs (SEN)

Academies are already required to meet any special needs of pupils, have regard to the SEN Code of Practice and to have an SEN policy. In addition, the Academies Act requires them to:

- Inform parents that their child has SEN and explain the provision being made
- Admit a child to the school if the school is named in the statement, subject to the right of appeal to the Secretary of State
- Appoint a Special Educational Needs Coordinator (SENCO) who is a qualified teacher and ensure any new SENCO undertakes required training.

These requirements are in line with part 4 of the 1996 Education Act and regulations, which now effectively apply to all schools.

Academies are required to participate in local Fair Access Protocol arrangements which ensure that hard to place pupils (including those with special needs but without a statement) are admitted equitably to local schools. This is the case even if the school is already full.

If a school which is converting contains any existing SEN provision, for example, a separate SEN unit, the academy would be expected to maintain it following negotiations with the local authority.

##### 4.9.2 Children Looked After

Academies will have to comply with the Code of Practice governing admission arrangements in the same way as other categories of maintained school. This means that they must give priority to children looked after in their normal admissions round. The local authority has the power to direct an admission authority (in this case an academy) to admit a child looked after to a school at any time of the school year, even when the academy is full.

Following amendments during the passage through parliament, the Academies Act includes a requirement for all academies to have a designated teacher for looked after children.

### 4.9.3 Children from minority ethnic groups

Academies will have to comply with the code of practice governing admission arrangements in the same way as other categories of maintained school. This applies to children and young people learning English as an additional language arriving from abroad at any point in the statutory school age range and also to mobile groups such as Gypsy Roma Travellers.

### 4.9.4 Exclusions

Academies are required by their funding agreement to follow the law and guidance on exclusions as if they were local authority schools. This includes reporting exclusions to the local authority. Academies do not have to consult the local authority before deciding to exclude a pupil and can arrange their own independent appeals panel.

The local authority has a key advocacy role for children with SEN, children looked after, excluded pupils, children at risk of offending, pupils from minority ethnic groups including travellers and other disadvantaged groups.

## **4.10 Equalities**

The local authority has a statutory duty to promote equality of opportunity (for example, race, gender and disability equality) which includes requirements to remove/minimise disadvantage, meet specific needs and promote participation. Academies, in common with other schools, are also required to promote equality and community cohesion, for example, through monitoring the attainment, progress, exclusions and attendance of all groups of pupils, and taking action to address disadvantage.

## **4.11 School Improvement**

### 4.11.1 Standards

The governing body of an academy will be responsible for:

- Ensuring the quality of educational provision
- Challenging and monitoring the performance of the academy.

Current DfE guidance suggests that academies will be required to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to local authority schools.

Academies are independent schools and as such are directly accountable to the DfE with regard to standards. B&NES Council would wish to continue to work with academies to raise standards.

The requirement for all schools to have an externally appointed School Improvement Partner (SIP) will be ended from September 2011 (this already applies to outstanding schools converting to Academy status). Schools below the floor standards will have an externally appointed person who will fulfil a SIP/Challenge adviser type role.

### 4.11.2 Ofsted

The Secretary of State has announced that schools previously judged outstanding will no longer be subject to regular inspection. This doesn't mean they will never be inspected. Some good schools are inspected three years after their previous inspection as part of an annual sample. Where a good school is not selected as part of the annual sample, HMI undertake an interim assessment and decide whether a school needs an inspection in the coming months or whether it can be deferred.

The performance of all schools will continue to be monitored and any signs giving cause for concern could trigger an inspection. Subject to legislation, all schools will be able to request an Ofsted inspection from Autumn 2011.

## **4.12 Curriculum**

### 4.12.1 National Curriculum

Academies do not need to follow the National Curriculum. However, they will need to provide a broad and balanced curriculum that includes English, mathematics, science and religious education. Secondary schools will be required to have a specialism.

The governing body will be accountable directly to the DfE for ensuring that children are taught an appropriate curriculum.

### 4.12.2 14-19 Curriculum

There are no special statutory requirements for academy schools in relation to the 14-19 curriculum. B&NES has developed an effective local 14-19 partnership structure. It is anticipated that secondary academies would wish to continue to be a part of this arrangement.

### 4.12.3 Early Years Foundation Stage framework

There will continue to be a statutory requirement for early years and childcare providers in relation to legal requirements of the Early Years Foundation Stage Framework. The EYFS is currently under review.

## **4.13 Governance**

Governance is not covered in the Academies Act and will be set out in the academy's Articles of Association.

### 4.13.1 Responsibilities of the governing body

The governing body will be responsible for establishing the academy trust. The trust will then enter into a funding agreement with the Secretary of State for the running of the academy. The academy trust (made up of members) has a strategic role in running the academy and will be responsible for appointing the governors (also known as directors or trustees) to the governing body of the academy. It is the governing body that manages the academy on behalf of the members of the academy trust. The key responsibilities are to

- ensure the quality of educational provision
- challenge and monitor the performance of the academy
- manage the academy trust's finances and property
- employ staff.
- to comply with (and ensure that the Academy Trust complies with) both charity and company law;
- to manage and comply with the obligations in the Funding Agreement;
- to maintain its faith ethos where the school has a religious designation.

Governors will be directors of the company constituted under the Memorandum and Articles of the Academy Trust and will need to comply with company law. This will include a requirement to prepare annual accounts and an annual report which will be submitted to the Secretary of State and posted on the Academy web-site together with a list of governors and the articles of association and the funding agreement.

The DfE does not believe that the additional responsibilities for governors of academies will make it harder to find people to volunteer to become governors.

#### 4.13.2. Membership of the governing body

It will be for the members of the existing governing body to decide who will become members and who will become governors. It is possible to be both.

There is no maximum limit to the membership of the academy trust but the DfE would expect it to comprise at least 3 people: one appointed by the Secretary of State (should he choose to appoint); the Chair of the Governing Body and any additional members, if agreed unanimously by the members of the trust.

There are some minimum requirements. These are that an academy must have at least two parent governors, no more than a third of governors can be academy staff, and there can be no more than one local authority governor. Other than these core requirements, the legislation allows the academy trust to appoint a governing body that is appropriate for their school. Headteachers or principals will be ex-officio governors and there is provision for up to three co-opted governors (appointed by the governing body). There is also provision for the Secretary of State to appoint additional governors in certain circumstances.

For voluntary and foundation schools converting to academy status, the foundation or trust may appoint the majority of governors. If the Diocese of Bath and Wells intends to appoint the majority of governors on the governing bodies of voluntary controlled (VC) schools which convert to academies, this will change the profile of these governing bodies. Currently VC schools have 25% or fewer foundation members. All of the Roman Catholic schools are voluntary aided so they already have a majority of foundation governors.

On converting to an academy, the current governing body establishes an academy trust. This is a charitable company limited by guarantee responsible for the strategic oversight of the academy with control over the school land and other assets. The responsibilities will be similar to those in most maintained schools. The governing body can continue to delegate functions to committees, the principal or any other holder of an executive office.

#### 4.13.3. Liability

Under the articles of association, the academy trust is required to provide indemnity insurance to cover the liability of its governors.

Academies are charitable companies limited by guarantee. This means that if the academy were to go bankrupt, the members of the Trust Body could be held liable to the amount set out in the Articles of Association. The most common level of liability is set out as £10 per trustee. However, anyone acting as a director of the company (in most cases the governors will be both trustees and directors) have unlimited liability for their own defaults. For example, if a director breaches fiduciary duties her/his liability to the company is for the entire loss caused. A director is also, in some instances, predominantly related to health and safety, personally liable for fines imposed for breaches of regulations.

A director is not liable for any debts or liabilities providing s/he acts properly and within the powers and authority conferred on her/him. If s/he acts outside those parameters then a director can be made liable, without limit, for loss caused to the company and potentially to third parties.

Most companies take out liability insurance to protect its trustees against inadvertent breaches of regulations. The National Governors' Association (NGA) strongly recommends that any governing body converting to academy status should take out such insurance.

## **4.14 Collaborative working**

### 4.14.1 Between schools

The DfE expects schools which are performing well who wish to convert to support at least one weaker school and for this support to be focused on having a measurable impact on standards.

Groups of schools have been able to apply to be an academy, providing at least one is outstanding or good with outstanding features, from the 17<sup>th</sup> November 2010. Federations may choose this route.

The DfE will ensure that the very lowest performing schools, attaining poorly and in an Ofsted category or not improving, are partnered with a strong sponsor or outstanding school and converted to become academies to effect educational transformation.

### 4.14.2 Between schools and the local authority

A positive working relationship is enjoyed between officers of the local authority and school leaders and governors, supported through the effective BASCL and Primary Council and through other groups, for example, the Schools Forum. We would wish to sustain these positive relationships by working in partnership with the Academies.

There will be an academy representative of B&NES academies on the Schools Forum. For outstanding and good schools with outstanding features, an essential part of converting to an academy is agreeing in principle to support another school to raise standards. The process provides headteachers and governors with the flexibility to decide the exact nature of this support.

Local authorities will be expected to identify and work with sponsors who will take over weaker schools and transform them into Academies.

## **4.15 Data**

### 4.15.1 Use of existing systems

Academies will need to purchase new licences for management information systems such as SIMS. New databases have been set up and all the data from the existing system transferred.

### 4.15.2 Data sharing

The Management Information Team currently provides a data and performance service. B&NES needs accurate and timely data from schools for a number of purposes including safeguarding in relation to children missing from education. Academies will not have to provide their data to the local authority automatically, although they will have to respond to FOI requests. If their data is not included, this would result in comparative data which is produced being incomplete. A data sharing protocol has been developed to enable the continued sharing of information and to clarify the data services to be provided.

The DfE will publish 'families of schools' documents for all regions from next year. This data will group schools into 'families' of 10 to 15 schools with similar intakes on the basis of prior attainment and socio-economic factors in order that headteachers and teachers can use the data to compare their performance with similar schools in the region.

## **4.16 Health and Safety**

As the employer, the governing body of an academy has overall accountability for health and safety for the school workforce and students. In particular, the governing body must ensure that the academy complies with health and safety legislation. The academy is required by law to appoint one or more competent persons to help them comply.

As premises owner, the governing body will be responsible for all site related matters and maintenance including:

- The physical condition of the building
- Asbestos management
- Legionella management
- Transport management
- Security.

The local authority carries no civil liability for health, safety and well being in academies. The governing body is therefore required to obtain appropriate Public and Employer's Liability Insurance.

## **5 SUPPORT FROM THE DEPARTMENT OF EDUCATION (DfE)**

There are a number of documents and forms which are available from the DfE Academies website at this address: [www.education.gov.uk/academies](http://www.education.gov.uk/academies)

The Department for Education (DfE) will provide every school that registers an interest in converting with a named contact, who will work with the school to help them follow the process.

The DfE has appointed a Project Lead for Bath and North East Somerset from the New Academies Division of the DfE. Their role is to provide support and advice to the schools which are converting to academy status. They can also offer advice to the local authority.

## **6 FREE SCHOOLS**

Free Schools are another aspect of the Government's reform of schools which was set out in the Schools White Paper in 2010. They are all-ability, independent, state-funded schools set up by interested parties to meet local community needs. Free Schools are academies but unlike other academies they can be located in a buildings other than existing schools, for example, appropriate community space.

A Free School could be set up by any suitable proposer, where there is evidence of parental demand, for example, through a petition or declaration from interested parents and a clear and compelling business case. Proposers could include one or more of the following groups: teachers; charities; academy sponsors; universities; independent schools; community and faith groups; parents; businesses (on a not-for-profit basis). Groups running Free Schools cannot make a profit.

Similar to all other academies, Free Schools will be funded on a comparable basis to other state-funded schools. They will be subject to the same Ofsted inspections as all state schools and will be expected to maintain the same rigorous standards.

Free Schools do have some additional freedoms to other academies. For example, teachers in Free Schools will not necessarily need to have Qualified Teacher Status.

The admissions arrangements of any Free School must be fair and transparent. Free Schools are expected to be open to pupils of all abilities from the area and cannot be academically selective. Free Schools will need to take part in their local coordinated admissions process, and so parents apply for places for their child in the same way as any other local school.

No application was made to set up a free school in Bath and North East Somerset for 2011.

Applications to establish a Free School in 2012 must have been submitted to the DfE by Wednesday 1 June 2011 in order for it to be considered. Details on how to submit an application form are available on the DfE website. The DfE will assess applications in three ways:

- against the minimum criteria set out in the guidance
- against other Free School applications; and
- against cost considerations.

Under current legislation, it is not possible to establish a Free School solely catering for pupils aged 16-19. Subject to Parliamentary approval, the Education Bill will make that possible, and will enable the Secretary of State to approve applications for 16-19 Free Schools to open in September 2012.

Advice for those wishing to set up a Free School within their area is available from the New Schools Network ([www.newschoolnetwork.org](http://www.newschoolnetwork.org)).

Further information on the government's policy on Free Schools and details of the application process can be found on [www.education.gov.uk/freeschools](http://www.education.gov.uk/freeschools)