

Questions & Answers

**Pupil Referral Units
conversion to Alternative
Provision Academies**

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PUPIL REFERRAL UNIT CONVERSION TO ACADEMY STATUS

Why are you allowing PRUs to convert to Academy status?

Children and young people being educated in alternative provision are some of the most vulnerable in society. They include excluded pupils, but around half of the pupils are there for other reasons: for example those who have been bullied and are too scared to attend school; children who are ill; and school-age mothers. Large numbers of pupils in PRUs do not go on to achieve meaningful qualifications, and some go on to cause serious problems for themselves and their communities.

International studies suggest a correlation between increased levels of school autonomy and high standards in education. Evidence both from exam results and independent reports shows that the autonomy enjoyed by mainstream Academies is leading to an improvement in standards. Independent status and the additional freedoms and flexibilities gained through converting to Academy status are crucial in enabling Academies to succeed. Strong, ambitious leadership, effective management, high aspirations for all pupils and good teaching are essential to innovate and raise standards. There is every reason to believe that greater autonomy, with decisions taken by the professionals on the ground, will lead to similar improvements for pupils in the alternative provision (AP) sector.

The *Importance of Teaching White Paper* set out our vision for improving AP – including allowing PRUs to access the enhanced autonomy that Academy status can offer - autonomy to help raise standards within the PRU and across the whole AP sector. Higher standards in AP will in turn provide a source of local expertise to help mainstream schools improve their practice and the outcomes for some of the most vulnerable children in our society.

Many PRUs have expressed an interest in operating independently from the local authority. As Academies, they would have greater freedom to develop wider services to provide for schools and children, both locally and further afield. AP Academies will have a key role to play in shaping the strategic direction of AP in their area, working closely with all commissioners (schools and local authorities) and other AP providers, playing a leading role in driving up quality and spreading best practice. Their arrival will increase diversity and allow schools and local authorities to choose the best provision for their pupils.

The ultimate goal of this work must be to help these young people achieve all that they are capable of in their studies, and prepare them to be effective members of society.

We already deliver high quality provision so what would be the benefits of becoming an AP Academy?

Academy status will give education professionals working in AP greater scope to innovate and raise standards for the pupils in their PRUs, although remaining clearly accountable for the outcomes they deliver. AP Academies will enjoy a number of benefits over maintained PRUs, which include:

- freedom from local authority control
- greater control of their budget
- the ability to set their own pay and conditions for staff
- the ability to change the lengths of terms and school days to benefit pupils
- decisions on how to deploy resources to gain maximum benefit for pupils
- freedom to develop new types of support to pupils

How would becoming an AP Academy benefit individual pupils?

The freedoms gained by becoming an AP Academy will allow converting PRUs to develop their own provision and increase and diversify the range of AP provision in the area. As with other Academies, AP Academy leaders will use their professional judgement to deploy resources to maximise the benefits that accrue to their pupils.

A PRU that chooses to convert to an Academy remains state funded but receives its full budget directly from central government (i.e. in addition to a budget that replicates what it currently receives, it receives a funding for services previously provided by the local authority) and is governed through an Academy Trust. It has to pay for any additional services it requires that are no longer provided by the local authority. Whilst local authority services are available as a buy back option for Academies, high quality cost effective provision can also be sourced elsewhere.

From a local authority's point of view, AP Academies will diversify the range of AP providers they may choose, enabling them to develop their role as a commissioner, effectively ensuring that pupils are directed to the best options available to suit their particular needs.

Do converting PRUs have to support other local schools? Can this be through outreach or will there be another type of support?

Working with other schools in the area will be a key role of AP Academies - without close collaboration, they will not be able to provide the services to pupils' schools that they are set up to provide. How AP Academies do this will depend on the professional judgement of their staff, and not on local or central diktat.

ELIGIBILITY

Can any PRU apply to convert?

All PRUs that can demonstrate that they are performing well (see criteria below) can apply to become AP Academies. We recognise that for PRUs, looking at exam results it is not always the most meaningful indicator of quality. We have therefore developed a set of criteria to take account of wider factors.

The performing well criteria are as follows:

- Evidence of strong and improving pupil attainment and progress and evidence of other achievements that support the learning of pupils in AP, such as strong behaviour management, high attendance (overall and persistent) and limited exclusions.
- Evidence of where the pupil goes after their time in AP and of systems being in place to enable reintegration into suitable mainstream education where appropriate.
- Evidence of capacity to improve outcomes and leadership and management capacity and preparedness to take on new financial management responsibilities.
- Any other evidence which the PRU may put forward in order to demonstrate that it is performing well, including evidence of demand for places.

PRUs may apply to convert to Academy status on their own or in a partnership arrangement with others.

How does a PRU demonstrate the “performing well” criteria?

Evidence of meeting these criteria can be demonstrated by a range of indicators including: Ofsted report; attainment and progression data; evidence of tailored approaches to individual pupils, strong leadership and capacity, systems for sharing information; and success in reintegrating pupils into mainstream education where appropriate.

Can a PRU with no full-time pupils convert?

Yes. An AP Academy may offer both full-time and / or part-time provision.

What role does the local authority have in the decision to convert a PRU?

A PRU may convert as long as the majority of the management committee have voted in favour of conversion to AP Academy status. However, as the local authority will be a major commissioner of the AP Academy in the future, we would encourage the management committee to discuss the decision with the local authority. In return we would also expect the local authority to support the PRU when converting, providing them with any information they request relating to budgets and staffing.

Does a management committee of a PRU need a unanimous decision in favour of converting?

No. As is the case with the governing body of a maintained school, a majority decision of the management committee will be needed for a PRU to convert to AP Academy status.

CONVERSION PROCESS

How do PRUs register their interest in becoming an Academy?

PRUs should visit the DfE website to complete the online registration form. The PRU will then be assigned with a named DfE project lead and will be contacted to discuss next steps. The DfE project lead will be the PRU's single point of contact through the process.

PRUs that register an interest with the view to apply will need to begin preparatory work to collate information that demonstrates how they meet the performing well criteria. Evidence of performing well can include: recent Ofsted report, attainment and progression data, evidence of tailored approaches to individual pupils, strong leadership and capacity, systems for sharing information and for reintegrating pupils into mainstream education where appropriate.

What is the earliest date that PRUs can convert?

The earliest date that PRUs may open as AP Academies is 1 September 2012. The Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012 enable the management committee (MC) of a PRU to apply for an Academy Order to become an AP Academy. PRUs have been able to register an interest with the Department and start to work on their conversion since 27 February 2012.

How long will conversion take?

Depending on the individual circumstances of the PRU, the process will take around 6 months – some may be quicker, others may take longer.

What are the key steps involved in converting?

The steps are all explained in the guidance on the DfE website, but as a minimum, all PRUs must:

- have agreement to convert from their management committee;
- hold a consultation with parents, teachers, pupils and the community;
- establish an Academy Trust as a company by registering with Companies House;
- establish a new bank account to enable the Academy to receive its funding;
- sign a funding agreement with the Secretary of State;
- transfer staff to the new Academy;
- make arrangements for the continued use of land and premises;
- purchase insurance; and
- transfer, renew or procure new contracts, licences.

These steps are set out in the guidance document and in the process timeline available at the section of the DfE website (www.education.gov.uk) relating to becoming an Academy. Your DfE project lead will be happy to talk you through these when you submit a PRU Application Form.

What is the role of the local authority during conversion?

As with the conversion of mainstream schools, we would expect the PRU and the

local authority to work together during the conversion process. For example, as part of the conversion process, the local authority will conduct a TUPE consultation, confirm a PRU's budgets and transfer land and assets to the Academy Trust.

What will the role of the local authority be in relation to the AP Academy?

Local authorities will retain their "section 19" duties (the duty to arrange suitable full-time education, unless a child's health makes this inappropriate, for any child of school age who, for reasons of exclusion, illness or otherwise, would not receive suitable education without such provision). The relationship with the converted PRU will change in that the local authority role will move from being the direct provider of services to commissioning them. In the longer term, we are trialling a system under which schools rather than local authorities would take responsibility for arranging AP for permanently excluded pupils.

What support can PRUs expect from the DfE as they go through the process?

Each converting PRU will be assigned a DfE project lead to work with them through the conversion process. Financially, once the Academy Trust is set up, it will be able to apply for a £25k grant which will be available to use towards the costs (including legal costs) associated with conversion.

The Academy Trust and management committee will need to work together to secure its own expert advice in relation to finance, HR, and legal aspects. It is recommended that, as for mainstream converters, legal advice is obtained to help them resolve any conversion issues. The PRU Application Form should help identify areas of difficulties from the outset to ensure that conversion proceeds as smoothly as possible.

What is a funding agreement?

The funding agreement is a contract between the Academy Trust and DfE. As well as funding arrangements, it also governs the Academy Trust where legislation does not. The funding agreement specifies how the Academy is run, what duties it is under and what powers the Secretary of State has over the Academy. In many places the funding agreement makes specific reference to existing legislation to ensure that Academies operate in a similar fashion to other state-funded schools and that there is parity between Academies and the maintained sector.

Will the DfE project lead continue to provide support to a PRU after it converts?

Once a PRU converts, responsibility for the AP Academy will pass to the Education Funding Agency. A handbook is being prepared for all new Academies to assist them in the first year of operation.

FUNDING

How will AP Academies be funded?

A consultation on school funding was published in July 2011, and set out a range of proposals for reforming funding arrangements for high needs pupils, which includes pupils placed in AP settings. In March 2012, the Government's response to the consultation on school funding, '*School Funding Reform: Next steps towards a fairer system*' has now been published. For further information please see the DfE's consultation website at www.education.gov.uk/consultation. This document sets out new funding arrangements which will apply to all state-funded AP providers (PRUs and AP Academies).

How will PRUs that provide education for pupils in hospital be funded?

The '*School Funding Reform: Next steps towards a fairer system*' document explains that the Department is currently working with the hospital school sector in order to develop a sustainable, non-bureaucratic way of funding hospital education, with further details available in due course. PRUs that provide hospital school education, or who are educating pupils that have been referred to them through the health authority can still register an interest with the Department by going to the section of the DfE website (www.education.gov.uk) relating to becoming an Academy. Upon registration, a project lead will be assigned to them to talk them through their conversion and discuss any issues.

What are the principles of these new funding arrangements?

The new approach (place-plus) will introduce a more pupil-led set of funding arrangements, while balancing this by providing AP settings with a base level of funding to offer some stability of funding. We proposed that a base level of funding (£8,000) would be allocated to providers on the basis of an agreed number of planned places. Funding above this level would come from the commissioner (LA or mainstream school) on a per-pupil basis ('top up funding').

There is considerable flexibility about how these arrangements can work locally, and commissioners and AP Academies should work closely together to agree how places will be commissioned, how top-up funding will be provided by the commissioner and when – so that both commissioner and AP Academy are confident that they can continue to deliver high quality outcomes for local pupils.

Will PRUs be better off if they remain local authority maintained?

No. This new reformed funding approach for the AP sector will apply to all state-funded AP providers, including maintained PRUs and AP Academies. Whether a PRU decides to become an AP Academy or not, the new funding arrangements will apply to them. We want to ensure that the introduction of these funding arrangements does not create undue disruption, and the Department will continue to work with the sector to ensure that the transition to the new system is as smooth as possible.

AP Academies will receive funding equivalent to that which they would have received as a local authority maintained AP provider. Therefore, PRUs becoming

AP Academies will be no better or worse off. AP Academies will also receive LACSEG to take account of the services that they would have received from the local authority as a maintained PRU.

How will those PRUs which become AP Academies be funded if they convert before the introduction of this new funding reform?

The principle of Academy funding remains one of equivalence. Pending the introduction of the reformed approach to funding pupils in AP settings, PRUs that convert to Academy status will be funded through interim arrangements which will seek to replicate the funding arrangements and budgets already in place for those PRUs. These arrangements will remain until such time as when the new funding approach for pupils with high needs is implemented for all PRUs and AP Academies.

PRUs converting before the introduction of those new funding arrangements will therefore benefit from consistency of funding until that new funding system is in place - they will continue to be funded at the level they would have been funded as a local authority maintained PRU. When the new reformed approach to funding is introduced for the AP sector, it will apply to all AP providers, including maintained PRUs and AP Academies.

Will AP Academies receive the Local Authority Central Spend Equivalent Grant (LACSEG) funding from the DfE?

Yes, like other Academies, PRUs will receive LACSEG after they convert to AP Academy status. The LACSEG is additional money for Academies to pay for services which local authorities provide free of charge to their maintained schools and PRUs. AP Academies are free to buy back these services from the local authority or find them elsewhere. In 2012/13 there is a separate LACSEG rate for each local authority. From 2013/14 DfE hopes to set a national per pupil rate for LACSEG for AP Academies.

Who will fund AP Academies?

Funding will be made by the Education Funding Agency (EFA) in monthly instalments, paid on the on the first working day of the month.

Will the funding levels be agreed for a given period of time, if so for how long?

Funding arrangements for PRUs converting to AP Academy will be set out in a funding letter from the EFA, typically a month before opening. Interim funding arrangements for PRUs converting to AP Academy will be in place until the introduction of the reformed approach to funding pupils in AP settings.

Will a PRU be better off financially if it decides to convert?

The principle is that an Academy (whether an AP Academy or mainstream Academy) should receive the equivalent funding that it would have received as a maintained institution, with the addition of a grant to fund services that were previously provided by the local authority (e.g. HR, payroll, health and safety).

Financial autonomy is an important freedom. The Academy Trust takes decisions on how to deploy resources rather than decisions being taken by the local authority.

Some PRUs do not know their budgets as their local authority controls their finances. Would there be support to enable PRUs to find out their running costs?

We would expect that local authorities will work constructively with their converting PRUs and provide them with the information required to enable conversion.

What would be the financial position of an AP Academy that was not full as a result of local Academy schools or their local authority not commissioning places?

While in the short term the funding of AP Academies will not be directly affected by unfilled places, this may not remain the case for AP Academies and PRUs under the new funding framework. It is up to mainstream maintained schools or local authorities to decide which AP provision is the most suitable for their pupils. The AP Academy will need to develop and maintain good working relationship with schools and Academies in their area working with them to ensure that the provision they provide meets the local needs.

Will PRUs that convert to AP Academy Status be exempt from Business Rates?

Currently, Business Rates are payable in respect of PRUs. However, when a PRU converts to become an AP Academy they will not pay Business Rates. Academies have charitable status and therefore receive mandatory 80% relief on business rates. The remaining 20% is reimbursed by the EFA who receive an annual invoice from Academies.

How does a PRU access capital funding as a converter?

The conversion process will not be a source of gaining additional capital funding to expand or acquire new land and/or buildings. This does not mean that there is no capital funding for Academies. Academies will continue to receive their Devolved Formula Capital (DFC) in 2012/13, which is allocated on the same basis as for maintained schools, and which is to be used for capital maintenance of their buildings and ICT. Academies established after 1 April 2012, with predecessor maintained schools, will receive their DFC for the year ending March 2013 from their local authority.

Academies will continue to have access to an Academies Capital Maintenance Fund for 2012/13. The fund has been calculated on the same basis as the local authority fund for maintained school and is intended to meet the maintenance and building condition needs of academies. Information on the application process can be found at <https://sharepoint.partnershipsforschools.org.uk/ACMF>.

AP Academies will be able to access the same capital funding in the same way as other Academies.

What happens if we've been promised capital funding by our local authority to build/repair our PRU, will we still get this funding if we convert?

Local authorities are expected to continue to support projects that have already been identified to receive capital funding from the local authority even though they may decide to convert to AP Academy status.

Will PRUs wishing to convert receive a support grant to help with the costs of conversion?

We recognise that costs may be incurred during the conversion process, such as obtaining legal advice on the documents necessary for setting up the AP Academy, advice on conducting a consultation on whether the PRU should convert, and signage and stationery. Mainstream schools receive a £25,000 conversion grant to help towards the costs of conversion. For PRUs, we will provide the same amount to facilitate the conversion of the PRU - a £25,000 conversion grant which will be provided either to the new Academy Trust/ Multi Academy Trust when it is set up, or to an existing Academy Trust if the PRU is joining one. The support grant is normally signed by the headteacher or the chair of the management committee or Chair of Governors for an existing MAT and the PRU should send the form to their DfE project lead to process.

GOVERNANCE

(inc. Memorandum of Association & Articles of Association)

What is an Academy Trust?

An Academy Trust is a charitable company limited by guarantee and there is no share capital for the people that run it. The Academy Trust is responsible for the strategic direction of the Academy, and it has control over the land and other assets. It is governed by its Articles of Association that must be agreed by the DfE.

What are the possible AP Academy conversion models?

There are many models of governance – single Academy Trusts; Multi Academy Trusts (MAT); Umbrella Trusts; and loose cooperative partnerships. Your DfE project lead will be able to discuss the best model to suit individual circumstances.

A management committee may wish to set up a single Academy Trust initially with a view to expanding at a later point as a MAT. It is also possible for a single PRU to set up a MAT with a view to others joining at a later stage. But there are also looser arrangements such as forming an Umbrella Trust or agreeing informal collaborative arrangements. For some PRUs, being sponsored (joining a MAT or other co-operative forms of governance) allows them to convert with the assistance of someone with more experience, helping them to address any conversion issues they are faced with and providing them with support once they have converted.

More information is available in the PRU converter guidance document.

How is an Academy Trust established?

Before the Academy Trust can be set up, the PRU's management committee will need to decide who the founding members are. Current policy is that there should be a minimum of three. If this causes your PRU difficulties, you should discuss this with your Academies project lead. The PRU's management committee (or its legal adviser on its behalf) will then need to submit a completed Memorandum (listing the founding members) and the AP Academy Articles of Association model document and submit these to the DfE project lead for clearance. When these documents have been approved by the DfE, the PRU's management committee (or its legal adviser on its behalf) will need to register the Academy Trust with Companies House. The small fee which will be incurred for this may be reimbursed from the £25k conversion grant provided to the Academy Trust once it has been set up and it has opened a bank account.

How are the members of the Academy Trust and of the AP Academy's Governing Body chosen?

The PRU's management committee will decide and agree who among them will be the members of the Academy Trust. The first members are also the founders of the Academy Trust whose names will need to be noted on the Memorandum of Association document. Forms can be submitted online at the Companies House website or by sending through signed hard copy paper forms:

(<http://www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml>) An

Academy Trust should have at least three founding members but there can be more. The full constitution of the membership is set out in the Articles of Association.

It is the members of the Academy Trust that put in place the process and arrangements for electing and replacing members of the trust.

Once the Academy Trust has been set up, the members will then appoint the Governing Body for the AP Academy, as prescribed in the Articles of Association.

How much time will AT members need to commit as members of a Trust?

Time commitment of members will depend on the individual circumstances of the AP Academy. Their role is to provide strategic direction for the Academy. There is no set requirement for how frequently the Academy Trust should meet, this will depend on individual circumstances. Some meet two or three times a year, others five or six times. The Governing Body and Principal are responsible for the day-to-day running of the Academy.

Can the Principal/headteacher be a member of the Academy Trust or be a non-executive member of the Academy Trust?

As a general rule, the answer is “no”, as this would give rise to potential conflicts of interest. And because the Academy Trust is there to hold the Principal to account, appointing the Principal to the Trust would undermine that. There are a number of situations in which conflicts of interest commonly occur, including direct financial gain accruing to a trustee. The Charity Commission lists the most common types of direct financial gain to a trustee which include: “payment for a separate post within the charity, such as headteacher, to someone who is also a trustee”.

If trustees wish to pay one or more trustees, such payment will need to be authorised, either by a clause in the charity's governing document, or by an Order of the Court or the Charity Commission.

What will happen to a PRU's management committee if it decides to convert?

A PRU's management committee will simply cease to meet and exist from the conversion date - the date that control of the PRU is passed to the AP Academy Trust and the local authority stops maintaining the PRU. If a management committee has responsibility for more than one PRU but not all of them, then the management committee would continue in existence for the purpose of running those PRUs that are not converting. If the constitution of the management committee has been disrupted (e.g. one or more member has left), then the management committee will need to be reconstituted to ensure it continues to support the non-converting PRUs and complies with relevant legislation.

What are the rules for appointing the new Governing Body?

The Governing Body will be appointed by members of the Academy Trust. The process for appointing governors and the makeup of the Governing Body will be set out in the Articles of Association.

The governors will be responsible for the day-to-day management and governance of the AP Academy and decisions will need to take place early on in the conversion process to agree who will be appointed as governors of the AP Academy.

The minimum constitution of a Governing Body is:

- At least 2 parent governors (who may or may not be parents of current pupils);
- A maximum of 1 local authority appointed governor; and
- The Principal/headteacher.

We also recommend that headteachers of other schools in the area sit on Governing Bodies, but the Academy Trust must be careful to avoid local authority influenced status (see below) when appointing Governors. In addition, the Governing Body may have staff governors and community governors.

How will the role of the governing body differ from that of a management committee? Will it mean more work/accountability etc?

The principles of governance are the same in Academies as they are for maintained schools but the Governing Body has greater autonomy.

We recognise that there is no single model for PRU management committees. Some operate in a similar manner to maintained schools, others less so. The responsibilities of the AP Academy Governing Body will be similar to those in most maintained schools. The governing body can delegate functions to committees, the principal or any other holder of an executive office.

It is the governing body that manages the AP Academy on behalf of the members of the Academy trust. The key responsibilities are:

- ensuring the quality of educational provision;
- challenging and monitoring the performance of the AP Academy and its leadership;
- managing the Academy Trust's finances and property; and
- employment of staff.

There are many similarities between the governing bodies of maintained schools and Academies. We believe that volunteer school governors will still be able to fulfill their role in Academies and that this will not make it harder to find governors. We would also expect Academies, as with all schools, to provide the necessary training and support to governors to ensure they are able to fulfill their duties.

What is local authority 'influenced status'

Sections 68-71 of the Local Government and Housing Act 1989 and regulations made under these sections (the Local Authorities (Companies) Order 1995 SI 1995/849) state that a company is 'influenced' if:

- 20% or more of the **members** or 20% or more of the **directors** (often referred to as the governors) who sit on the Academy Trust are Associated Persons

'Associated Persons' are defined in s.69 (5) but include current members (councillors), current officers (employees of the local authority), or anyone who has been a member within the past four years.

What are the rules regarding the involvement of local authority associated personnel in Academy governance?

The DfE policy is that no Academies should have local authority influenced status. If an Academy were 'influenced' it would be:

- required to identify itself as being local authority influenced on all business letters, notices and other documents of the company;
- required to remove any director who became disqualified from holding membership of a local authority;
- barred from publishing any material which might affect public support for a political party;
- required to provide to the local authority's auditors with information about the Academy Trust which they might need to audit of the local authority's accounts.;
- required to provide the Audit Commission with such information as it required; and
- required to provide councillors with any information they needed to discharge their duties.

These are additional bureaucratic burdens which we do not wish to place on Academies. Therefore local authority membership of Academies at member and governor level should be less than 20%.

How does a PRU that wants to become an Academy set up an Academy Trust that is not LA influenced?

Parent or community governors or other local headteachers who are not employed by the local authority could be the founder members who set up the Academy Trust. Then, as per the Articles of Association of the Academy Trust, these founder members can appoint additional members at a later stage (while bearing in mind the DfE requirement that no more than 20% of the members or Governors should be local authority Associated Persons).

Can Principals/ headteachers of other schools sit on an Academy Trust or Governing Body?

Yes, again, DfE policy on Academy Trusts/ governing bodies of the Academies not being local authority influenced would need to be adhered to. So headteachers who are not considered as being employed by the local authority would not typically be included as part of the 20% of Associated Persons. These include headteachers of foundation schools, voluntary aided schools, Trust schools, non-maintained special schools and Academies.

How will AP Academies be accountable to their local community?

Academy Funding Agreements require them to be at the heart of their local community. They are also accountable through their results which are published in

the same way as they are for maintained schools. Just like other Academies, AP Academies will be inspected by Ofsted. Academies are also accountable through their Funding Agreements to the Secretary of State. We envisage that AP Academies will have a key role to play in shaping the strategic direction of AP in their area, working closely with all commissioners (including local authorities) and other providers, and playing a leading role in driving up quality and spreading best practice across the AP sector.

As PRUs play a role in allowing local authorities to fulfil their statutory duty regarding arranging AP for permanently excluded pupils and those without a place, how will the local authorities be able to meet this duty once the PRU converts?

The duties set out in s19 of the Education Act 1996 are placed on local authorities, not PRUs; PRUs are a means by which local authorities may discharge these duties, and some local authorities do so without having any PRUs. When a PRU becomes an AP Academy, the section 19 duty and power to open a new PRU will remain with the local authority. The local authority will continue to be responsible for commissioning the most appropriate provision for pupils they are responsible for. In terms of AP, they may choose the AP Academy or another AP provider, just as they do currently.

Will PRUs that convert to become AP Academies be able to commission other AP providers?

The AP Academy can commission other providers to complement the education provided within the AP Academy. However, the Funding Agreement requires that funding be used for the purposes of the Academy. Therefore, it cannot be used to fund full-time, permanent placements elsewhere.

STAFFING (inc. TUPE, and pension)

What is TUPE?

TUPE is the Transfer of Undertakings (Protection of Employment) Regulations. If a business, part of a business or service provider changes from one owner to another, an employee's contract and terms and conditions of service could be protected under, 'TUPE'.

If a PRU converts to become an AP Academy, which staff will transfer?

This would need to be determined on a case-by-case basis and discussions will need to start very early on in the conversion process.

Who is responsible for carrying out the TUPE Consultation?

It is the current employer of the staff (usually the local authority) which is responsible for conducting the TUPE information and consultation process. In some cases the local authority may ask the PRU's management committee (as part of the local authority) to conduct the consultation on its behalf.

Can staff opt out of transferring to the AP Academy?

Employees who do have the right to transfer to the AP Academy may opt out of the transfer. However, this is equivalent to resigning – they do not have the option of electing to remain in employment with the local authority unless the local authority is prepared to offer them a new position.

Will you make arrangements to offset the pension deficit that PRU's and Special Schools incur when becoming Academies?

We do not have any control over the payment of pension deficits. The deficit applying to a PRU when it converts to an AP Academy is determined by the local pension authority's actuary. Details of the Local Government Pension Scheme are available at:

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/a00202059/lgps>.

How would the AP Academy maintain staff levels and expertise if capacity could not be predicted year on year?

For PRUs converting in 2012/13, funding which replicates the current arrangements and levels for PRUs will be agreed for the first academic year. When the new funding arrangements are introduced, funding for all state funded AP providers, including PRUs, will be subject to the wider changes - including being more responsive to actual pupil numbers while providing a degree of stability for providers. Therefore, in becoming AP Academies, PRUs will need to ensure that they have good working relationships with other schools in their area so they can meet local demand and plan accordingly. For some PRUs, converting as part of a MAT may be the best solution to ensure that this planning need is met and to allow economies of scale.

LAND & BUILDINGS

What do PRUs need to do in respect of land and buildings?

PRUs will need to make arrangements for the continued use of the land and premises **before** converting to become an Academy. They will need to instruct their own solicitors to deal with the legal arrangements for the land transfer. Steps should be taken early in the process to:

- identify all areas of land on which the PRU sits
- establish who currently holds the land; and
- agree leasing or transfer arrangements with the current landowners.

There is a land questionnaire for the converting PRU's solicitors to complete as part of the conversion process.

How are ownership and maintenance of existing buildings and land determined for PRUs?

The process in place for mainstream converters will apply to PRUs. So, in cases where the land/building is owned by the local authority, the Academy Trust will agree to lease it from the local authority to the Academy Trust at a peppercorn rent. If it is owned by a private land owner, agreement will need to be reached with them. The maintenance will be the Academy Trust's responsibility in most cases, unless the agreed lease specifies otherwise.

The Secretary of State also has scheming powers to direct the local authority to transfer its assets to the Academy Trust, if necessary.

What will happen if premises are currently being built for the use of a PRU?

The DfE would expect the local authority to honour their commitment to the funding of building work proposed.

Who is responsible for insuring a PRU after it becomes an AP Academy?

Academy Trusts are responsible for making arrangements to insure land and buildings. It is imperative that insurance is in place from midnight of the date of conversion so that there is continuity of cover. Normal public procurement rules must be followed to ensure that the insurance policy offers value for money. The cost of property/contents cover is normally reimbursed by the Education Funding Agency at actual costs upon receipt of the relevant invoices.

How can AP Academies arrange insurance?

They should first contact their local authority to see if any insurance policy or cover can be offered. Local authorities normally have a group policy tendered in compliance with EU rules. The local authority may be willing to have the AP Academy included in this, at least for premises insurance; and it will normally be financially advantageous for the converting PRU to take advantage of this, due to economies of scale.

What if an Academy cannot obtain insurance via the local authority?

In this instance, they should contact the Crescent Purchasing Consortium (CPC), which is an EU-compliant insurance framework. CPC arranges the various quotes of the selected insurance companies for the academy and helps them to select the most relevant and beneficial quote for their requirements. The CPC can be contacted via their website at: <http://www.cpc.salford.ac.uk>.

COMMERCIAL TRANSFER AGREEMENT (CTA)

What is the purpose of the CTA?

The CTA is intended to ensure that all information on the transferring staff is recorded and transferred to the academy trust so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. The CTA includes details of any assets, liabilities and contracts that will transfer to the Academy Trust, and those that will remain with the local authority. Converting PRUs should send the CTA to their local authority and provide them with the opportunity to comment. Our expectation is that a CTA will be in place before conversion.

The Secretary of State also has scheming powers to direct the local authority to transfer its assets to the Academy Trust, if necessary.

CONSULTATION

Do PRUs wishing to become AP Academies need to hold a consultation (as is the case for mainstream Academies)?

Yes. There is a legal requirement for the management committee to consult with interested parties (e.g. students, parents and the local community/stakeholders) on whether the PRU should become an AP Academy. PRUs are free to choose how they wish to consult, with whom and for how long.

When does the statutory consultation need to take place and how long should it run for?

The consultation process can start at any time but it must be completed before the Funding Agreement is signed with the Secretary of State. It is useful to have early conversations with interested parties to ensure they understand the proposed changes.

Do PRUs need to provide DfE any evidence of their consultation?

No. But the PRU's management committee will need to confirm:

1. that it has consulted appropriate persons (see above);
2. the dates on which the consultation was carried out; and
3. that the views obtained were considered in the decision to convert to an Academy.

DfE is not being prescriptive about the documentary evidence a PRU's management committee needs to retain. However, as a general steer, it could include copies of any reports that were commissioned, consultation questionnaires along with responses, minutes of consultation or briefing meetings. Although PRUs don't need to provide this documentation as part of their application process, they will need to ensure that this information is available on request.

Do PRUs have to consult staff under TUPE?

The local authority will need to conduct a TUPE consultation with all staff (teaching and support teaching) and the unions as part of the staff transfer process. Generally, this first TUPE consultation with staff would take the form of an open general meeting before the more detailed bilateral discussions with staff begin.

Do converting PRUs need to undertake an 'equalities impact assessment'?

Under equalities legislation, public bodies are required to have "due regard" to the need to eliminate discrimination, promote equality of opportunity and foster good relations in the exercise of all their public functions. This will include making a decision about whether to convert to Academy status. The due regard duty previously applied only in relation to disability, gender and race, but from April 2011 it was extended to cover other protected characteristics under the Equality Act, such as age (to a limited extent in respect of schools / education), disability, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation.

Management committees of PRUs should consider whether they need to carry out an equalities impact assessment in relation to their conversion to Academy status. If they decide there is a potential impact, then they need to consider whether or not to carry out an equalities impact assessment. This is a matter for management committees to consider, and on which they should take advice from their solicitors.

ADMISSIONS

Which students will AP Academies provide education for?

The law sets out requirements for an educational institution to be an AP Academy, which are:

1. the institution is principally concerned with providing full-time or part-time education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education for any period;
2. the institution provides education for children of different abilities, and
3. the institution provides education for children who are wholly or mainly drawn from the area in which it is situated.

Suitable education, in relation to a child, means efficient education suitable to the child's age, ability and aptitude and to any special educational needs the child may have.

Will AP Academies be required to abide by the Schools Admissions Code?

AP Academies are not covered by the Schools Admissions Code. Unlike mainstream Academies, AP Academies will admit pupils by way of referrals from commissioners, rather than through the normal admissions arrangements. The commissioners could be local authorities, schools or mainstream Academies.

In what circumstances will pupils be referred to AP Academies?

Pupils will be referred to AP Academies in the same way as they are for PRUs – local arrangements in place can remain post-conversion.

The law requires local authorities to arrange full-time education for permanently excluded pupils from the 6th day of their exclusion, and arrange suitable education for a range of other pupils who would otherwise be without such education. This education must be full-time unless a pupil's medical condition makes full-time education inappropriate for them.

The law also requires schools to arrange full-time education for pupils on a fixed-period exclusion of more than 5 days from the 6th day of the exclusion. This applies to maintained schools and Academies.

The law also allows maintained schools to direct pupils off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil. Under current regulations, these directions must be reviewed at least every 30 days, and must not extend beyond the end of the academic year in which it is made.

Other Academies, with the agreement of a child's parent, can arrange for a pupil to receive education elsewhere, for example, at an AP Academy or other AP provider, as part of early intervention measures to address behaviour. We would

expect most such placements to be temporary.

Can an AP Academy be a first choice school?

Admission to an AP Academy is through referral either from a school, an Academy or a local authority. Parental choice is not currently available.

How would schools refer pupils to AP Academies?

We expect that schools will refer pupils to AP Academies in the same way as they do for PRUs. AP Academies will accept pupils that have been referred by commissioners, including local authorities, schools and Academies. We would expect local authority inclusion coordinators to have the same regard for AP Academies as for other AP providers when determining where a pupil should receive Alternative Provision.

What will be the admission criteria for AP Academies?

The admission arrangements/criteria of an AP Academy will be defined in its Funding Agreement which will set out the process of possible referrals from a range of commissioners.

How will the capacity of the AP Academy be set?

The planned number of places will be agreed as part of the Funding Agreement. A business case for any significant expansion would have to be presented after the PRU converts. Whilst the DfE looks favourably at proposals to expand outstanding provision, no capital funds can be guaranteed.

Will AP Academies hold statutory responsibilities for identified groups of vulnerable learners? What is the role of the local authority in this?

AP Academies will have the same statutory duties as mainstream schools with regards to identified groups of vulnerable learners. Local authorities will retain their section 19 duty.

Is there an expectation that AP Academies be involved in provision post 16?

No, the duties on local authorities under s19 of the Education Act 1996 only refer to pupils of compulsory school age, though local authorities have powers to secure provision for other pupils in they wish to do so. If PRUs are already delivering this provision it will be included in the Funding Agreement. PRUs would need to seek the agreement of the DfE if they wanted to change the age range they cater for.

If a PRU is currently providing Post-16 education will they be able to continue to deliver this offer after converting?

Yes.

CURRICULUM & EXAMINATIONS

Will AP Academies have to follow the national curriculum?

AP Academies must deliver a broad and balanced curriculum but will not need to follow the national curriculum. They will need to provide efficient education suitable to the child's age, ability and aptitude and to any special educational needs the child may have.

Will children in an AP Academy have to sit exams?

The position for AP Academies will be the same as for mainstream maintained schools with respect to public examinations and national curriculum assessments.

OFSTED / INSPECTIONS

Will PRUs continue to be inspected by Ofsted after converting to AP Academy status?

Yes. They will be subject to the same inspection framework as PRUs. AP Academies that are rated “good” or “outstanding” will be inspected again within 5 years of the end of the school year in which the predecessor school (i.e. the PRU) was last inspected; those rated “satisfactory” will be inspected every three years. However, various factors could lead to Ofsted deciding to inspect earlier, for example, where there is a high staff turnover, change in leadership, parental complaints, etc.

Will PRUs that are applying to convert be inspected before opening as an AP Academy?

No. PRUs will not undergo a pre-opening Ofsted inspection unless this is requested by the Department.

SPECIAL EDUCATION NEEDS

Can an AP Academy admit pupils with a statement of special educational needs?

Yes, statemented pupils can be admitted to AP Academies, but the pupil's stay should be short term rather than an extended period.

In the case of a statemented pupil that has been excluded from the school at which they are registered, the AP Academy can provide education for a short stay while the statement is amended and resolved.

Can AP Academies be named on a Statement?

Yes, an AP Academy may be named in a statement if it will provide the best education to the statemented pupil. As indicated in the answer to the question above, such placements should generally be short term.

Department for
Education

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