
SCHOOLS CONVERTING TO ACADEMY STATUS

Responsible Cabinet Member – Cyndi Hughes
Children and Young People Portfolio

Responsible Director – Murray Rose, Director of People

SUMMARY REPORT

Purpose of the Report

1. This report informs Members of Academy Orders issued by the Parliamentary Under Secretary of State for Schools regarding the conversion of a number of Darlington schools to Academy status. The report gives information on likely time-scales for conversion and outlines considerations with regard to land transfer and finance that need to be agreed.

Summary

2. The Academies Act 2010 received Royal assent on 27 July 2010. Schools deemed outstanding by Ofsted were enabled by the Act to apply for Academy status. Subsequently, other schools have similarly been invited to become Academies. The Governors of 11 schools in the Borough have applied for Academy status.

Recommendation

3. It is recommended that :-
 - (a) Members receive the report.
 - (b) Cabinet resolves to cease to maintain the schools detailed in the **Appendix**.
 - (c) Cabinet delegates powers to the Director of People and the Director of Resources to liaise with the Department for Education and the Governing Bodies of the schools concerned to negotiate and agree the transfer arrangements to complete any requisite transfers of land and to arrange a conversion date on or after 1 July 2011, in line with the Secretary of State's direction.
 - (d) Cabinet delegates powers to the Director of People and to the Director of Resources to enter into the special agreements pertaining to the PFI nature of one of the conversions, in line with the Department for Education's standard practice and guidance.

Reasons

4. To comply with a direction to the Council to carry out these actions by the Secretary of State for Education.

Murray Rose
Director of People

Background Papers

There are no background papers relevant to this report.

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S17 Crime and Disorder	There are no issues arising from this report
Health and Well Being	There are no issues arising from this report
Carbon Impact	There are no issues arising from this report
Diversity	There are no issues arising directly from this report. Darlington has a diversity of secondary school provision, including one existing Academy, voluntary aided schools and community schools.
Wards Affected	All wards in Darlington
Groups Affected	Pupils aged 11-16 and their families Staff at the schools concerned
Budget and Policy Framework	The Dedicated Schools Grant will be adjusted following Hurworth's conversion to Academy status, consistent with Darlington's <i>Scheme of Financing Schools</i> . Further reductions to the DSG will be made following the conversion of each Academy.
Key Decision	Yes
Urgent Decision	No
One Darlington: Perfectly Placed	There are no issues arising from this report
Efficiency	There are no issues arising from this report

MAIN REPORT

Information and Analysis

5. The Academies Act 2010 made it possible for more schools to apply for Academy status. Academies have greater freedoms than maintained schools in that they:-
 - (a) act as their own Admission Authorities;
 - (b) employ staff directly; and
 - (c) have control of their school's land and assets.
6. Academies are controlled directly by Academy Companies, which becomes a corporate entity. It is with these companies that agreements are made and the contracts are signed.
7. Under the Act, schools that are judged to be Outstanding or Good with Outstanding Features may apply to become an Academy. Academy Trusts may include schools that do not qualify to make applications themselves as long as they have Academies within the scheme that are Outstanding or Good with Outstanding Features. Schemes can work across the age sectors so a single Academy Company could ultimately control any number of primary and / or secondary Academies.
8. The final decision to allow the application and issue an Academy Order lies with the Secretary of State.

Obligations on Authority

9. The Authority is obliged by the Secretary of State to allow its schools to become Academies. The conversion process includes transferring staff to the employment of the new Academy under TUPE rules, and also transfers the schools assets.
10. The land and buildings are transferred by deed with a long lease of 125 years. The Authority is obliged to transfer all land which has been wholly or mainly used for the purposes of the school within the last eight years.
11. The Authority and converting schools must agree a conversion date. The Authority ceases to maintain the school on the day before this date. On and after that date, the Academy Company controls the Academy.
12. From the date of conversion, the school and Darlington Borough Council will become separate legal entities).
13. It is envisaged that most conversion dates will be set between the 1 July and the 31 August 2011. Because dates have not yet been agreed and further schools may yet apply for Academy status, Members are asked to delegate to the Director of People powers to make the necessary arrangements at a mutually convenient time. Negotiations have commenced with the DfE and lawyers acting for the schools.
14. In the case of non PFI schools the Council will effect the required transfers by

- (a) The Transfer Agreement- this covers issue such as transfers of non land assets, contracts, staff as well as warranties and indemnities
- (b) The Lease- this deals with the transfer of the land used wholly or mainly for the purposes of the school

Model forms of both documents have been prepared by the DfE and will be followed and completed by officers, subject to delegation of authority.

Funding Arrangements

- 15. New Academies will be funded directly from the Department for Education. Under the recoupment scheme, the Authority's Dedicated Schools Grant will be lowered by a factor based on pupil numbers at the new Academy. This funding will be passed directly to the Academy Company.
- 16. Schools in Darlington seeking to convert to Academy status have worked collaboratively with other schools in the Local Authority to ensure that key specialist services for pupils are still funded by the Dedicated Schools Grant and that the funding for these will not alter as schools convert to Academy status. Academies can continue to purchase Local Authority services or can purchase services from elsewhere.
- 17. For each school that converts to Academy status the Local Authority will lose a proportion of the retained Dedicated Schools Grant. This loss of funding will be dealt with either by schools buying back into Local Authority services or by reducing costs as direct service provision is reduced.

Disposal of Land at Nil Value

- 18. The Authority is obliged to transfer the land by granting the Academy Company a lease on terms outlined in the Act which envisages that schools will be granted either the freehold transfer of the land or a long lease of 125 years, it is expected that a long lease of 125 years will be granted in the case of all schools currently in the conversion process.. Such transfers require the approval of Cabinet as the transfer will be at an undervalue. If the transfers are not approved then the matter will be passed to the Secretary of State who will enforce the scheme.
- 19. In the majority of cases, the parcels of land comprising a school site are not at dispute. In some cases though, land identified as part of a school site has never been used for educational purposes but has served as land for public amenity. The Director of Resources will be consulted before any lease is agreed to an Academy Trust to ensure the Council's interests are protected.
- 20. The Department for Education has issued a standard form of lease to transfer the school premises as defined by the Act.

Specific PFI Contract Arrangements

- 21. The Education Village, currently a federated primary school, secondary school and all-through special school, has applied for Academy status.
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22. Special arrangements are needed here as the school's building is provided by the Four Schools PFI Project. This PFI contract has 20 years left to run.
23. The special arrangements include extra contracts the Authority is required to enter into. There are:
 - (a) A Deed of Variation with Kajima Darlington Schools Ltd, the PFI provider. This variation is cosmetic in nature and handles definition changes to, for example, include the definition of "Academy Related Party", and names the Academy Company on insurance documents.
 - (b) A Principal Agreement with the Department of Education. This agreement hands over some PFI liabilities and risks to the department. Specifically, it deals with the project's affordability gap and governance arrangements.
 - (c) The School Agreement, which replaces the current Governors Agreement, with the new Academy Company. This passes on the remainder of liabilities and risks to the Academy Company, guaranteeing the Academy is subject to the same restrictions the Authority is under the PFI contract. It also passes on some funding risk to the Academy Company.
 - (d) The normal conversion documents (125-year Lease, Transfer Agreement), as per Academy conversion processes.
24. The Deed of Variation (along with the main PFI Project Agreement), the Principal Agreement and the School Agreement all expire at the same time, when the PFI contract completes. This is the 31 March 2031.
25. Members are recommended to delegate powers to the Director of People to allow the establishment of the relevant contracts and agreements as set out in paragraph [21].
26. Currently, there is a PFI Affordability Gap which is charged to the Dedicated Schools Grant. The Affordability Gap is the difference between the PFI credits and the actual annual cost of the contract. The Affordability Gap was approved because Darlington Borough Council saw the benefit of supporting the Education Village via the PFI contract. As the Education Village will no longer be an asset for Darlington, the DfE will pay this Affordability Gap instead.
27. Harrowgate Hill Primary School's Affordability Gap and funding arrangements will not be affected by the PFI Academy Conversion.

Financial Implications

28. The transfer of the long leases will remove these assets from the Council's balance sheet.
 29. Following conversion any non teaching staff would continue to be members of the Local Government Pension Scheme administered by Durham pension authority. However the deficit on the date of the conversion passes to the Academy.
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30. Currently the Council provides school services through a range of service level agreements. Whilst the Council will seek to maintain these arrangements the Academy schools may wish to cease using the Council offered services. The majority of these agreements are offered on an annual basis to terminate at the end of each financial year. Advance planning needs to take place to deal with a possible reduction in demand. Legal services and other departments are examining the existing agreement to determine the likely impact in each case.

Conclusions

31. In order to enable officers to carry out the necessary negotiations and enable the conversions to Academy status to take place as directed by the Secretary of State it is proposed that general delegated authority is given to officers. Officers will conclude the transfer agreements and the leases, in the model form prepared by the DfE, amended where necessary on a school by school basis. Officers will carry out this function in consultation with the relevant portfolio holders.