



## Converting Schools to Academies – Know Your Rights

### Academisation

The Government continues to promote its academy agenda, encouraging and compelling schools to become academies as part of multi-academy trusts (MATs). This document sets out the circumstances under which this happens, and the legal rights and arguments that can be made to resist academisation.

### How do schools become academies?

- **Forced conversion:** where a school is 'eligible for intervention', the regional schools commissioner, acting on behalf of the Secretary of State for Education, can issue an order to close a school and re-open it as a sponsored academy within a MAT.
- **Voluntary conversion:** the governors of a school can voluntarily apply for academy status. The Government no longer allows schools to become stand-alone academies. All schools converting must join a MAT. Even if the governing body makes the final decision, this is often the result of having been put under pressure, or because schools believe that they must 'jump before they are pushed'.

### Forced conversion under the Education and Adoption Act

Under the Education and Adoption Act 2016, the Education Secretary has a duty to issue an academy order to any maintained school with an Ofsted judgement of Inadequate. The order is usually issued by the relevant regional schools commissioner (RSC).

An Inadequate Ofsted judgement is now the only route to forced academisation of a school. A school in this situation will be told it has no choice over its sponsor and there is no obligation to consult over the transfer. The only requirement is for the chosen sponsor to communicate to parents its plans to 'improve the school'.

It may seem as though academisation is inevitable for these schools. However, more than 30 schools with Inadequate Ofsted judgements have had their academy order revoked after a follow-up inspection gave them a higher grade. A parent and staff campaign at William Torbitt Primary School in Ilford, east London, put pressure on the Government to withdraw an academy order after the school was re-inspected and given a Good grade.

### Opposing forced academisation

The NEU is campaigning to end forced academisation and supports campaigns to oppose individual schools from being academised against their will.

If your school has been given an Inadequate Ofsted grade, contact your local rep, branch or regional office for advice and guidance.

Campaigns that have the active participation of parents at the school are far more likely to be successful.

Read the Anti Academies Alliance campaign toolkit on opposing academisation for information and ideas on how to launch a campaign.

#### Voluntary conversion to academy status

NEU members need to be aware that academy conversion is an ongoing and very real possibility for all schools. The process of converting a school to academy status in the case of voluntary converters can also be surprisingly quick.

Many governing bodies are converting because they are being put under pressure by the RSC or a diocesan board or because they feel they must 'jump before they are pushed'. Academisation is an irreversible process and gives no benefits to the staff, pupils, parents or community. Choosing to join one MAT is no guarantee that the school won't end up being transferred to a different MAT in future by the RSC. Nor can a school decide to leave a MAT voluntarily, either to re-join the local authority or join another MAT.

If the MAT collapses, walks away or is forced to give up the school by the Government, its academies will be transferred to a new trust. Parents and staff will have no say in this process or even be consulted over the new sponsor.

#### How is the decision taken for voluntary converters?

The decision to apply for academy status is taken by the governors. In the case of foundation schools and voluntary schools, the governing body may only apply for academy status with the agreement of any existing trust and those entitled to appoint any foundation governors.

Having registered their interest in academy status with the Department for Education (DfE), the governors simply have to vote in favour of a resolution to convert to academy status. The decision can be made by a majority of those present at the meeting of the governing body. The application goes to the Secretary of State for Education but in practice will be considered by the RSC and the head teacher board (HTB).

Once the academy application is approved, an 'academy order' is issued which gives the school the legal right to start the conversion process, apply for the conversion grant, establish new governance arrangements, register the academy trust and so on. Once all the legal arrangements are in place, the academy trust signs the funding agreement with the Secretary of State, or his/her representative, and the academy conversion process is complete. The whole transfer process can take as little as three to four months from start to finish.

#### Consultation requirements for voluntary conversion

There are two consultation stages for voluntary academy converters:

- the consultation on whether or not the school should become an academy
- the TUPE consultation – this occurs when a decision to convert has been taken by the governors and information on employees' transfer rights must be given by the employer to union reps.

This guidance focuses on the first type of consultation, on the question of whether or not the school should become an academy.

#### What the law says

For schools converting voluntarily, the Education and Adoption Act 2016 states that: "Before a maintained school in England is converted into an academy, the school's governing body must consult such persons as they think appropriate about whether the conversion should take place."

The legislation goes on to state that this consultation can occur before or after an academy order, or an application by the governors for an academy order, has been made.

#### What the Government says

The DfE guidance for schools applying to convert voluntarily to academy status states: “Statutory consultation – Your governing body must consult formally about your school’s plans to become an academy with anyone who has an interest in your school. This will include staff members and parents, but you should also involve pupils and the wider local community.”

#### What the NEU says

Academy conversion is an irreversible process with far-reaching consequences for pupils, staff and the wider community. It is not a decision that should be taken lightly by a small group of governors acting without the support of the school community and the wider community that it serves.

The NEU believes that in addition to the provisions on consultation described above, governing bodies have a common law duty in respect of consultations.

The extent of this common law duty has been set out by Lord Justice Stephen Sedley QC in the Court of Appeal, as follows:

1. Consultation should be undertaken when the proposals are still in a formative stage.
2. Adequate information should be given to enable consultees properly to respond.
3. Adequate time should be provided in which to respond.
4. The decision maker should give conscientious consideration to the response to the consultation.

There is a further well-established principle, that:

5. If the information is incorrect or misleading, or does not give true reasons for putting forward the relevant proposals, this also may constitute a sufficient flaw in the consultation process to lead to a quashing of the subsequent decision.

#### Opposing voluntary conversion

Don’t wait until you hear that your governing body is considering academy status before expressing the collective view of the NEU group because it will be far more difficult to build a campaign at that stage. Instead, you should ensure that all NEU members in the school are aware of the implications of academy status on their pay and conditions of employment, as well as for the education system generally.

#### What you should argue for

School reps and members should argue for the widest and most thorough consultation with all those affected by the school’s potential transfer to academy status.

The NEU believes:

- No school governing body should take a vote on academy conversion until after full and meaningful consultation with the whole school community has taken place. The feedback from this consultation should inform the decision of the governors.
- Some NEU groups have successfully argued that the school should hold a ballot of key stakeholders before taking any decision on conversion. The NEU supports this approach as a means to ensuring that there is the widest possible debate and fullest possible participation in the decision-making process.
- At a minimum, those consulted should include staff, parents, pupils, neighbouring schools, parents at feeder primary schools (in the case of a secondary school considering conversion) and the local authority.
- The union believes the timing of consultation should begin as soon as any discussion about the possibility of academy status arises and before any vote by the governors occurs.
- Meaningful consultation means that the school community should hear both sides of the argument – for and against academy conversion – so that all interested groups can genuinely come to an informed view on the pros and cons of academy status. This means that if the school is sending written materials to parents or posting information on its website, the case against academy status should be given equal prominence and the same weight as any arguments in favour.

- The school should organise stakeholder consultation meetings where speakers both for and against conversion can make their case, and where parents, staff and others can ask questions and receive answers and full feedback.
- The timing of consultation meetings should facilitate attendance by the widest possible number of interested parties. This could mean taking into account days of religious worship which might preclude some members of the school community attending.
- Where a significant number of people affected by the proposal may not speak English, it is good practice to provide a version or versions of the consultation document in the principal language of those likely to be affected by the proposal.