



Department  
for Education

# **Making significant changes to an existing academy**

**Departmental advice for academy trusts**

**January 2014**

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# Part 1 – Summary

## About this departmental advice

This advice document aims to assist academy trusts to understand what they need to do before making a significant change to their existing arrangements. It sets out the steps that an academy trust would need to follow to enable that change, including which changes will be fast tracked and which require a formal business case. The guidance also outlines the key components of the business case.

## Expiry or review date

This advice document will be kept under review and updated as necessary.

## Who is this advice for?

This advice is for academy trusts considering a change to their academy.

## Key points

- Academy trusts wishing to make a change to their existing arrangements must first consider whether the change is significant enough that it will require approval from the Secretary of State. The academy trust should exercise its own judgement in deciding whether the change is significant. The EFA can provide advice at [academy.questions@education.gsi.gov.uk](mailto:academy.questions@education.gsi.gov.uk). Examples of significant changes are set out later in this document.
- If the change is significant, the academy trust must submit a business case to the EFA, unless it is a fast track change (see page 4). Further information on what the business case should include is set out on page 13.
- The Secretary of State retains responsibility for the decision to make any material changes to an academy, but it is the EFA who will notify the academy trust of the Secretary of State's decision and next steps, including changes required to the academy's documents, e.g. articles of association and funding agreement. Where necessary, the EFA will consider the financial health and governance of the academy.
- Fast track significant changes – expansions, age range changes (by up to two years), adding boarding provision and amending admissions arrangements in 'old style' funding agreements – do not require a formal business case. Approval from the Secretary of State is still required but he is likely to approve the majority of these requests, provided that he is assured that adequate local consultation has taken place and responses have been taken into account, any financial

arrangements are sound, and appropriate planning permissions and other relevant agreements have been secured, where necessary.

## Part 2 – The changes

### Fast track changes

Academies wishing to expand, make age range changes (by up to two years), add boarding provision or amend admissions arrangements in ‘old style’ funding agreements do not need to submit a formal business case to the EFA<sup>1</sup>. However, they do still need to seek approval from the Secretary of State, through the EFA, to make such changes. Part 4 of this document explains the steps to making a significant change and the information needed by the EFA where a formal business case is not necessary.

<b>Fast Track Change</b>	<b>Detail</b>
<b>An enlargement of the premises</b>	Increase to the physical size of the school – including setting up a satellite school.  Increases in the published admissions number (PAN) must be made as set out in the School admissions code.
<b>Change of lower or upper age limit by up to 2 years (excluding the addition of a sixth form)</b>	For example: a primary adding early years provision; a secondary changing from 13 – 19 to 11 – 19.
<b>Adding or increasing boarding provision</b>	The creation of new boarding provision or an increase in existing boarding provision. <sup>2</sup>
<b>Changes to admission arrangements for academies with old style funding agreements</b>	Adoption of the latest admissions annex to enable these academies to change their admission arrangements without the Secretary of State’s consent.

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1 ‘Trusts that are subject to one or more funding agreements that allow one or more of its academies to receive GAG based on estimated pupil numbers (regardless of whether they are being funded on that basis); and allow the Secretary of State to recover GAG if estimated numbers exceed census-based pupil numbers beyond a specified percentage; and do not require a move to pupil census-based funding permanently, will still be required to submit a business case to propose these changes’?

2 Other legislation applies, such as the Education (Independent School Standards) (England) Regulations 2010, as amended, and legislation covering health and safety, fire, and planning regulations. The National Minimum Standards for Boarding Schools also apply – see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/180948/DFE-00126-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180948/DFE-00126-2012.pdf)

## Other significant changes

The following list gives examples of other significant changes which require approval by the Secretary of State based on a formal business case. This list is not exhaustive and the academy trust should exercise its judgment in deciding whether the Secretary of State's approval is needed.

Example	Details
<b>Change of lower or upper age limit 3 years or more</b>	For example: a primary adding or removing secondary provision (or vice versa).
<b>Adding/removing a sixth form</b>	a secondary adding or removing years 12-13
<b>Change of gender composition</b>	A move from co-educational to single sex or vice versa. Please note that: <ul style="list-style-type: none"> <li>• A change from single sex to co-educational provision in academy nurseries or academy based post-16 provision can be made through the normal procedures for changing admissions;</li> <li>• a co-educational school cannot change provision in its nursery or post-16 to single sex.</li> </ul>
<b>Enlargement of the physical capacity of a special academy including an increase in pupil numbers</b>	Capacity for special academies means the number of pupils for which the school is organised to make provision.  Where it is proposed to increase the number of pupils for whom the school makes provision which, when taken with all such previous increases, would increase the number of such pupils by 10% or 20 pupils (whichever is the lesser).  The exception to this is where the special academy is established in a hospital as hospital special schools are exempted from the requirement to apply to the Secretary of State for approval of their expansion.
<b>An academy amalgamating or merging with another academy</b>	This would involve the closure of the school and would have TUPE implications.
<b>An academy setting up or joining a multi-academy trust (MAT)</b>	This would have governance structure and funding mechanism implications.
<b>Transferring to another site</b>	This could mean enlargement of the premises

	(see above) but might also affect the catchment area. If so, the academy would also need to reconsider their admissions arrangements.
<b>Changes affecting reserved provision for pupils with special educational needs (SEN)</b>	<p>This may include proposals to add or remove the reserved provision, or to increase or decrease the numbers for which the reserved provision caters. It may also include changing the characteristics of the reserved provision such as the age range or type of SEN for which the reserved provision caters.</p> <p><b>Please note</b> - reserved provision for pupils with SEN is the single legal category which includes both "resourced provision" – where pupils spend more than half of their time in mainstream classes with support – and "designated SEN units" – where pupils spend more than half of their time in special classes.</p>
<b>A change in the type of SEN for which the special academy is organised to make provision</b>	For example: adding or removing designations/categories of SEN <sup>3</sup> .
<b>Decrease in/removal of boarding provision</b>	Decrease by 50% or 50 pupils (whichever is the greater). Removal of all boarding provision.
<b>Gaining a faith designation</b>	A change from being a non-faith academy to one that is designated as having a religious character.
<b>Change to a Church of England academy's characteristics</b>	A former voluntary controlled school that is an academy is able to gain the same characteristics regarding governance structures, employment of staff, teaching of religious education and collective worship as a former voluntary aided school that is now an academy (see Q&A below).

Academy trusts must consider whether the proposed change will affect the governing documents of the trust and whether approval should be obtained from the Charity Commission. The Charity Commission guidance on this is available [here](#).

<sup>3</sup> The list of the categories of SEN that a special academy can be designated is contained within the guidance [Data Collection by Type of Special Educational Need : The Department for Education](#)

Academy trusts should also always discharge their public sector equality duty in proposing any changes.

For all significant changes, academies will need to contact the EFA in good time prior to the proposed change coming into effect to ensure the funding agreement (and if necessary the articles) can be varied before the change takes effect.

## Part 3 – Further Information

### Physical expansions onto satellite sites

**Where academy trusts wish to expand onto an additional site they will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school.**

The establishment of new selective schools in all cases is prohibited by statute. Expansion of any existing academy onto a satellite site will only be approved if it is a genuine continuance of the same school. When deciding whether to approve an expansion onto a satellite, the Secretary of State will consider factors including:

#### **The reasons for the expansion**

- What is the rationale for this approach and this particular site?

#### **Admission and curriculum arrangements**

- How will the new site be used (e.g. which age groups/pupils will it serve)?
- What will the admission arrangements be?
- Will there be movement of pupils between sites?

#### **Governance and administration**

- How will whole school activities be managed?
- Will staff be employed on contracts to work on both sites? How frequently will they do so?
- What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body/academy trust board and the same school leadership team)?

#### **Physical characteristics of the school**

- How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
- Is the new site in an area that is easily accessible to the community that the current school serves?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change can be considered to be an expansion.

## Admissions-related changes

### **What should be done when a change affects admissions but cannot meet the normal timescale for making changes to admissions?**

- Academies are contractually obliged to comply with the School Admissions Code, including the timescale for changing admissions.
- The normal lead in time between determining and implementing admissions arrangements, as set out in the School admissions code, is 17 months. However, this may not always be possible.
- Where necessary, academies must seek a 'variation' of their admission arrangements under paragraph 3.6 of the School admissions code. They should do so at the same time as seeking approval of a change that affects or creates a relevant age group for admission.

### **What needs to be done before the variation of the admission arrangements can be agreed?**

- The academy trust must consult the relevant persons or bodies as set out in paragraph 1.44 of the School admissions code.
- The consultation must cover the relevant change to admissions arrangements and explain that representations may be made to the EFA.
- The department recommends that the consultation on admissions lasts a minimum of 8 weeks.

### **What changes to admissions arrangements are likely to be necessary if the age range is changed?**

- Where, for example, a school changes its age range from 11-16 to 4-16, we would expect the current oversubscription criteria to be used but for a new admission number to apply to reception as a new point of entry. This advice would apply to any change in the relevant age group, up or down.
- Where a school adds boarding provision, a boarding admission number and boarding admission criteria must be adopted.
- Where a school adds a sixth form there is no need for changes to admissions arrangements unless the intention is to admit external pupils, in which case a year 12 admission number and oversubscription criteria must be included.

## Faith-related changes

### **What should a non-faith academy do if it wants to become an academy with religious designation?**

Academies are required, through their funding agreement, to gain the Secretary of State's consent before applying for a religious designation.

The academy trust must clearly set out their proposal for changing from a non-faith to a faith academy including their proposed new governance and staffing arrangements, the basis on which they believe the change is needed, and why it would benefit the academy and the wider community. They must carry out a consultation, show that there is support for this change locally and get the express consent of the relevant religious body to become a faith school. If faith based admissions arrangements are proposed these must be consulted upon too.

EFA will assess the application submitted by the academy and, if this change is approved, will alert the Independent Education and Boarding Team (IEBT) in the Department for Education who will carry out the necessary actions to designate the academy and may write to the relevant academy direct. Following the completion of the designation process the EFA will update the funding agreement and articles as necessary via a deed of variation.

**What if a former voluntary controlled (VC) school that is now an academy wants to gain the same characteristics in relation to employment and RE/collective worship as a former voluntary aided (VA) school that is now an academy?**

A former VC school that is now an academy must consult on gaining the same freedoms as a former VA school that is now an academy. They then submit the results of this consultation along with the academy trust's application to the EFA to show that there is support for this change locally and to provide evidence that the relevant diocese agrees with this change. Once the EFA is satisfied there is sufficient support they will request that an Order from the Secretary of State is issued and that necessary changes are made to the funding agreement and articles of association to ensure that the required provisions are in place.

## Part 4 – Next steps

### Who should be consulted over the proposed change and how?

Regardless of whether the proposed change is a 'significant change' or a 'fast-track change', the academy trust will need to confirm to the EFA, that a consultation has been conducted with those who may be affected by it.

The local authority will hold important contextual information on the requirement for places locally, and they must be consulted. Therefore, before granting any requests, the Secretary of State (through the EFA) will need to be satisfied that the local authority has been consulted, and will consider any reasonable objections from them.

Other suggested stakeholders include:

- Each local authority which maintains a statement of SEN in respect of a child attending the academy.
- Parents of children who attend the academy.
- Parents in the area.
- Primary, secondary special schools and sixth form and FE colleges in the area.
- The Admissions Forum for the academy's area, where one exists (if admissions are to be affected).
- Affected admissions authorities in neighbouring local authority areas (if admissions are to be affected).
- The relevant PCT for the area in which the school is situated.
- Any NHS Trust or Foundation Trust responsible for the hospital or other provision in the area in which the school is situated.
- Any diocesan authority/faith sponsor for religiously designated academies must be consulted.

The consultation process on a significant change should run for a minimum of four weeks and as far as possible run alongside admissions consultations if the change will require a change to admission arrangements. It is important to take timing into account in order to maximise response to the consultation, including attendance at any public meetings – for example, consulting during term time rather than school holidays. The location of public and stakeholder meetings should also be planned to maximise response. It is good practice to hold meetings in the academy or in a venue close to it.

Comments or objections can be made on any grounds and opportunities for feedback should be given at all public and stakeholder meetings. The consultation document and

any other consultation literature should include contact details for telephone calls, letters, faxes, and e-mails.

## What are the steps to making a significant change?

1. The academy trust carries out a **consultation** with stakeholders including with the local authority, parents, faith sponsors (where relevant) and other schools. A condition of funding from future capital funds will be that the academy has conducted a consultation, and that responses have been taken into account, and that any consents required have been given.

### 2. a) Fast track changes:

The academy seeks approval by the Secretary of State for expansions, age range changes (of up to two years) adding boarding provision or amending admissions arrangements in 'old style' funding agreements by providing the EFA with all relevant information to show that:

- adequate local consultation has taken place;
- funding has been secured in relation to the proposed change, and financial arrangements are sound;
- the change is aligned with local authority place planning; and
- appropriate planning permissions and other consents required have been secured.

OR

### b) Other significant changes:

The academy submits a formal **business case** to the EFA for approval by the Secretary of State (see below for details of what the business case should include).

3. The Secretary of State considers the proposal and either approves or rejects it.

4. The EFA notifies the academy trust of the Secretary of State's decision and takes any necessary action – e.g. if the change involves an amendment to the academy's funding agreement, the EFA will send a Deed of Variation to the academy trust for them to complete; any changes to the academy trust's Memorandum and Articles of Association will need to be passed by special resolution by members of the academy trust and be registered with Companies House.

5. The academy trust updates the academy's details on Edubase. Further guidance on using Edubase is available [on the department's website].

## What should the business case include?

The business case to the EFA must be rigorous enough for a decision to be made on whether the change is necessary, and as a minimum we would expect that it should include:

- The details of the change, including any potential issues/risks relating to the proposals (e.g. changes to the leadership, any foreseen adaptations, additions, refurbishments or land transfers needed), and evidence of demand;
- When the change is to be implemented, and how (e.g. will it need to be done in stages);
- The effect on other schools, academies and educational institutions within the local authority, and an overview of the responses to the consultation;
- The degree of local authority support and what the academy has done in response to any consultation responses from them;
- Any indicative costings and an indication of how these might be met, including how the change will be sustained in terms of capacity and value for money;
- Any suggested changes to the admission arrangements;
- When an academy is proposing changes to its SEN provision, the business case must demonstrate that the proposed change will not have a detrimental impact on local SEN provision.
- Details of financial arrangements and if appropriate, confirmation that planning permission has been secured; and
- The consent of any relevant religious authority and/or site trustees.

An example business case is available at:

<https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>).

## Is funding available for making a significant change?

Academies can discuss with the EFA the options that may be available to them. They should consider how to make the proposal cost effective, both in terms of capital and recurrent funding. The proposal should include indicative costings and a proposal as to how these might be met. There is no funding for legal costs, or managing the consultation processes, and there should be no presumption any change will attract additional EFA revenue or capital funding

Please also see [further information about academies capital investment and maintenance](#).

## Where can academies get more information?

The EFA is responsible for operational work in relation to open academies. Queries and business cases should be submitted to them at:

[academy.questions@education.gsi.gov.uk](mailto:academy.questions@education.gsi.gov.uk)

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