Academy arrangements and the Local Government Pension Scheme

Edition 4 FAQ. This edition replaces Edition 3 which is now withdrawn.

This guidance offers practical advice and is not a legal opinion. It is recommended that practitioners take legal advice on their own particular circumstances.

Foreword

The December 2011 letter from the Secretaries of State for Education and Communities and Local Government recommended that, where an academy seeks to be pooled with the Local Authority, this is favourably considered. It also said that supporting guidance would be developed and issued and this joint Department for Education and Department for Communities and Local Government 'Frequently Asked Questions' document has therefore been produced. It is intended to guide practitioners, in both pension's administration and academies, to better understand the relationship between academies and the Local Government Pension Scheme (the Scheme).
The FAQ document does not replace the Scheme regulations and practitioners will want to seek their own legal advice as necessary.

Academies

Academies set up under the Academies Act 2010 are independent schools but they are publicly funded. Section 1 of the Academies Act 2010 contains provisions that allow for the Secretary of State for Education to enter into an academy arrangement with any person to establish and maintain and to carry on, or provide for the carrying on of, an academy. The Act enables existing maintained schools to convert to academy status and for academy arrangements to be entered into with an academy trust that is replacing a maintained school. Additionally, the Act allows the creation of new schools (i.e. schools that do not replace a converting or closing maintained school), including Free Schools, University Technical Colleges (UTCs) and Studio Schools. These new schools are also academies set up under academy arrangements under Section 1 of the Academies Act 2010.

Local Government Pension Scheme

A proprietor of an academy, commonly referred to as an academy trust, who has entered into academy arrangements, is a Scheme employer in the Local Government Pension Scheme and is listed in paragraph 21 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008. This means that the non-teaching staff employed by academy trusts are automatically eligible for membership of the scheme and existing members in a maintained school retain eligibility when a school becomes an academy. The change in legal status, when a former maintained school is replaced by an academy, means that the academy trust becomes an scheme employing authority in its own right. Academy trusts for new provision, such as Free Schools, Studio Schools and UTCs will also be scheme employers.

In this document the LGPS (Benefits, Membership and Contributions) Regulations 2007 are referred to as “the Benefits Regulations” and the LGPS (Administration) Regulations 2008 are referred to as “the Administration Regulations”.

Department for Education Guarantee for Academies Local Government Pension Liabilities

In July 2013, the Department for Education gave a guarantee concerning the LGPS liabilities if an academy were to close. This FAQ4 has been updated with more information on the guarantee and its application.

Sections

Employees

1.Q. Can non–teaching staff of an academy trust join the Scheme?
A. Yes. Academy trusts are employers in the scheme by virtue of Paragraph 21 of Part 1 of Schedule 2 to the Administration Regulations. This means that any member of staff, under age 75 and with a contract of employment for three months or more, who is not eligible to be a member of another public service pension scheme (such as the Teachers Pension Scheme) will be automatically enrolled into the Scheme, but they are able to opt out should they wish.

2. Q. What happens if an employee in a maintained school has opted out of the Scheme prior to the maintained school converting to academy status?
A. As the employee will be starting employment with a new employer (the academy trust); they will be automatically re-enrolled back into the Scheme under the provisions of Administration Regulation 13. They still retain the option to opt out again.

3.Q. Can staff transferred to an academy trust from a maintained school under Transfer of Undertakings (Protection of Employment) (TUPE) provisions keep the Scheme benefits accrued prior to the transfer separate from those accruing after the transfer?
A. No. Administration Regulation 16(7) provides that the scheme member's service is automatically aggregated (i.e. is treated as unbroken) despite the member having a new employer where it is either a transfer under TUPE provisions or a transfer which is treated as if it were a relevant transfer within the meaning of TUPE regulations.

4.Q. If a former employee of a maintained school, who was a member of the Scheme, has left the Scheme with deferred benefits but seeks to have early release of retirement benefits between the ages of 55 and 60, but the school has converted to an academy, who will be responsible for deciding whether, or not, to agree to the release of these benefits?
A. The decision rests with the Local Authority responsible for the former maintained school, as the Local Authority was the last employer and not the academy trust. (Benefits Regulation 30).

Academies as employers in the LGPS

5.Q. What is the appropriate Administering Authority for an academy trust?
A. This is determined by the geographical location in which all or most of the proprietor's area lies (Administration Regulation 30 and paragraph 6A of the table in Part 1 of Schedule 4).

6. Q. How is the academy trust's Scheme employer contribution rate set?
A. If the academy is not pooled, the Administering Authority's actuary will set the employer's contribution rate taking into account the number of non teaching staff and a range of information relating to those staff e.g. pay, length of membership in the scheme etc. The resulting rate will be expressed as a percentage of pay of employees who are active members of the scheme for future service entitlements and an additional contribution towards any deficiency between assets and liabilities that may exist at the time of the calculation. The deficiency payment

could be expressed as a percentage of pay or a monetary amount depending on the policy of the Fund. The contribution rate will be calculated in accordance with the Administration Regulations 2008. The Fund's funding strategy statement will influence the period over which the deficiency can be recouped and recovery periods can vary between different pension funds.

7.Q. How can an academy trust get information about the setting of the employer contribution rate?
A. Administration Regulations 36 and 38 specify the valuations, reports, certificates or revised certificates that the Pension Fund administering authority must obtain. Administration Regulation 37 requires that a copy of the rates and adjustment certificate is sent to the employers who have active members in the Scheme, or who may have to pay into the pension fund.

8.Q. Are there any Scheme costs, in addition to the employer contribution, that an academy trust could face after it has become a separate employer in the Scheme?
A. The Administration Regulations set out what charges the administering authority can make on employers. As well as the employer's contribution rate, the academy trust would have to pay additional amounts if:

- they have used their discretion to increase the total service of a member, or award additional pension (Administration Regulation 40);
- if a member becomes entitled to benefits on the grounds of ill health, redundancy, efficiency or flexible retirement (Administration Regulation 41);
- a contribution towards the administration of the pension fund is due (Administration Regulation 42);
- if the administering authority has incurred additional costs resulting from the level of performance of the employer (Administration Regulation 43);
- if due to late payment interest is due (Administration Regulation 44).

9.Q. What are multi-academy trusts and who employs non teaching staff?
A. Multi-academy trusts (MATS) are groups of academies managed and operated by one proprietor[1]. The employer of non teaching staff in academies is the proprietor of the academy trust and not the individual academy within the trust and so it is the proprietor who is the employer for Scheme purposes. Within a MAT all academies are governed by one trust (the Members) and a board of Directors (the Governors). The MAT holds ultimate responsibility for all decisions regarding the running of the individual academies, from setting the curriculum to HR. However, it can delegate some of these decisions to governing bodies of individual academies to enable more focused local control, though it remains legally responsible for staff and standards across all schools in the chain.

10.Q. Could there be additional costs for the academy trust relating to a higher number of academy staff taking ill health retirements than was assumed by the actuary?

[1] A proprietor within the meaning of section 579 (general interpretation) of the Education Act 1996, who has entered into academy arrangements within the meaning of section 1 (Academy arrangements) of the Academies Act 2010

A. Yes. Where more employees than actuarially assumed receive benefits as a result of ill health retirements, there could be an additional charge made to the academy trust (Administration Regulation 41 applies).

11.Q. If an academy terminates an employment for redundancy reasons, could there be a cost for the academy?
A. Yes. Where retirement benefits are released early because a member has been made redundant, and is aged 55 and over but before age 65 (or the retirement age at which unreduced benefits can be paid), the academy will need to pay for the period of early release. This is known as a ‘strain payment’ and becomes payable as the administering authority has to pay the pension for longer than anticipated. (Administration Regulation 41 (2)).

12.Q. Would an academy trust be required to contribute to the Pension Protection Fund for Scheme purposes?
A. No. The Scheme is exempt from the Pensions Protection Fund as it is a statutory public service pension scheme set up under powers contained in the Superannuation Act 1972.

13.Q. Does an academy trust need to obtain separate insurance for any Scheme obligations?
A. There is no general requirement for private insurance to be obtained by an academy trust in relation to its Scheme obligations.

Issues relating to the funded nature of the Scheme

14. Q. Does the academy trust benefit from investment returns?
A. Yes, the investment returns credited to the pension fund will be allocated to the assets apportioned to the academy trust or the pool of employers in which the academy trust participates.

15.Q. How are assets and liabilities, and any deficits, considered at the triennial valuation?
A Where an academy trust is not pooled and it has its own individual contribution rate, the assets will increase in line with contributions made and positive investment returns achieved but reduced by the amount of benefit payments paid in respect of current and former academy staff. Funds use different approaches with regard to the allocation of assets where an employer participates in a pool and this depends on the type of pooling being used. In some Funds, assets and liabilities are separately tracked and updated for each employer in the pool whereas other Funds calculate a share of the pooled assets, for accounting purposes only, in some predetermined way at each triennial valuation.

If an academy has not already been informed about how a triennial valuation might affect employer contribution rates either individually or as part of a pooled arrangement, they should contact their Administering Authority for the information. It should be noted (see 23 below) that the requirement for assets and liabilities to be disclosed is likely to be a requirement for any accounting disclosures for the new Academies in any case and the information will be supplied for each Academy as required. It should, however, be noted that the assumptions used for Financial Reporting Standard 17 (FRS17)[2] are heavily prescribed by FRS17 and are different to those used for calculating the contribution rate for the employer. The liabilities set out for FRS17 purposes may, therefore, be very different to that used for a triennial valuation.

16.Q. Should there be an interest charge on the academy trust deficit because it is being paid off over a number of years?
A. The calculation of the deficit contribution includes an amount to reflect the loss of investment returns that would have been expected to have been available if the deficit had been funded immediately which could be seen to be a type of interest charge and something that applies to all employers with liabilities in the Fund. There should be no additional interest applied but when preparing accounting figures for FRS17 purposes, an interest charge will be shown in the figures, in line with the relevant accounting requirements.

17.Q. If an employee of an academy voluntarily obtains a post with another employer in a different Pension Fund and wishes to aggregate membership, is the amount transferred between the Funds affected by any deficit with the ceding Fund?
A. No. Transfers are permitted under Regulation 86 of the Administration Regulations 2008 and a Cash Equivalent Transfer Value (CETV), otherwise known as an Inter-Fund Adjustment, would be paid from the ceding Fund to the receiving Fund. The CETV represents the full value of the member's pension rights and so any difference between the CETV paid and the level to which that employee's benefits were actually funded will remain with the academy (or the pool if the academy is part of a pool) and will be addressed as part of ongoing academy contributions in the relevant funds. Equally, if an employee in another Pension Fund voluntarily obtains a post with the academy and wishes to aggregate membership, any deficit up to that point will remain with the ceding employer. A CETV will be paid which, as set out above, represents the full value of the member's pension rights and this will be allocated to the academy's notional pool of assets.

18.Q. If several academy employees are TUPE transferred to another academy in another fund, is the transfer value affected by any deficit with their ceding Fund?
A. Not if the transfer involves less than 10 members. However, if there are 10 or more members TUPE transferred to another academy, the bulk transfer arrangements in regulation 86 of the Administration Regulations 2008 would apply. This means that the ceding and receiving administering authorities have to reach agreement on the amounts to be transferred having taken into account guidance issued by the Government Actuary. While not a regulatory Scheme requirement, we would expect the Administering Authority to consult with academies over the level of assets to be transferred. Any deficiencies in the amounts will be addressed as part of ongoing academy contributions in the relevant funds. In either case, the member’s accrued service is unchanged and transfers to the new Fund.

Pooling

[2] http://www.frc.org.uk/asb/technical/standards/pub0206.html

19.Q. What is meant by the term ‘pooling’?
A. There are a number of different pooling arrangements in existence, ranging from a common contribution rate for the pool to simply the pooling of risks. Your Administering Authority will be able to provide details if pooling is relevant. The main uses of pooling are to share pension risks and/or help keep employer contributions stable across a pool, rather like insurance where premiums reflect the likelihood of a claim being made. Funds may operate pooling arrangements for their very small employers where, for example, one or two ill health retirements in the same year might require a large capital sum that might otherwise not occur for decades.

When a maintained school converts to academy arrangements, it becomes a separate employer in the Scheme and a separate employer contribution rate is calculated. It is possible that this rate can be higher (or in some cases lower) than was charged to the predecessor maintained school e.g. because of the age and pay profile of the transferring staff. When an academy pools with the Local Authority, it pools its employees with those in the Local Authority. When there is a common contribution rate for the pool, the costs are averaged out across all employers in the pool and an academy would pay broadly the same Local Authority pooled employer contribution rate, including a contribution to the deficit relating to those employer’s scheme members that are in the pool.

20.Q. If an academy elects and is permitted to have their Scheme arrangements pooled with the Local Authority, can an academy leave the pool at any time?
A. It is not intended that an academy would join and leave a pool in an ad hoc way. This would create instability for the local fund. Stability of costs for all participants in the pool, including academies, relies on the pool being managed over a reasonably long period; uncertainty of pool membership creates instabilities which can override any beneficial effect of pooling and increase costs.

21.Q. Can a new academy (e.g. Free School, University Technical College, Studio School?) seek to participate in a pool with the Local Authority?
A. Yes. Non-converting academies would be able to seek to participate in a pool with the Local Authority.

22.Q. Are there any benefits for a completely new academy trust joining a pooled arrangement?
A. As a new academy trust which was not a Local Authority maintained school, pooling arrangements could mean that the academy trust benefits from sharing certain risks with other employers in the pool. This could have a stabilising effect on the academy trust's employer contribution rate, which might otherwise fluctuate if the academy trust sits outside of the pool and bears, alone, any additional costs of, say, unexpectedly high numbers of ill health retirements. Costs in a pool might be a little higher at outset than might otherwise be the case but the benefits of the ‘risk premium’ might outweigh any short term gain outside the pool. Ultimately, it will be for the new academy trust and the Administering Authority to determine whether they should pool having considered all the issues following a conversation with their Administering Authority

Accountancy issues

23.Q. What accounting information will be required?
A. Financial Reporting Standard (FRS) 17 or International Accounting Standards (IAS19)[3] (if the latter applies) will require information to be produced by the Fund actuaries for each academy at each accounting date (generally, 31 August). Information may also be provided to the academy when it is formed, if required. This will include the current market value of the assets notionally allocated to the academy (or an appropriate share of the pool if the academy participates in a pool) and the value of the liabilities on the relevant accounting basis at that date.

Outsourcing and contractual issues

24.Q. Are staff in organisations that contract with academies eligible to join the Scheme?
A. HM Treasury published the new Fair Deal code in October 2013. This means that, where staff are compulsorily transferred to an external provider, the transferring employer (in this case the academy) has to secure pension protection for those transferred staff. The new policy is that transferred staff can remain in the Scheme. Admission can be achieved through the Admitted Body Status arrangements, and will be considered by the appropriate administering authority and subject to the provisions of the Administration Regulations. Full details of the Fair Deal policy can be found at the link;

https://www.gov.uk/government/publications/fair-deal-guidance

25.Q. What arrangements can an academy trust put in place to ensure that one of its contracting provider's Scheme liabilities do not fall to them?
A. Regulation 6 of the Administration Regulations 2008 makes provision for a contractor's access to the Scheme, through an admission agreement, where services are transferred to an external provider. The Scheme employer, the Academy Trust in this instance, needs to be a party to any admission agreement and, as such, would need to be content with the terms of that agreement. This is because, in the event of contractor failure, the Scheme regulations provide that an amount can be called from the Scheme employer, in this case the academy trust (Administration Regulation 38 (3) refers). However, the Scheme regulations require that the admission body, taking actuarial advice and to the satisfaction of the Administering Authority, assesses the level of risk for failure of the contract and that, where the level of risk is such as to require it, the contractor provides a bond, indemnity or parent guarantee, to meet the level of risk identified (Administration Regulation 7 applies).

Provision of a guarantee from the Department for Education

26.Q. What is the Department guaranteeing?
A. The Department has provided a guarantee for Scheme Administering Authorities that, where an academy closes, any outstanding Scheme liabilities that arise will not fall back on the fund. This is set out in a Parliamentary Minute and Written Ministerial Statement both of which can be found at the following link:

[3] 3 http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_261/l_26120031013en00540183.pdf

http://webarchive.nationalarchives.gov.uk/20130905103751/http://www.education.gov.uk/schools/leadership/typesofschools/academies/la/a00204881/lgps

In the first instance we would expect the liabilities to be met from the academy trust's assets on closure of the academy. Any outstanding deficit that remained would then be met by the Department.

27.Q. When did it come into force?
A. The guarantee came into force on 18 July 2013.

28.Q. Is the guarantee only for a seven year period?
A. No. The guarantee is not time bound. The liabilities have been projected over a seven year period as this is the period over which we can reasonably predict academy numbers with any confidence. Going forward, the Department will project future academy numbers and assess potential liabilities on a rolling programme.

29.Q. How will it work?
A. If an academy were to close (i.e. with no successor academy in its place), the Department would assess whether the Scheme pension liability could be met from the assets of the academy trust. This is because under an academy trust's funding agreement the Secretary of State has powers to decide how assets are allocated when an academy closes. Where the liabilities could not be met from the assets the Department would meet the remaining liabilities and ensure they do not revert to the fund.

30.Q. Under what circumstances would an academy be likely to close?
A. Academy closure is unlikely. If an academy was failing and there remained demand for pupil places, a new academy trust would be sought to take over the running of the academy. In this case, Scheme liabilities would be transferred to the new academy trust. Where there is no successor academy trust, for example, when an academy closes due to falling rolls, Scheme liabilities would, in the first instance, be met from the academy trust's existing assets. Closure could take several years to happen, during which time the Department would work closely with stakeholders including the relevant Administering Authority.

31.Q. Are there circumstances where an academy closure could be a first option?
A. Yes. Closure might be considered as a first option if, for example, the academy is in breach of its duties to such an extent that there is a risk of serious harm to the welfare of pupils at the school. If this were to happen the closure would be managed in conjunction with all the relevant authorities to ensure the safety of children first. The liabilities would then be managed in the same way as any other closure.

32.Q. If an academy defaults on its obligations under the Scheme regulations, which is not caused by or results in closure of the academy, will the Administering Authority be able to call on the Department for Education guarantee?
A. No. A default should be raised by Administrating Authority with the academy immediately and separately reported to the Education Funding Agency (EFA) to ensure that the situation is resolved promptly. The Agency would be concerned if this were to arise and would seek to investigate the circumstances for the default. The Agency can be contacted at Academy.QUESTIONS@education.gsi.gov.uk

33.Q. How would the pension liabilities be paid?
A. The Department, on receiving and agreeing an indicative actuarial calculation from the Administering Authority on the amount of unmet liabilities in respect of the closing academy, and having agreed or determined what payments would be made by the Academy trust towards it from its available assets, would then pay any outstanding related Scheme liabilities to the relevant Administrating Authority to an agreed timescale. The intention would be to make full payment as soon as practicable but, bearing in mind the need for the Administering Authority to obtain the final cessation valuation, it might make an interim payment. This would be agreed between the Department and the Administering Authority.

34.Q. The Parliamentary Minute states that HM Treasury and Department for Education can remove the guarantee after a reasonable notice period, doesn't this weaken it?
A. No. This is standard for Government policies. There is no specific end-date for the guarantee, nor any expectation that it will be withdrawn in the foreseeable future.

35.Q. What happens if the estimated contingent liability ceilings for a particular year, as set out in the parliamentary minute, are exceeded?
A. The ceilings have been based on the historic closure rates for local authority maintained schools. However, the closure rate for academies is expected to be much lower and we do not, therefore, expect to exceed these amounts. If it becomes evident that the ceilings would be breached, the Department will have further discussions with HM Treasury seeking approval for the limits to be increased.

36.Q. Will the contingent liability ceilings be revised annually and communicated annually to administering authorities?
A. Yes. The ceilings will be reviewed and communicated annually as part of the Department's standard disclosures within its Departmental estimate and statutory accounts.

37.Q. Will a revised Parliamentary Minute be issued at each annual revision of the contingent liability ceilings?
A. No. A new Parliamentary Minute would not normally be needed. However if there was a significant increase or decrease in the ceilings we would publish a revised Parliamentary Minute.

38.Q. What happens to any Scheme liabilities if an academy, which is part of a multi academy trust (MAT), were to close?
A. Any Scheme liabilities could, in the first instance, be assumed by the MAT. If, however, the MAT was unable to assume such Scheme liabilities, the guarantee would then be engaged with the Department assuming any outstanding Scheme liability in the same way as for a stand-alone Academy.

39.Q. Should Department for Education plan to withdraw the guarantee, would there be a consultation and would Administering Authorities' views be sought as part of that consultation?
A. Yes. We would consult with Administering Authorities and other interested parties should we withdraw the guarantee.

40.Q. What period is considered ‘reasonable notice’ for the withdrawal of the guarantee?
A. We have not yet established how long this period should be and would welcome your views on this. Please send your responses to

Phillip.hossell@education.gsi.gov.uk

41.Q. Would Department for Education inform the relevant Administering Authority as soon as it was aware of a planned closure of an Academy?
A. Yes. The sooner Administering Authorities are aware of plans to close an academy the sooner arrangements for managing that closure can be put in place. The Local Authority would also be informed because of its responsibilities regarding the provision of school places in the local area.

42.Q. If there is disagreement between Department for Education and the relevant Administering Authority over the cessation valuation amount due on closure of an academy, or the timescale for payment, who would arbitrate?
A. In the unlikely case of a disagreement, there would be a referral to a third actuary. This is in line with Department for Communities and Local Government’s current practices.

43.Q. When an academy closes, how long would it take for the Department for Education to issue the closure notice?
A. A closure notice would be issued as soon as a decision to close an academy was made even where the closure would be planned to take effect over a number of years.

44.Q. Does the guarantee cover liabilities which accrued before and after academy conversion for transferring employees as well as those accruing to new employees of an academy?
A. Yes. The guarantee covers all the academy’s outstanding Scheme liabilities at the time of closure.

45.Q. Is the Department for Education aware that, if academies receive preferential recovery periods rather than a higher contribution rate and should the guarantee be called upon, the cessation valuation at closure will produce a higher amount?
A. The Department acknowledges that the effect of paying lower contribution rates will inevitably result in a higher cessation valuation in the event of an academy closure, as the pension authority is unlikely to have access to funding from any other employer in the fund after closure. However, a closure event would be managed over a period of years and would include the possibility of making annual lump sum payments to the fund to reduce the pension deficit position prior to actual closure.

46.Q. What should an Administering Authority do if it has concerns regarding the pension guarantee and academy pension liabilities being accrued?
A. The academy pension situation will be continually monitored by the Department for Education and Administering Authorities will be able to flag concerns at any time.

47.Q. Who can I contact if I have any questions regarding the guarantee?
A. You can contact Phil Hossell phillip.hossell@education.gsi.gov.uk. This guidance may not address all the issues relating to being an employer in the Scheme and, if an academy trust has any specific issues or requires further information on items in this FAQ document, we suggest that an early conversation between the academy and its Scheme Administering Authority is considered.

For further information please see the following sources.
The Department for Education
http://www.education.gov.uk/schools/leadership/typesofschools/academies
The Local Government Pension Scheme Regulations
http://timeline.lge.gov.uk/
Link to LGA advice site
http://www.local.gov.uk/web/lgaworkforcepensions/home
Contact:
Robert Ellis, Workforce, Pay and Pensions, DCLG -
robert.ellis@communities.gsi.gov.uk
Lesley Hastie, Academies Start-up Funding & Data Division, DfE -
lesley.hastie@education.gsi.gov.uk