



Academy conversion – advice for sixth form colleges

Sixth form colleges (SFCs) have been given the option in 2016 to convert to become academies. The Department for Education (DfE) published guidance and an application process in February 2016 on what sixth form colleges need to do.

AoC takes no view as to whether conversion is right for any individual SFC. It is up each governing body, as representing autonomous institutions, to decide. This note is designed to set out the advantages and disadvantages.

When looking at the issue for a particular college, local circumstances will be relevant, including its size, ethos, core purpose and comparative performance. Local competition and relationships with other colleges and schools are also important factors. Any decision needs to consider potential future changes in the landscape.

DfE has acted properly in recent years to eliminate a number of the inequalities between schools and colleges including ones related to funding, performance reporting and inspection. Some differences remain, for example in the handling of VAT and in regulation. Many of these changes follow successful college lobbying as does the conversion process but it is important to note that conversion will not, on its own, resolve all the issues that sixth form colleges face.

The key points about the guidance are:

- Conversion will be achieved through a sixth form college corporation dissolving itself and transferring its property, rights and liabilities to either a new or existing academy trust (DFE advice, paragraph 5).
- Applications to apply will be considered as part of the relevant local area review (para 8).
- DfE advise that it will take a minimum of 4 to 6 months between approval and the start date for conversion to take effect (para 11).
- Sixth form colleges (and any academy trust that they might join) are responsible for completing any financial and legal aspects of the transfer. Although this does not need to be completed before application, there must be sufficient assurance that the new academy will be financially solvent and viable (para 20).
- Transition grants of up to £50,000 are available for single sixth form college academy conversion and of up to £100,000 for an establishment of a multi academy trust involving 2 or more colleges (Transition grant guidance)



- There is an option to apply for support from the new restructuring facility but funding will only be offered if there is evidence that the college is unable to fund the change through its own resources (including asset sales) (paras 22 to 24).
- Sixth form colleges are expected to consult all relevant stakeholders including staff members, parents, local stakeholders, lenders and important contractors (paras 25 to 29).
- Decisions will be made jointly by the Regional Schools Commissioner and SFC commissioner who will check the proposal passes and educational, governance, financial health, sustainability and value for money assessment. Support from the area review is a necessary pre-condition for approval (para 37 to 38).
- The default options for conversion will be that the sixth form college forms or joins a Multi Academy Trust (MAT) (Annex 1, para 6).
- Colleges with good or outstanding ratings from Ofsted and for finance will be able to form their own MAT or (on an exceptional basis) to apply as a single academy trust (Annex 1, para 6).
- Colleges with Ofsted ratings that they require improvement or are inadequate will be required to join stronger MAT (Annex 1, para 6).
- Advice is available from the Joint Area Review Delivery Unit (area.reviews@education.gsi.gov.uk) who will allocate a lead EFA advisor to sixth form colleges who express an interest. Once applications have been approved, a case worker will be allocated to help with the processes surrounding the establishment of a new trust (or joining the existing trust), the dissolution of the sixth form college and the agreement of articles of association, funding agreements etc (Annex 3, Para 25 and main document para 39).

Because conversion involves a legal change of the ownership, it will result in a one-off VAT charge if the college has a building completed after 1 March 2011 for which it obtained a zero rating certificate. Even though a building's use is unchanged, HMRC state that a change of control counts a change of use and therefore requires the VAT originally claimed to be recovered. DFE and BIS have now confirmed that the VAT costs relating to an area review related ownership change can be recovered from restructuring grants.



The conversion decision is a complicated one. This slide summarises the key points in one place



Sixth form college conversion

Advantages

VAT reclaim
Insurance @£25/student
LGPS guarantee
Avoids an FE merger
Standardised status
New local relationships
Others will convert
"Join the mainstream"

Disadvantages

The MAT requirement
External financial control
Income restrictions
HE, SFA and Visa issues
Bank, VAT, contract issues
Conversion at own expense
Distracts leadership
"No going back"

Potential Advantages

- An immediate advantage is the ability to reclaim VAT following the Chancellor of the Exchequer's pledge to allow a conversion process so that sixth form colleges can secure the same benefits as academies. The 2011 Finance Act allows academies to recover VAT on all non-business expenditure. (HM Revenue and Customs VAT Information Sheet 09/11 explains the rules). Conversion may earn a sixth form college a VAT rebate worth £200,000 to £300,000 a year.
- Conversion may be an opportunity to put the Sixth Form College onto a more sustainable financial footing, particularly the process involves reduction in debt or joining a larger group.
- For some sixth form colleges, conversion is a way to avoid a takeover by a neighbouring FE college. In recent years a number of FE colleges have closed their A Level provision and some schools have closed their vocational courses. For some sixth form colleges, conversion will enable a move into a sector focused more on academic qualifications.
- Sixth form colleges would be able to convert without changing their name. They could retain the title 'sixth form college' in all relevant information.
- The academy brand is at the heart of government education policy. The recent schools white paper sets out a plan for every school to become an academy. It is possible that conversion will make it easier for sixth form colleges to engage with DfE and the schools system.



- Sixth form colleges and 16-19 academies work in the same education system, teach the same qualifications, are both funded by EFA and inspected by Ofsted. EFA allows at least one 16-19 academies to continue to use the Individual Learner Record to supply student data. Conversion will not change the core features of a SFC.
- Although academies are subject to greater DfE control, 16-19 academies are exempt from some significant rules which currently apply to 11-18 academies and schools (for example the admissions code, behaviour/exclusion policies etc).
- Conversion to an Academy would make it easier for a sixth form college to join a MAT which might bring useful support, investment and scale economies (albeit at a loss of independence). Forming their own MAT may allow an sixth form college to secure these benefits but with more choice over how they form partnerships.
- As schools, academies may have access to some initiatives of funding which are not easily accessible to SFCs. For example, academies currently benefit from DfE assistance with insurance premiums.
- The DfE guaranteed some of the LGPS pension liabilities of academies in 2013 and requires LGPS funds to pool academies' assets/liabilities if the academies ask them to do so. Although most LGPS funds have classified colleges as having 'statutory underpinning', they do not benefit from the same national guarantee. Converting sixth form colleges may be covered by this guarantee though this depends on the terms of the conversion.
- Academies are able to access a DfE risk pooling scheme at a cost of £25 a student
- As an academy, it might be easier to extend a college's age range and start admitting younger students. In the last few years, only one sixth form college has taken advantage of the rules for direct recruitment of 14-16 year olds.
- Some suppliers offer discounts or special prices only for schools or academies. There are more professional services available to the 5,000 academies than to the 350 colleges.

Potential Disadvantages

The main disadvantages of conversion are the new and additional regulations that could constrain their work.

- Academy conversion requires a one-way change of legal status with DfE gaining more control over what happens in future. Whereas college governing bodies have the decision about whether to merge or demerge, academy changes require the approval of the Regional School Commissioner acting on behalf of the Secretary of State
- Government rarely offers something for nothing. The default option for conversion is the requirement to join a MAT. There is a strong push within DfE to use MATs as a vehicle to turn around failing or coasting schools. Sixth form colleges may find that conversion requires a greater involvement in secondary education.



- Becoming an academy will require an overhaul of a college's governance because of the requirement to form a trust and to identify and update members, trustees and governors.
- There are 14 Catholic sixth form colleges and another 12 with linked trusts. The conversion deal, articles of association and funding agreement may not be sufficiently customised to meet their requirements. DfE has been negotiating the terms of academy conversion with the Church of England and Catholic Education Service and may include clauses in the forthcoming
- As an academy, a sixth form college would need to sign a funding agreement with the Secretary of State. The current model funding agreement for 16-19 academies is 90 pages and more prescriptive than the current rules that apply to sixth form colleges. It might be possible for SFCs to negotiate variations individually, or as a group but many of the clauses reflect Government policy. DfE and EFA do not have the staff to offer variations.
- Academies are in the public sector whereas SFCs are in the private sector. Conversion would be a form of nationalisation would involve a greater degree of regulation of the college's activities in terms of spending, employment of staff, use of land and financial reporting. The Academies Financial Handbook is 59 pages, has become more directive in response to financial problems in individual institutions and has a fairly long list of things that governors and accounting officers must do. Academies need to ask for prior approval before setting a deficit budget.
- Conversion is likely to require repayment of any bank loans though this is still up for negotiation. If a sixth form college is able to repay its loan from other assets then conversion is straightforward. If it wishes to maintain its loan (for example because the terms were good), it will need approval from the Transaction Unit because of the impact on DfE's own accounts. Maintaining its loan may not be straightforward because there is currently no academy lending market so the position will depend on the attitude of lenders. The restructuring fund process has been deliberately designed to be fairly arduous to ensure that applicants prove their need the money.
- Academies are covered by a different set of accounting standards (the Charity SORP) and have a 31 August year end. They are required to submit accounting returns by 31 March and to make a number of the returns which are no longer required from SFCs.
- There would be a small financial cost in changing legal status and possibly some switchover costs relating to communications, staff and service contracts.
- 16-19 academies are defined in law as institutions "principally concerned with providing full-time or part-time education suitable to the requirements of persons over the compulsory school age [16] but under the age 19"¹ SFCs with significant SFA funded provision for students over the age of 19 may find it harder to retain this work.
- Under current immigration rules, sixth form colleges are allowed to recruit international students if they hold a Tier 4 licence whereas academies cannot recruit

¹ Section 1B(1), Academies Act 2010



international students unless they have done so as independent schools before conversion. Government policy is pretty inflexible on immigration issues (and is likely to be even less so following the EU referendum) so the option for sixth form colleges is to find another partner to manage the activity and the licence.

- SFCs have a small, distinct and positive brand which may be lost with conversion to become one of more than 1,000 secondary academies. There is a wider risk to the viability of SFCs as a recognised sector if there is a division between two legal categories. This could result in a loss of influence.
- HEFCE's legal powers and the legal arrangements covering the student loan company are governed by the 1992 Further and Higher Education Act which allows it to fund FE corporations but not academies. The college will need to apply for specific course designation for each course on offer. The reforms associated with the Higher Education and Research Bill promise to level the regulations (upwards) which would put colleges and academies at the same place in terms of access to higher education but DFE control of academies might well make developing higher education provision (rather than just maintaining it) more difficult.

FE and tertiary colleges

DFE's advice on conversion says that an FE or tertiary college might also be able to apply for conversion. In order to do so, the college would need to show that it could meet the statutory definition of a 16 to 19 academy. As a minimum, DFE interprets this as meaning that 80% of a college's FTEs are 16 to 19 full-time students. In practice this would require a demerger of other activities (adult further education, higher education etc) and would need to be part of a plan developed in the area review process.

Finally

Conversion may be perceived as a step to ensure that a SFC is sustainable but does not address all the financial issues they face and needs to be assessed carefully against alternative options.

We will continue to update this document more information becomes available. Any queries or comments to Julian_Gravatt@aoc.co.uk

Association of Colleges
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