

## **A note from the Secretaries of State for Education and Communities and Local Government**

To Local Authority Leaders and Chief Executives in England

copied: Local Government Pension Scheme administering authorities

### **Academies and the Local Government Pension Scheme (LGPS).**

Academies in all their forms are central to improving education. They promote innovation and diversity in the school system, give power and freedom back to heads and teachers and raise school standards across the board. The Academy conversion programme ensures that the highest performing institutions help the weakest to improve. Where maintained schools are performing poorly the Government is encouraging their conversion to Academy status with the help of an outstanding school or experienced sponsor. The Government is committed to expanding the Academy programme. There are now 1,463 Academies across England, with many more schools wishing to convert. In addition, the first Free Schools opened in September 2011 and the range and choice of education provision is changing rapidly across the country. Free Schools, University Technical Colleges (UTCs) and Studio Schools are being opened as Academies in direct response to parental demand and will drive up standards in the communities they serve.

We are, therefore, writing to set out in further detail an approach to pooling that we recommend be adopted. The clear aim is that there is a consistency of approach across Local Government Pension Scheme (LGPS) administering authorities so that an Academy in one part of the country is not treated in a different manner to one in another and no Academy pays unjustifiably higher employer pension contributions to the LGPS compared to maintained schools in the local area. This applies to existing Academies as well as those yet to convert or open, including Free Schools, University Technical Colleges and Studio Schools.

Many LGPS administering authorities have worked hard to help those schools becoming Academies resolve issues but we know that some administering authorities have been uncertain about how to treat Academies in their fund with some Academies being set employer pension contributions significantly more than maintained schools in the local area. Where a maintained school converts to Academy status it is Government's intention that the overall costs for the Academy as a participant in the Scheme should not increase. Like maintained schools, all forms of Academy continue to receive their funding from the public purse and, consequently, should not be treated in the LGPS less favourably than maintained schools.

Some converting Academies have been discussing with their LGPS administering authority the wish to be pooled with the local authority that formerly maintained the school.

Pooling arrangements between employers are permissible within the LGPS regulatory framework and we strongly recommend that where an Academy wishes to be pooled, administering authorities positively consider this. Academies would then pay the same LGPS employer contribution rate as maintained schools in the local area which includes an element for accrued past service liabilities. If it is found that inconsistencies or unjustifiably high employer pension contributions to the LGPS remain, consideration will be given to what other steps, including regulatory changes, would be needed.



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December 2011

## Academy arrangements and the Local Government Pension Scheme - pooling of Academy arrangements with local authorities

### **Legal and financial status of Academy arrangements**

1. Academies set up under the Academies Act 2010 are independent schools but they are publicly funded. Governance arrangements are agreed with the Department for Education and the Funding Agreement entered into with the Secretary of State sets out clear and robust financial and accounting requirements. Under the Funding Agreement the Academy Trust (the legal entity that runs the Academy Trust), has to ensure that its accounts are audited annually by independent auditors and it must allow access by the Secretary of State to its accounts and related records.
2. 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 and Studio Schools. These new schools are also Academies set up under Academy arrangements under Section 1 of the Academies Act 2010.
3. Funding Agreements made between the Secretary of State for Education and the Academy Trust are not signed for a set or limited period of time, rather they are open-ended.

### **The Local Government Pension Scheme and pooling Academy arrangements with the relevant local authority**

4. A proprietor of an Academy<sup>1</sup> who has entered into Academy arrangements, is a Scheme employer in the Local Government Pension Scheme (LGPS) and is listed in paragraph 21 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008 (as amended). This means that the non-teaching staff employed by Academies 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 LGPS employing authority in its own right. Academy Trusts for new provision, such as Free Schools, Studio Schools and UTCs will also be LGPS employers.
5. While there is no express regulatory provision in the LGPS for the pooling of employers in the Scheme, Regulation 36 of the LGPS (Administration) Regulations 2008 is considered a sufficiently broad power to enable employers (if they wish) to enter into joint arrangements with the Scheme funds, as already happens in some cases, that will

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<sup>1</sup> Commonly referred to as an "Academy Trust": A qualifying Academy Trust proprietor is a charity under section 12 of the Academies Act 2010. This includes Academies that opened prior to the 2010 Act.

facilitate the setting of harmonised employer contribution rates under pooled arrangements.

6. Where an Academy pools with the local authority it is intended that this should result in the Academy Trust having the same employer contribution rate as the local authority would have in respect of its maintained schools. This is because the assumptions used to set the rate will be common to the Academy and local authority. Actuarial assumptions are shared across the pool and all participants in the pool are responsible for meeting the cost of the full past service deficit relating to those in the pool and share the same deficit recovery period.
7. It is recognised that consideration has to be given about the risk to the fund should a school or Academy fail. Should a maintained school ever be wound up it will be the function of the local authority to transfer pupils to another educational institution. Pension liabilities would be managed within the local authority's employer contribution rate.
8. Equally, if the Secretary of State for Education considered that an Academy was performing poorly, he would review the position, broker support and, where necessary, take steps either to replace the Academy Trust sponsors (the members of the Academy Trust) or the Academy Trust. If either party to the Academy arrangements ever decided that those arrangements should be brought to an end, it would have to give notice to the other party. The education provision for the affected children and young people would need to continue in an appropriate educational establishment.
9. The Government would be bound to consider all available options for dealing with an Academy's outstanding LGPS pension liabilities including, but not limited to, the assignment of assets and liabilities to a new or an existing educational establishment where this was the desired outcome.
10. This note is intended to clarify the position regarding Academy funding and the Secretary of State for Education's role should there be any question about the performance or continued operation of an Academy. This clarification has been provided to remove the uncertainty for administering authorities about the treatment of Academies in their fund and also allow requests, from an Academy to be pooled with the local authority for LGPS purposes, to be positively considered. The clear aim is that there is a consistency of approach across LGPS administering authorities so that an Academy in one part of the country is not treated in a different manner to one in another and no Academy pays unjustifiably high employer pension contributions to the LGPS compared to maintained schools in the local area. If it is found that inconsistencies or high employer pension contributions remain, consideration will be given to what other steps, including regulatory changes, would be needed following discussions with LGPS experts, including Scheme actuaries.
11. The preferred approach in this note is recommended to apply to all Academies, including existing Academies as well as those yet to convert or open, including Free Schools, University Technical Colleges and Studio Schools.
12. To help practitioners in both educational establishments and LGPS administering authorities, supporting guidance is being developed and will be issued shortly covering

Academy arrangements and the LGPS both for existing Academies and those schools considering conversion to Academy status. It will also cover how to manage an existing Academy's employer contributions for those who wish to join a pooling arrangement but have not been treated this way previously.

13. Communications about this note should be addressed to either:

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From: the Department for Education and Department for Communities and Local Government

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