
Schools Converting to Academy Status – November/December 2023

Executive Member(s): Cllr Tessa Munt - Lead Member for Children Families and Education

Local Member(s) and Division: Cllr Norman Cavill and Cllr David Fothergill (Monkton and North Curry)

Cllr Mike Hewitson and Cllr Oliver Patrick (Coker)

Cllr Henry Hobhouse and Cllr Kevin Messenger (Castle Cary)

Lead Officer: Claire Winter – Director of Children’s Services

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1. Summary / Background

- 1.1. The Secretary of State for Education has directed via an Academy Order, the conversion to Academy Status of Stoke St Gregory Church of England Primary School, Castle Cary Community Primary School and West Chinnock Church of England Primary School. West Chinnock is federated with Norton-Sub-Hamdon Church of England Primary School and the Governing Body have taken the decision that both schools should convert at the same time.
- 1.2. This is a decision to authorise officers to enter into property and land arrangements (Service Director Strategic Asset Management) and associated HR, finance and business management (Assistant Service Director Education Partnerships and Schools) to facilitate the conversion of all four schools that are the subject of this paper. The decision that these schools should convert to academy status has been taken by the Secretary of State for Education.
- 1.3. In accordance with the Council’s Constitution the Strategic Asset Management Service Director who is the Director responsible for property has delegated authority to agree the disposal of Council land, together with being able to agree granting leases and licences in relation to all academy conversions

2. Recommendations

- 2.1. It is recommended that the Lead Member for Children and Families and the Service Director - Strategic Asset Management:
- 2.2. a) authorise the Council to enter into a Commercial Transfer Agreement relating to the transfer of the staff, assets and contracts of the following schools to the following Trusts:

School Name/Trust Name	School Category	Proposed Conversion Date
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Stoke St Gregory Church of England Primary School to The Oak Partnership Trust	Voluntary Controlled	01/11/2023
Castle Cary Community Primary School to The Academies for Character and Excellence Trust	Community	01/11/2023
West Chinnock Church of England Primary School to The Bath and Wells Multi Academy Trust	Voluntary Controlled	01/12/2023
Norton-Sub Hambdon Church of England Primary School to The Bath and Wells Multi Academy Trust	Voluntary Controlled	01/12/2023

b) Approve the grant of a 125 year leasehold interest in land owned by Somerset Council to the relevant academy trust on a peppercorn basis (as set out paragraph 16.8 in this report).

c) Take on behalf of the Council all necessary actions and enter into any necessary transactions to give effect to the above and any supporting documentation that may be required to give effect to the same.

3. Reasons for recommendations

3.1. To meet the requirements of the Academies Act 2010

4. Other Options Considered

4.1. No other options were considered since these are directives from the Secretary of State for Education in respect of all four schools.

5. Links to Council Plan and Medium-Term Financial Plan

5.1. The Council Plan 2023 - 2027 priorities is that children need access to good schools and education outcomes should be improved for all children.

6. Financial and Risk Implications

6.1. An amount pro-rata from the date of conversion to 31 March 2024 will be recouped from the Dedicated Schools Grant equivalent to the funding that these schools would have received through the funding formula as maintained schools.

6.2. The 125 year lease for land owned by Somerset Council will be on a peppercorn basis to the academy trusts.

6.3. Councils are unable to levy any charge for any school in receipt of a direct academy order as a result of poor performance. The cost to the Council of these conversions is estimated to be in the region of £7,000 for legal fees and £10,625 per conversion of officer time.

The Council is able to and will levy a charge of £10,625 for the conversion of Norton-sub-Hamdon Church of England Primary School and will recover all related legal costs.

- 6.4.** On the 2 August 2023, the Council’s Executive approved a new Academisation Finance Policy and Procedure. This decision brings the Council’s policy in line with the Department for Education guidance including that for the treatment of any surplus or deficit balance at the date of conversion. This policy states that for schools in receipt of a direct academy order, any surplus is retained by the Council and any deficit is also retained by the Council. In the case of a voluntary conversion, any deficit or surplus balance is transferred to the trust. The academy trust will also be entitled to retain committed funds where these fall into any of the categories specified in the new policy.
- 6.5.** The estimated reserves at the proposed date of conversion in the following table have been calculated by adding the reserves balances held at 31 March 2023 to the pro-rata estimated surplus or deficit for the 2023/24 financial year which have been taken from the schools’ budget plans for that year.

School Name	Conversion type	Estimated reserves	Estimated committed funds
Stoke St Gregory Church of England Primary School	Directed	£82,000	£24,000
Castle Cary Community Primary School	Directed	£118,000	£48,000
West Chinnock Church of England Primary School	Directed	£17,000	£6,000
Norton-Sub Hambdon Church of England Primary School	Voluntary	£33,000	£11,000

For conversions subject to a directed academy order, if at the point of conversion, there is a surplus, this will be retained by the Council but will exclude any agreed committed funds as defined in the new Academisation Finance Policy and Procedure. If at the point of conversion there is a deficit, this will remain with the Council.

For voluntary conversions, if at the point of conversion there is a surplus, this will be transferred to the relevant Academy Trust. If there is a deficit at the point of conversion, this will be reimbursed to the Council by the Department for Education.

- 6.6.** In 2023/24, the Council received income of £119,467 for services provided to the four schools which are the subject of this paper. Similar income is unlikely to be received in 2024/25. The service will therefore prepare its budget for 2024/25 taking this into account.
- 6.7.** The amount of the Local Government Pension Scheme deficit relating to the employees transferring will be provided to the Academy Trust and, at the point of conversion, any such liability will become the responsibility of the Academy Trust.
- 6.8.** Two key risks relating to the proposed conversions have been identified:
- For conversions subject to a directed academy order, expenditure in the period before conversion beyond that defined within schools’ budget plans could decrease any surplus or increase any deficit due to be retained by the Council at the point of conversion. This would have a direct impact on the Council’s own finances.
 - Unforeseen legal costs relating to the land and asset transfer.

Although every effort will be taken to avoid costs to the Council including any historical liabilities.

7. Legal Implications

- 7.1. The Academies Act 2010 enables all maintained schools to convert to Academy status. The Council has a duty under section 5B of the Act to take all reasonable steps to facilitate the conversion of the school into an Academy.
- 7.2. For a maintained school to convert to an Academy the Council, the governing body of the school and the Academy Trust must enter into a Commercial Transfer Agreement (CTA) based on the model form published by the Department for Education. The CTA records the assets, contracts and staff transferring from the maintained school to the Academy. Under the CTA, the Council retains liability for employment costs arising before the transfer date in respect of school staff who were employed by the Council and provides an indemnity to the Academy Trust in respect of these costs. At the date of this report, no such costs have been identified.
- 7.3. The legal work to progress the transfer of the statutory and leasehold interests together with any ancillary property documentation or matters related to the same and the CTAs for the relevant site will be carried out by the Council's in-house Legal Services.

8. HR Implications

- 8.1. The necessary Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) consultations are being undertaken during the Autumn term. The relevant trade unions have been consulted via the Somerset Schools CYP JCC. The Council is the employer of staff for all four schools that are the subject of this paper and is responsible for consulting with staff and their unions.
- 8.2. Teaching and support staff unions will be seeking assurance that all employer responsibilities in respect of staff transfers, and more general staff consultation requirements are met.

9. Equalities Implications

- 9.1. The Council has a statutory duty to promote equality of opportunity (for example race, gender and disability equality) which includes requirements to remove/minimise disadvantage, meet specific needs and promote participation. Core advice and support will therefore continue to be provided to academies free of charge, but additional support will be traded. Academies, in common with other schools, are also required to promote equality, for example through monitoring attainment, progress, exclusions and attendance, and taking action to address disadvantage.
- 9.2. There may be equalities implications associated with the proposed transfer of Council assets but the Council has no control over these.

10. Community Safety Implications

- 10.1. None

11. Climate Change and Sustainability Implications

11.1. None

12. Health and Safety Implications

12.1. On transfer to an Academy the Council no longer has any Health & Safety (H&S) legal duties for the staff, visitors, and public within the school. On transfer these duties all fall under the responsibilities and accountability of the School Governing Body. However, the Council does retain a duty of care for the children attending the Academy. The Council currently carry out monitoring of maintained schools under its control including, H&S arrangements and undertakes a H&S compliance audit on a maintained school on a 3-yearly cycle. On transfer to Academy status this will no longer occur.

12.2. On transfer all accidents, near misses, recording of acts of violence and aggression cease to be recorded on a Management System which is monitored within the Council. The Academy Trust are wholly responsible for reporting accidents/incidents to the Health and Safety Executive (HSE) in a timely and accurate way. The Academy should appoint or have access to a H&S professional.

12.3. On conversion the current Fire Risk Assessment for the site and premises is transferred to the Academy Trust and the Trust takes sole responsibility for Fire Risk Assessment.

13. Health and Wellbeing Implications

13.1. None

14. Social Value

14.1. None

15. Scrutiny comments / recommendations:

15.1. The proposed decision has not been considered by a Scrutiny Committee.

16. Background

16.1. The Academies Act received Royal Assent on 27 July 2010. The purpose of the Academies Act is to enable more schools to become academies. It includes provisions to:

- Enable all maintained schools to apply to become academies;
- Give the Secretary of State the power to issue an Academy Order requiring the local authority to cease to maintain the school;
- Require governing bodies of maintained schools to consult before converting to an academy;
- Ensure that foundation or voluntary schools, obtain consent from that school's foundation before the school can apply to become an academy;
- Prohibit the religious character of schools changing as a result of the conversion process;

- Allow maintained schools that currently select to continue to do so as an academy;
 - Deem academy trusts to be exempt charities;
 - Ensure that a converting school will continue to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy;
- 16.2.** There are currently 133 Academies in Somerset: 24 Secondary, 6 Middle, 97 Primary, 1 All Through School. 1 Middle deemed Primary, and 4 Special Schools. 90 are Converter Academies where the Governing Body have decided to seek Academy Status. 38 are Academies with a Sponsor. Sponsored Academies will generally replace underperforming schools where standards need to be raised. Sponsors are held accountable to the Department for Education for their academies and in particular improving performance. There are also five academies in Somerset which opened as new Free Schools.

- 16.3.** Stoke St Gregory Primary School and Castle Cary Primary School have received two consecutive judgements of less than good. The Regional Director for South West on behalf of the Secretary of State has determined that both schools must convert to academy status with a sponsor.

West Chinnock Primary School received an inadequate OfSTED judgment in October 2022. The Regional Director for the South West has a duty to make an academy order in respect of any maintained school judged as Inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor. As West Chinnock is federated with Norton-Sub-Hamdon Primary School the governing body took the decision to pursue academy status for Norton-Sub-Hamdon too.

- 16.4.** The Secretary of State for Education has issued Academy Orders under section 4 of the Academies Act 2010. This directs the Schools and the Local Authority to commence formal TUPE consultations and to gather land ownership and land registration documentation to enable the land and buildings occupied by the school to be transferred to relevant Academy Trusts.
- 16.5.** Governing bodies of maintained schools are required to consult before converting to an Academy and must submit a consultation report to the Department for Education. Who must be consulted is not specified but parents and the local community are suggested.
- 16.6.** Trade unions representing staff working in Somerset schools have been consulted about the proposals. They will be seeking assurance that all employer responsibilities in respect of staff transfers, and more general staff consultation requirements are met.
- 16.7.** Academies will receive the equivalent level of funding per pupil to that which they would receive from the Local Authority as a maintained school. Funding will be in the form of a grant from the Education and Skills Funding Agency (ESFA). The ESFA will recoup from the schools budget an amount of money to go towards funding the Academy. Schools/Sponsors receive a minimum of £25,000 towards the costs of conversion from the DfE but no additional funding is available for Councils to cover their costs.

- 16.8.** Leases granted to Academy Trusts are on a full repairing and on a peppercorn basis. The terms of the lease are set out within the model Academy Lease of the Department for Education.

Stoke St Gregory Church of England Primary School is a Voluntary Controlled School and the playing field is owned by the Council and a 125 year lease will be put in place between the Council and The Oak Partnership Trust. The Council will enter into a statutory transfer of its freehold interest in part of the site to the Bath and Wells Diocesan Board of Finance.

West Chinnock Church of England Primary School is a Voluntary Controlled School and the playing field is owned by the Council and a 125 year lease will be put in place between the Council and The Bath and Wells Multi Academy Trust. The Council will enter into a statutory transfer of its freehold interest in part of the site to the Bath and Wells Diocesan Board of Finance.

Norton-Sub-Hamdon Primary School is a Voluntary Controlled School and the playing field is owned by the Council and a 125 year lease will be put in place between the Council and The Bath and Wells Multi Academy Trust.

Castle Cary Primary School is a Community School and land on which the school buildings sit is leased from the Vicar and Churchwardens. The Council will surrender the lease and The Academies for Character and Excellence Trust will enter into a new lease for the site. The Council will put in place a 125 year lease for the playing field.

- 16.9.** Legal Services and Strategic Asset Management will structure the land transaction for these schools to protect the Council's interests while complying with any DfE stipulations.
- 16.10** The relevant legal issues relating to this conversion are set out in the legal implications section of this report.

16.11 School Organisation

When a school becomes an Academy, the Academy Trust becomes the admissions authority, i.e., it will need to manage its own admissions process and ensure that its admission arrangements comply with the School Admissions Code. Schools converting to Academy status will retain the current admissions arrangements on conversion and Governing Bodies would need to consult widely before changing these.

16.12 Special Educational Needs and Disability

Academies also have a continuing duty to meet the needs of children with special educational needs and /or a disability and must follow the SEND Code of Practice.

16.13 Human Resources

An Academy is a separate legal entity to which existing staff are transferred under Transfer of Undertakings (TUPE). This means that staff are entitled to transfer under their current terms and conditions of employment. The Council is responsible for consulting with staff and their recognised trade union representatives. Trade Unions representing staff working in Somerset schools have been consulted about the proposals via Somerset Schools CYP JCC. The Trade Unions will be seeking assurance that all employer responsibilities in

respect of staff transfers are met. Consultation with staff is being carried out during the Autumn term.

- 16.14** Staff are also entitled under TUPE to be provided with certain written information in relation to the transfer of their employment by the Council. Once the Academy is open, the Academy Trust may consult with staff and trade unions on changes to those terms and conditions.
- 16.15** The Council must carry out a due diligence exercise for all transferring staff to verify information on contracts, terms and conditions, pension deficits etc before passing this information to the Academy Trust.
- 16.16** In the Commercial Transfer Agreements entered into with the Academy Trusts where, prior to the transfer, the Council was the employer of school staff, the Council indemnifies each Academy Trust in respect of all costs and liabilities which transfer to the Academy Trust under TUPE and which relate to the period prior to the date when the Academy opens. Any costs incurred will need to be met from the Council's contingency budget.

17. Background Papers

17.1. Academies Act 2010:

<http://www.legislation.gov.uk/ukpga/2010/32/contents>

17.2. Academisation Finance Policy and Procedure August 2023

<https://democracy.somerset.gov.uk/documents/s11543/Item%205%20-%20Academisation%20Finance%20Policy%20and%20Procedure.pdf>

18. Appendices

18.1. None

Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	31/08/2023
Communications	Chris Palmer	30/08/2023
Finance & Procurement	Nicola Hix	13/09/2023
Workforce	Alyn Jones	11/09/2023
Asset Management	Oliver Woodhams	13/09/2023
Executive Director / Senior Manager	Claire Winter	13/09/2023
Strategy & Performance	Alyn Jones	11/09/2023
Executive Lead Member	Cllr Tessa Munt - Lead Member for Children Families & Education	05/10/2023
Consulted:	Councillor Name	

Local Division Members	Cllr Norman Cavill Cllr David Fothergill Cllr Mike Hewitson Cllr Oliver Patrick Cllr Henry Hobhouse Cllr Kevin Messenger	15/09/2023
Opposition Spokesperson	Cllr Frances Nicholson, Opposition Spokesperson for Children, Families, and Education	26/09/2023
Scrutiny Chair	Cllr Leigh Redman, Scrutiny for Children and Families Education	26/09/2023