
Report to: Overview and Scrutiny Committee – **Date of Meeting:** 9 August 2011
 Children’s Services
 Cabinet Urgent Business Committee 10 August 2011

Subject: Academy Conversion Agreements

Report of: Strategic Director - People **Wards Affected:** All

Is this a Key Decision? Yes **Is it included in the Forward Plan** No (Rule 15)

Exempt/Confidential No

Purpose/Summary

To seek authorisation for officers to sign the documentation required to by the Government’s academy conversion process.

Recommendation(s)

The Cabinet Urgent Business Committee is recommended to:

- 1) Note the statutory requirements regarding academy conversion
- 2) Authorise appropriate officers to complete the necessary agreements required as part of the academy conversion process for the schools currently seeking academy conversion.
- 3) Note that the proposal was a Key Decision but, unfortunately, had not been included in the Council's Forward Plan of Key Decisions. Consequently, the Chair of the Overview and Scrutiny Committee (Children’s Services) has been consulted under Rule 15 of the Access to Information Procedure Rules of the Constitution, to the decision being made by Cabinet as a matter of urgency on the basis that it was impracticable to defer the decision until the commencement of the next Forward Plan because of the timescales determined by the academy process.

How does the decision contribute to the Council’s Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local		√	

Reasons for the Recommendation:

Cabinet Urgent Business Committee need to authorise appropriate officers to enter into the agreements required as part of the academy conversion process for schools seeking to convert to academies.

What will it cost and how will it be financed?**(A) Revenue Costs**

Not applicable

(B) Capital Costs

Not applicable

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal

The conversion of schools to academies is a statutory process under the Academies Act 2010.

On 25th May 2011, the Secretary of State for Education made Academy Orders in respect of the conversion of a number of schools in Sefton into academies[see Annex A attached]. The Orders provide that on the conversion date, the schools in question shall become academies and that they shall cease to be maintained by the Local Authority.

The principal issues in relation to conversion are:- Transfer of Staff; Transfer of Land and Transfer of Assets and Contracts. These issues may be dealt with in two documents, a Commercial Transfer Agreement and a Lease Agreement, although officials from the Department for Education have confirmed that conversion can take place even if these Agreements are not concluded.

The advantages of the Council entering into these agreements are :-

1. If the Lease Agreement is not concluded, the Minister may direct a form of disposal of the land under his powers in the Act. This could result in terms which are less favourable to the Council than those which are contained in the Lease Agreement.
2. The Commercial Transfer Agreement contains certain indemnities and warranties that protect the Council against certain future liabilities. If the Agreement is not concluded, the Council would not have the benefit of these.
3. The Agreements provide clarity and certainty with regard to the obligations between the parties. For example, in the Commercial Transfer Agreement, the School would provide an acknowledgement that the Council has provided the necessary information in relation to staffing matters”.

Human Resources

Upon conversion to an academy staff within the school will transfer under TUPE to the new academy.

Equality

- | | | |
|----|--|-------------------------------------|
| 1. | No Equality Implication | <input checked="" type="checkbox"/> |
| 2. | Equality Implications identified and mitigated | <input type="checkbox"/> |
| 3. | Equality Implication identified and risk remains | <input type="checkbox"/> |

Impact on Service Delivery:

Not applicable

What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD881) has been consulted and her comments are :
The authorisation of officers to sign the documentation does not lead to further financial implications. The financial implications arising from the national policy to create academies has been included in the 20011/12 budget and the medium term financial plans previously reported to Cabinet.

Head of Corporate Legal Services (LD 238/11) have been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

No – Department for Education Officials have indicated that the Secretary of State can direct the academy conversion process can continue if the agreements are not signed.

Implementation Date for the Decision

Following the call-in period for the minutes of this meeting
Contact Officer: Mike McSorley, Head of Learning Support
Tel: 0151 934 3428
Email: mike.mcsorley@sefton.gov.uk

Background Papers:

The following papers are available for inspection by contacting the above officer(s).

Academies Act 2010

Academy Orders in respect of Birkdale Deyes, Formby, Range, Maghull, Chesterfield and Greenbank High Schools.

Draft lease with Birkdale, Deyes, Formby, Range, Maghull, Chesterfield and Greenbank High Schools.

Draft transfer agreement with Birkdale Deyes, Formby, Range, Maghull, Chesterfield and Greenbank High Schools.

BACKGROUND

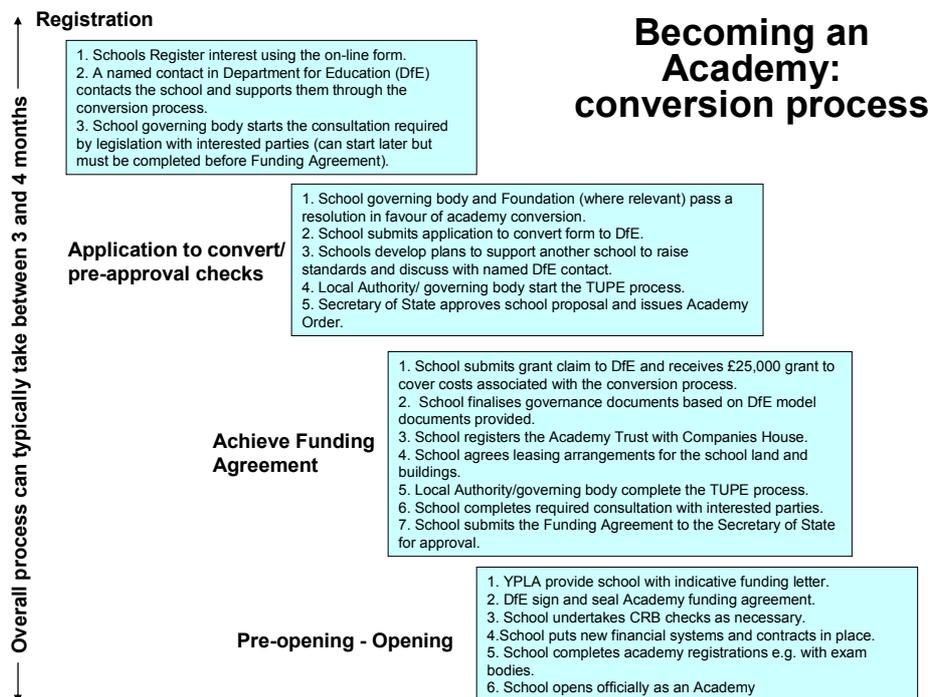
1 Academies in Sefton

1.1 As Members will be aware the following secondary schools in Sefton have registered with the Department for Education for conversion to academies:

- Birkdale High School (conversion date August 2011)
- Chesterfield High School (conversion date October 2011)
- Deyes High School (conversion date September 2011)
- Formby High School (conversion date September 2011)
- Greenbank High School (conversion date November 2011)
- Maghull High School (conversion date October 2011)
- Range High School (conversion date October 2011)

2 Academy Conversion Process

2.1 The process for schools converting to academies is legislated for under the Academies Act 2010. This provides for the governing body of a school to register and determine to go through the academy conversion process. The diagram below, produced by the Department for Education, outlines the process to be followed:



2.2 As part of the conversion process the new Academy Trust will need to enter into certain agreements with the Council as follows:

Land Issues

- 2.3 The Academies Act 2010 contains specific powers for the Secretary of State in respect of the land of the schools when they were maintained schools. It is intended that the transfer of publicly funded land owned by the local authority to the Academy will usually be by way of a 125-year lease.
- 2.4 The advisors on behalf of converting schools have provided the lease documents which will form the basis of the lease once the schools convert to academies. Officers are reviewing these leases to ensure there are no undue risks to the authority and that any usage rights etc are preserved. The leases transfer the responsibility for the operation and management of the building to the Academy Trust.

Commercial Transfer Agreement

- 2.5 This document is designed to ensure that all information on the staff who are transferring to the academy is recorded and transferred to the Academy Trust, so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. It also includes details of any assets or contracts that will transfer to the Academy Trust and of those that will not.
- 2.6 It should be discussed and agreed with the Academy Trust and the local authority before the Academy opens.
- 2.7 The advisors on behalf of converting schools have provided the commercial transfer agreement which is an agreement between the school governing body, the local authority and the academy trust. Officers are reviewing the documents to ensure there are no undue risks to the authority.

Assignment or novation of contracts

- 2.8 This forms part of the Commercial Transfer Agreement and covers agreements and contractual arrangements which will need to transfer to the Academy Trust.
- 2.9 Specific contract and arrangements in respect of each of the converting schools are being identified.

TUPE Process

- 2.10 TUPE consultation has been undertaken in respect of the schools seeking to convert to academies. Meetings have been held with the Trades Unions on a regular basis since May 2011.
- 2.11 With regards to TUPE, there is an obligation to provide written information about the transfer to employee representatives. The information which the current employer must give in writing to employee representatives (which will be union representatives where a trade union is recognised in respect of the relevant category of staff) is as follows:
- (a) The fact that the transfer is to take place, when and why;

- (b) The "legal, economic and social implications" of the transfer for the affected employees;
- (c) The "measures" which the employer envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
- (d) Any measures which the employer envisages the Academy Trust taking in connection with the transfer in respect of the transferring employees or, if no measures are envisaged, that fact.

2.11 The legal obligation to consult under TUPE only arises where the current employer (and not the Academy Trust) envisages taking "measures" in relation to affected employees in connection with the transfer. The School seeking to convert have all confirmed that they are not proposing any "measures".

2.12 The Council has provided information as detailed above and additionally has requested that the Academies provide a response to any queries from the trade unions. In this respect each Academy is taking their own legal advice. Any responses received have been forwarded to the trade unions. Additionally it is understood that the trade unions have raised matters direct with each school.

3 Council Requirements

3.1 The School Governors have resolved to convert to academy status subject to completion of the funding agreement with the Secretary of State.

3.2 The schools will ask the Council to enter into the Lease agreement and Commercial Transfer agreement as described previously.

3.3 In order for the agreements to be entered into, Members need to authorise appropriate officers from Young People and Families and Corporate Services to conclude negotiations and sign the documentation on the Council's behalf.

4. Financial Implications

The financial implications arising from the national policy to create academies has been included in the 20011/12 budget and the medium term financial plans previously reported to Cabinet.



Rt Hon Michael Gove MP
Secretary of State

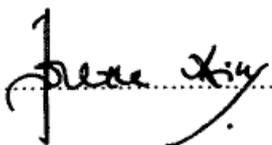
Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 0012345 ministers@education.gsi.gov.uk

**To: The Chair of Governors of Birkdale High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Birkdale High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Birkdale High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.......... Date: 25 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools



Rt Hon Michael Gove MP
Secretary of State

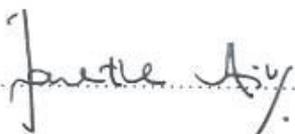
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**To: the Chair of Governors of Chesterfield High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Chesterfield High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Chesterfield High School:
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.......... Date: 10 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools



Rt Hon Michael Gove MP
Secretary of State

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**To: The Chair of Governors of Deyes High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Deyes High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Deyes High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.....

Date: 25 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools



Rt Hon Michael Gove MP
Secretary of State

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**To: The Chair of Governors of Formby High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Formby High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Formby High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.....

Date: 25 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools

Department for
Education



Rt Hon Michael Gove MP
Secretary of State

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tel: 0370 0012345 ministers@education.gsi.gov.uk

**To: The Chair of Governors of Greenbank High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Greenbank High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Greenbank High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.....

Date: 25 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools



Rt Hon Michael Gove MP
Secretary of State

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**To: The Chair of Governors of Maghull High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Maghull High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Maghull High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.....

Date: 25 May 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools



Rt Hon Michael Gove MP
Secretary of State

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**To: The Chair of Governors of Range High School
Sefton Local Authority**

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Range High School shall be converted into an Academy.
3. The conversion date shall be the date that the Academy opens as a school further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Sefton Local Authority shall cease to maintain Range High School.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:  Date: 17 June 2011

Lord Hill of Oareford
Parliamentary Under Secretary of State for Schools

Department for
Education
