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An Analysis of College Merger Issues

April 2016

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Merger facts and figures

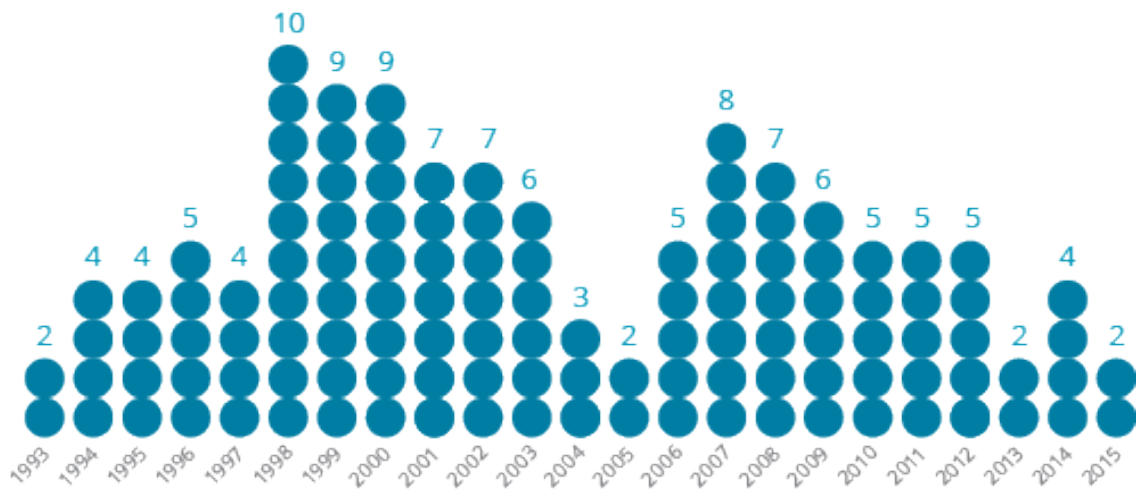
1. There are now 332 colleges in England¹ but there were almost 500 at incorporation in 1993 and as many as 800 in the 1960s. In the aftermath of incorporation, the people regulating colleges created a number of new processes for merger which are still in operation today. These include:
 - A merger process which involves two or more colleges pooling their assets, liabilities and governance.
 - A transfer process into the higher education (HE) sector in cases where a further education (FE) college's HE student numbers exceed 55% of the total student population².
 - A process for creating new FE colleges³.
2. The first college mergers took place very soon after all colleges were incorporated in 1993. There have been a steady flow of mergers in every year since for a variety of reasons. Some key causes and trends have been:
 - A decision by two or more governing bodies that a merger would create a stronger college in terms of finance and quality of provision.
 - External support for mergers for example via the Rationalisation Fund which was made available to colleges between 1999 and 2002.
3. There have often been cases where government departments or funding agencies have pushed a particular college to merge – generally in cases where its finances are weak or its quality has been judged poor. However in these cases, as in all other mergers, the decision on which colleges should merge and how has always been taken by college governing bodies. To date (since 1993), there have never been more than 10 college mergers a year in England but it is likely that 2016 will see record numbers, perhaps 15 in all.

¹ There are 231 further education colleges, 91 sixth form colleges and 10 special designated institutions

² FE colleges whose HE student numbers exceed 55% of the total can apply to the Secretary of State to become HE institutions.

³ In the years after 1993, the Department for Education and Skills converted a couple of local authority education services

College Mergers, 1993-2015



Mergers in the rest of the UK

4. Colleges in Scotland, Wales and Northern Ireland were also transferred out of local government control in the 1990s, incorporated as statutory college corporations and given a direct relationship with national Government in terms of funding and regulation. In the other three parts of the UK, there have been simultaneous college mergers as a matter of policy:

- In Northern Ireland, the Department for Employment and Learning directed the 16 colleges to merge to create six larger colleges in 2007⁴. Colleges were given revenue funds to pay for restructuring costs and were given access to capital funds for new buildings. Since 2011, Northern Ireland colleges have been classified as public sector organisations.
- In Scotland, the Scottish Government passed legislation to complete the restructuring of colleges and to make them accountable to regional boards. Between 2011 and 2014, the number of Scottish colleges reduced from 37 to 20 and there are 14 regional boards. Scottish colleges are also classified as public sector organisations. The Scottish Government provided £52 million to support merger costs but anticipated annual savings of £50 million in the longer term.

⁴ The plan for restructuring of colleges in Northern Ireland was outlined in a Northern Ireland Government strategy

- In Wales the number of colleges has reduced from 25 to 13 but there was more scope for individual colleges to decide how to reach a certain size. Several of the Welsh mergers have involved colleges joining universities.
5. Mergers in Scotland provide various recent lessons on the process itself. Audit Scotland published a report in 2015⁵ which made several interesting recommendations:
- The Government needed to specify how they would measure and publicly report on the benefits expected from mergers and on costs and savings.
 - College boards should comply with regulations and good practice when considering and approving senior staff severance⁶ and should complete remaining merger activities including standardising terms and conditions for all staff, curriculum reviews and integration of ICT systems.
6. College mergers take time. In Scotland, 18 months after most college mergers took place, the Scottish Audit Office reported that there was more work to do.

Merger process

7. Mergers between English colleges involve a bit of jargon which describes the form they take. Mergers can either be "Type A" or "Type B". This classification was invented by Further Education Funding Council (FEFC) officials in the 1990s when they were describing the different ways in which mergers could take place. The definitions are:
- Type A merger takes place where all the existing corporations are dissolved and a new one created.
 - Type B merger takes place where one corporation continues and the others are dissolved with the staff, assets and liabilities transferring into it.
8. The Association of Colleges' (AoC's) analysis of the mergers shows that Type B mergers (single dissolution) have been used in 80% of standard college-to-

⁵ Audit Scotland "Scotland's Colleges 2015"

⁶ The Public Accounts Committee of the Scottish Parliament has published a very detailed and very critical report on the handling of severance payments in Coatbridge College which has some relevant lessons for colleges elsewhere in the UK "2016 1st Report on The 2013/14 audit of Coatbridge College: Governance of severance" available from www.scottish.parliament.uk

college mergers. There are several reasons why Type B mergers are more popular:

- Continuity of name and brand for one of the colleges.
- Continuity of employment and contracts.
- Easier to explain to students and stakeholders.
- Minimises risk of delay pending official approval.
- Likely to be quicker and more predictable because the colleges are in control of the timetable.

9. In the last 15 years (between 2000 and 2015), there have only been 11 Type A mergers, six of which involved three colleges. In the same period there were 72 Type B mergers. Every completed or proposed merger since 2012 has been Type B.

10. College-to-college mergers are only one of the ways in which colleges have changed their structure. Structural changes include:

- Merger with a higher education institution.
- Merger with a school.
- Acquisitions of private training providers or local authority service.
- Legally binding federations.

11. Table 1 provides an estimate of the number of cases:

	Last 20 years	Last 5 years
New colleges	8	2
Type A mergers (double dissolution)	16	2
Type A merger (triple dissolution)	4	0
Type B merger (single dissolution)	99	12
Merger with higher education institution	12	1
Transfer to higher education sector	9	2
Merger with a school	2	2
Acquisition of private training provider	c150	c30
Legally binding federation	4	4

Legal status of colleges

12. It is necessary to understand something about the legal status of colleges to understand how and why they make decisions on mergers.

13. Colleges are statutory corporations. They were incorporated, or designated, under the Further and Higher Education Act 1992. This act transferred staff, assets and liabilities out of local government and created a corporation with a widely drawn set of powers and duties covering the provision of further, higher and secondary education⁷. These powers are vested in the colleges' governing body (sometimes referred to as 'the board', or 'the Corporation'). The 2009 Apprenticeships, Skills, Children's and Learners Act created sixth form colleges as a separate category of college ("a sixth form college corporation") but did not change the legal fundamentals of their status⁸.
14. Several features of college status have remained the same for the 20 years since incorporation:
 - The common legal form for colleges has made it relatively simple for successive governments to apply legislation to college corporations (for example laws on freedom of information⁹ or special education needs¹⁰).
 - A clear legal separation from schools and from higher education which has limited mergers despite curriculum crossovers¹¹.
 - Their charitable status which acts as a safeguard for their assets used for charitable objects¹².
 - Their VAT status (a 20% tax on contracting out; one reason why all colleges spend more than 50% of income on directly employed staff).
 - The requirement that they offer teachers' pensions or local government pensions to their staff (existing obligations on councils transferred to newly incorporated colleges in 1993).
15. Despite the rhetoric of the time, incorporation was actually a step away from full privatisation because it fixed colleges as charitable organisations with a number of public service duties. Colleges were incorporated whether their

⁷ Section 18 of the Further and Higher Education Act 1992

⁸ Schedule 8 of the Apprenticeships Skills Children's and Learners Act 2009

⁹ Freedom of Information laws cover many organisations outside the public sector including colleges and universities

¹⁰ The Children and Families Act 2014 applied common duties on all colleges with respect to young people with Education Health and Care Plans

¹¹ College partnerships with schools and universities are covered in more detail in the rest of this paper

¹² Following the Charities Act 2006, the Secretary of State for Education was designated the charitable regulator of sixth form colleges while the Secretary of State for Business Innovation and Skills is the charitable regulation of FE colleges. Special designated colleges are registered charities and therefore regulated by the Charity Commission.

governing bodies or councils wanted this via a single act of Parliament and a single set of statutory instruments passed in 1992. The transfer was overseen by two quangos abolished a long time ago¹³. Once incorporated, colleges had considerable autonomy within a national framework set by Government funding, inspection and performance management. This involved greater competition between colleges for students, income and reputation.

16. It is instructive to compare the status of colleges with those of academies. Academies have also been transferred out of local government or created as start-ups but this has happened one-by-one. The legal structure created for academies has made mergers easier. Academies are companies limited by guarantee with a board of directors that acts as a trust. The trust is the legal entity of which the school is part with many schools being part of multi-academy trusts (MATs)¹⁴ or Umbrella Trusts¹⁵. The process of adding or removing a school from an academy trust is relatively quick and need not change the original trust, though it requires Secretary of State approval (implemented by the Regional Schools Commissioner) and may involve a new funding agreement.
17. Colleges are self-governing organisations and are classified by the Office of National Statistics (ONS) as private sector, not-for-profit organisations. They nevertheless have a number of public service responsibilities which arise from their status as statutory corporations and from their stewardship of more than £6 billion in public funding (an average of more than £25 million per FE college and £10 million per sixth form college). The accounting status of colleges is a contentious issue. Colleges were classified as private sector organisations in the 1990s, were reclassified as public sector organisations in 2010 and were reclassified again in 2012¹⁶ following the Education Act 2011. These accounting distinctions mean that colleges in England have greater freedom to determine their own mission and programme of activity; are able to keep and reinvest money from income-generating activities; and are free to make their own decisions on merger.

Transfers into and out of the college sector

18. Mergers are not the only way in which colleges change their legal status. There have also been transfers into and out of the school and university

¹³ The Education Assets Board and the Further Education Funding Council

¹⁴ Defined by DfE's National College of Teaching and Leadership as a trust "where a group of schools is governed through a single set of members and directors"

¹⁵ Defined by DfE's NCTL as a trust which "permits schools of different categories to set up their own individual academies" but with "shared governance and collaboration"

¹⁶ ONS explained the reclassification of colleges – and the original classification in a note produced in 2012 http://www.ons.gov.uk/ons/dcp171766_266962.pdf

sectors. The boundaries between colleges, schools and universities are not always obvious particularly in cases where there are joint sixth forms or university centres run on college premises. Despite this, legal and regulatory differences have limited the number of mergers and transfers across the sectors.

19. Transfers into and out of the school sector have been surprisingly rare in the last 20 years. A large number of colleges have developed partnerships with schools via consortia and as academy sponsors but mergers have generally proved a step too far. St Mary's College in Middlesbrough merged with a secondary school in 2011. Christ the King College in London took over two 16-19 maintained schools in 2009 and 2013.
20. There will be more transfers from the college to school sector in 2016 and the next few years. The Government has responded to years of questions about the VAT differential in 16 to 19 education by giving sixth form colleges the option to convert to academy status¹⁷. Conversion will secure an annual VAT saving for sixth form colleges (perhaps £250,000) plus benefits from moving into the better known school sector but at a cost of having to make commitments to provide support to schools (perhaps as part of a multi-academy trust) and also moving to a more restrictive regime when it comes to financial decisions and income generation¹⁸. Sixth form colleges will not be able to convert until they have participated in an area review. The first conversions under the new rules are expected to happen in the second half of 2016.
21. Transfers into the higher education sector were quite common in the 1990s, mainly involving art and design colleges. Some of the transferring institutions have acquired full university status in the years since¹⁹. The legal threshold for transfer was defined in the 1992 Act but the process involves a Secretary of State decision. In recent years, Leeds College of Art and Plymouth College of Art have converted to become higher education institutions. The Department for Business, Innovation and Skills (BIS) recently issued guidance on what colleges need to do to secure approval for a transfer²⁰.

¹⁷ Information from DFE on conversion and the application form is available on their website <https://www.gov.uk/government/publications/16-to-19-academies-application-process-for-sixth-form-colleges>

¹⁸ The pros and cons of conversion <https://www.aoc.co.uk/blog/the-pros-and-cons-conversion>

¹⁹ Norwich University of the Arts was an incorporated FE college in 1993 and is now a university

²⁰ BIS guidance 15/522 Process and criteria for transfer from further education sector to higher education sector, September 2015

22. There has been one case where a higher education institution (HEI) has transferred back to the FE sector. Leeds College of Music converted to HEI status in the mid-2000s but has been constituted as a company limited by guarantee and is effectively a wholly-owned subsidiary of Leeds City College since 2011.
23. Mergers between universities or HEIs and colleges were also more common in the past than more recently. This is partly because four mergers have unravelled in recent years with the university handing the FE provision back to another FE college. The universities concerned did not find a way to manage the FE provision in an effective way. Four university/college demergers have resulted in the transfer of colleges in Harrogate, Lincoln, Penrith and Reading back to FE colleges. A smaller number of university/college mergers have proved more sustainable (for example Derby University's takeover of Buxton College and Leek College). In recent months, a number of universities have expressed an interest in taking over local colleges as part of strategies to develop their local links and employer facing provision.

Demergers

24. Mergers are rarely reversed but there have been some demergers in the last 20 years. A couple of mergers created the Pershore Group of Colleges but in 2007 it was split into two parts one of which transferred to Herefordshire College, the other transferred to Warwickshire College. K College was created by a merger in 2009 and was then divided back in two in 2014 with one side reconstituted as South and West Kent College which is closely associated with Hadlow College and the other side merging with East Kent College.

New colleges

25. New colleges are created when there is a Type A merger but the college has clear college predecessors so they are only new in the sense of legal status, name and governing body. There have been several new colleges created outside the merger process:
 - Several of the new National Colleges approved by the Government since 2014²¹ have been incorporated as FE colleges. Ada, the National College for Digital Skills (in Tottenham, London) and the National College for High Speed Rail (in Aston, Birmingham) are both incorporated FE colleges.

²¹ BIS "National Colleges, a call for engagement" June 2014 invited applications for new national colleges

- Several new sixth form colleges were created in the 2000s in place of school sixth forms. These included Longley Park in Sheffield, Rochdale Sixth Form College and Lowestoft Sixth Form College. In each case staff and buildings were transferred from the school sector.
- Two local authority education services were incorporated as colleges in the 1990s.
- In 2014, Prospects College of Advanced Technology was constituted as an FE corporation and was the first conversion of a not-for-profit independent training provider into the sector. Following the Prospects incorporation, BIS published guidance on the process for creating a new college²² and a paper which explained what lessons had been learnt from that case²³.

Mergers involving sixth form colleges

26. There have been relatively few mergers involving sixth form colleges in recent years, though there were more in the 1990s. There were 120 sixth form colleges in 1993 and there are now 92. Many mergers involving sixth form colleges have been seen as a takeover by a nearby FE college but this is not an automatic outcome. In some FE/sixth form college mergers, the principal of the new college has come from the predecessor sixth form college. Two sixth form colleges (Stockton Sixth Form College and Prior Pursglove College) will merge in April 2016. Mergers between sixth form colleges follow similar rules to mergers involving further education colleges²⁴.
27. One complicating issue with sixth form colleges is the relationship that 26 of them have with the church or with trusts. There are 14 Catholic sixth form colleges and another 12 sixth form colleges that have linked trusts. The recent merger involving Herefordshire College and Ludlow College (a sixth form college) required the approval of both the Ludlow College corporation and its associated trust for the merger to proceed.

Acquisitions of private training providers or local authority services

28. There have been a large number of cases where colleges have taken over private or charitable training providers or local authority training services.

²² The process for creating a new college is outlined in Section 4 and Appendix 1 of BIS College Governance, A Guide, August 2014

²³ BIS Prospects College of Advanced Technology project report, February 2015

²⁴ DfE guidance on opening and closing a sixth form college is available on their website <https://www.gov.uk/guidance/sixth-form-colleges-opening-closing-or-converting>

This happened for various reasons for example because the owners have wished to sell up or cease providing Government training directly or because a partnership with the college would create a stronger organisation. There have been several large transactions (for example Newcastle College Group's purchase of Carter and Carter's training operation in 2009 or West Nottinghamshire College's purchase of Pearson's operation in 2012) and many smaller ones. There is no complete record of transactions but AoC staff estimate there have been more than 150 purchases and transfers in the last 20 years.

29. Mergers or acquisitions involving training providers require similar project management and due diligence to college mergers but the process is simpler because it need not change the legal status of the college. Generally the college buys the shares of the company or makes an agreement with the charity that constitutes it as a wholly-owned subsidiary. There can be advantages for colleges to organise activities and courses via subsidiary companies because this can ensure accountability and can make it easier to employ staff on more flexible terms and conditions. However subsidiaries need to be properly managed. The investigation into the Barnfield Federation describes a complex corporate structure and a number of irregularities²⁵. Barnfield College extracted itself from the federation in 2014 and now runs in a simpler fashion.

Shared services

30. Shared services occur where two or more organisations are giving responsibility for a discrete area of their provision to a separate business entity which is wholly owned by the organisations involved. Colleges have shared services for decades particularly where there have been benefits in jointly managing specialist activities or where there has been external encouragement for partnership bids. Government interest in college shared services grew in response to Sir Peter Gershon's report on efficiency in 2004. This prompted a Learning and Skills Council (LSC) plan to develop a national student record and finance system for colleges. That plan ended in 2007 when it was clear that the LSC would itself be divided up following the break-up of the DfE. A few years later the Government made £15 million available to promote shared services projects. AoC managed a share of these funds and has collected evidence on the outcomes and the lessons on our website²⁶. Lessons include:

²⁵ SFA/EFA/DfE Financial management and governance review of Barnfield federation, 2014

²⁶ AoC shared service website available at <https://www.aoc.co.uk/funding-and-corporate-services/shared-services>

- Colleges attempted large-scale shared services projects but found it was difficult to move forward in a co-ordinated way. Two ambitious projects involving several colleges (e.g. most of the colleges in central London or the north east) were started in 2011 but did not proceed because short-term costs outweighed benefits.
 - A number of smaller sustainable shared services projects were created in this period. Bournemouth and Poole College and Brockenhurst College now jointly own a company which provides finance, HR and IT services²⁷. South Essex and Chelmsford Colleges jointly own Essex Shared Services Ltd which also provides finance services. City College Norwich has created a new legal structure involving a trust sitting above the college and a series of academies, a UTC and a shared service company²⁸. Two pairs of colleges (Kingston College and Carshalton College; Reigate Sixth Form College and Coulsdon College) have both established shared services as part of federations (see below). Five colleges in Sussex and Surrey recently collaborated over the purchase of a new IT system.
 - Colleges have encountered a number of obstacles when trying to share services including costs associated with VAT²⁹, legal difficulties over pensions³⁰, diversion of management time and disruption to partnerships created by inspection and funding changes.
 - It is possible for colleges to create sustainable shared services. Those that have reported that the financial and organisational benefits outweigh the costs and the obstacles. There is not, however, a comprehensive solution for all the challenges that colleges face.
31. In recent years, there have been many discussions about starting and setting up shared services but fewer about closure. The colleges involved may decide to proceed to a full merger, transfer the activities to one of the partners or close the service down. In all cases, there will be legal, contractual systems and employment law issues.

²⁷ Information on the Wessex Shared Services project is available here <http://www.aoc.co.uk/sites/default/files/Wessex%20Education%20Shared%20Services%20Ltd.pdf>.

²⁸ Information on the Norwich Shared Services project is available here <http://www.aoc.co.uk/sites/default/files/Transforming%20Education%20in%20Norfolk.pdf>

²⁹ Colleges can avoid VAT on transactions between them by setting up a cost sharing group but this is not a straightforward task and involves additional monitoring

³⁰ Staff employed by subsidiary companies owned by colleges cannot access teachers' pensions and can only access LGPS pensions if the college provides a guarantee in an admission agreement

Legally binding college federations

32. Colleges have legal powers to create federations. The process involves two or more corporations delegating legal authority to a joint committee. There is no data on how colleges have used these legal powers but it is possible that they can be used on a short-term basis where two or more colleges plan to merge. Kingston College and Carshalton College have set up a longer-term federation as have Reigate Sixth Form College and Coulsdon College which involves a shared principal and shared services but within a structure which retains two governing bodies. Both colleges have developed shared services within their federation.

College partnership with academies

33. Colleges have worked with schools for decades and have acted as academy sponsors since 2006. More than 50 FE and sixth form colleges have supported academies in a sponsorship role and have worked with mainstream schools, free schools, university technology colleges, studio schools and alternative provision academies in a variety of roles³¹. Partnerships between schools and colleges are not straightforward because there are different legal and regulatory regimes. Although colleges can form multi-academy trusts, they cannot join them. Colleges have nevertheless developed a number of innovative models. In 2012 the leadership at City College Norwich developed a new overarching trust, Transforming Education in Norfolk, which now oversees the college, a university technical college (UTC), several academies and a shared service company. Blackpool Sixth Form College has created a multi-academy trust which encompasses a secondary and primary school and which also has teaching school status. Several colleges, including Bedford College, South Staffordshire College, Hadlow College and New College Pontefract, have all supported successful free school bids. In the most recent free school application round, two of the 22 bids (in Bodmin, Cornwall and Filton, South Gloucestershire) were supported by colleges (Truro and Penwith College and South Gloucestershire and Stroud College respectively).

College groups

34. A number of colleges have a group structure for their internal organisation. Each college group differs in how they organise themselves but typically there is a corporate centre distinguished from individual colleges. The colleges are generally part of a single legal entity but have distinct names, advisory boards and managements. College groups were often created

³¹ This paragraph only covers a small sample of the work between colleges and academies.

when two geographically distant colleges merged, when a private training provider was acquired or where the college has become involved in sponsoring more than one academy or UTC. Where a college has a group structure, it may be easier to add a new college by merger. The existence of a college group structure allows services to be shared between different organisations without the VAT, procurement and other complications which exist when the colleges are legally separate.

The FE Commissioner and Sixth Form College Commissioner

35. The creation of the FE Commissioner and Sixth Form College Commissioner roles in 2013 has been a further catalyst for college mergers. The first (and only) FE Commissioner, Sir David Collins, investigated 30 colleges in 2014 and 2015, two of whom have subsequently merged as a result of the intervention and six more of whom are in the process of merging at the time this report was completed (in February 2016). One of the sixth form colleges investigated by the Sixth Form College Commissioner has since merged (with another sixth form college) while another, Totton College, transferred some of its courses and site to a national charity, Nacro, and then dissolved itself at the end of 2015.
36. The Further Education and Skills Minister created the two commissioner roles to accelerate the intervention process in cases of weak quality or weak finance. At its simplest, the intervention policy for FE colleges involves a referral to the FE Commissioner, a report back to the Minister and a letter from the Minister to the Chair suggesting some actions. Throughout the process, the college corporation retains decision-making authority but in some cases the Minister will write to say that the college is being placed in “administered status” in which case the college’s decision-making freedom is constrained pending a further report from the FE Commissioner³².
37. Many of the colleges referred to the commissioner have had weak finances. Now, as before, merger has sometimes been seen as the best response in these circumstances.

³² BIS Intervention in Further Education, the strengthened intervention process, April 2014

Area reviews

38. The national programme of post-16 area reviews was announced in July 2015 and will run for almost two years until summer 2017. The Government has announced a programme of 35 reviews in five separate waves outside London and six reviews within London.
39. The first area review started in Birmingham and Solihull in September 2015 and is coming to its conclusions in February 2016 with a firm merger proposal. The other six reviews in Wave 1 also started in early autumn and will produce recommendations in spring 2016. The seven reviews in Wave 2 started in January 2016 and at the time of writing (February 2016), about 140 colleges were involved in the process.
40. The area review process has prompted a large number of colleges to consider their future and whether to pursue mergers or federations. The message that colleges need to change has led some to consider merger though, in some cases, completion is taking some time. It can take up to 12 months to complete a merger. Nevertheless 2016 is likely to be a record year in terms of the number of English college mergers while 2017 may see even more. The full list of mergers is available at www.aoc.co.uk/mergers.
41. The 2015 Spending Review brought two further policy decisions which will have significant consequences for the shape and structure of the college sector in England:
 - Sixth form colleges will have the option to convert to become 16-19 academies. They will need to agree this as an option during an area review but make an application to DfE which will be assessed by the Sixth Form College Commissioner and Regional School Commissioner. The first conversions are likely to take place on 1 August 2016.
 - HM Treasury has allocated a restructuring fund to BIS which which will be available to support area review implementation. The money will be available as repayable advances and will be paid following an application by an FE college. Funds will only be made available to supplement money that the colleges themselves contribute, for example from their own cash reserves or from property sales.



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