



**UNISON ORGANISING IN SCHOOLS**

## **UNISON Briefing on the Academies Act 2010**

### **1. Journey of the Academies Bill through Parliament**

The Academies Bill was presented in the House of Lords on 26 May 2010; the same day as the Queen's Speech introduced the Coalition Government's programme. Its purpose was to enable many more schools to become academies in England, the first to open in September 2010. The Bill also made provision for 'free schools' to be established by parents and others, with the same legal requirements as academies.

On the same day, Michael Gove, Secretary of State for Education, wrote to schools explaining that the new academy programme would be open to all schools and invited expressions of interest. Local authorities are by-passed in the Bill and have no power to block schools converting to academies. Schools that are rated 'outstanding' by Ofsted can be fast-tracked through the process.

During passage through parliament, the Government made amendments on special education needs (SEN), consultation, Freedom of Information, transfer of land and several minor changes. It also added requirements for the Secretary of State to consider the impact of an additional free school on other schools and academies in the location and for the founders to consult with appropriate persons. Two non-governmental amendments were successful: that the Secretary of State must publish an annual report on academies and their performance and secondly on services to children with low incidence SEN.

MPs approved the legislation by 317 votes to 225, with six Lib Dem MPS voting against the Bill. The Academies Act received Royal Assent on 27 July 2010.

### **2. Clauses of the Act**

Clause 1 – empowers the Secretary of State to make 'academy arrangements' under section 14 of the Education Act 2002. It specifies that there must be a broad curriculum and a specialism in secondary schools. It must mainly serve the local community and admit children of different abilities. Charges cannot be made for admissions or attendance unless allowed under the academy agreement or grant.

SEN obligations were placed on academies at a later stage of the Bill. These are equivalent to those imposed on maintained schools in Part VI of the Education Act 1996.

Clause 2 – enables an academy agreement to provide for current expenditure and capital. State funding must continue for at least seven years or indefinitely with seven years' notice as long as the terms of the agreement are met. Terms for repayment or indemnity provisions should be in the agreement in the event of its termination.

Clause 2(5) amends school finance regulations so that low incidence special education needs or disabilities become a class of expenditure for the non-schools local government budget. Clause 2(6) provides for the Secretary of State to make alternative arrangements where the local authority fails to secure satisfactory provision for these children.

Clause 3 – allows for a governing body in England to apply for academy status. A school with a foundation is required to consult it and needs the consent of trustees and other persons entitled to appoint governors to the school e.g. a local diocese or other authority in a school of religious character.

Clause 4 – empowers the Secretary of State to make an academy order in two circumstances: on application by the governing body or when the school is eligible for intervention.

Clause 5 – the governing body must consult persons as appropriate before becoming an academy. This can be at any time before the academy arrangements come into effect e.g. the agreement is signed. The previous requirement to consult the local authority is removed.

Clause 6 – prescribes the 'conversion date'. By that date the school must have met the independent school standards. After that date, the academy will be inspected in the usual way by Ofsted.

Religious schools will keep their character and be designated as independent schools with a religious character and selective schools will retain that right.

School closure procedures must be followed.

Clause 7 – before an application is approved, the local authority must determine that the school has a budget surplus and the amount to transfer to the academy. The Secretary of State will determine the regulations for this purpose. Previously, local authorities retained the surplus on conversion to academy status.

Clause 8 – permits the Secretary of State to make a 'property transfer scheme' to move property, rights or liabilities to the academy, allowing schools to maintain catering and cleaning contracts, for example.

Clauses 9 and 10 – were added to the Bill at the Third Reading and require the Secretary of State to take into account the impact of a new free school on existing schools in the area and for free school 'promoters' to consult those it thinks appropriate.

Clause 11 – was also added to the Bill at this stage and requires the Secretary of State to lay an annual report before parliament on academy arrangements and performance.

Clause 12 – relates to academy exempt charity status which does not require registration with or regulation by the Charity Commission. The Young People’s Learning Agency (YPLA) is named as the principal regulator.

Clause 13 – introduces Schedule 1; complex and technical provisions which re-enact previous legislation on the disposal of land. As land on which maintained schools are situated can be held in a number of ways by different bodies, the schedule provides for a variety of circumstances.

Clause 14 – introduces Schedule 2 which amends existing legislation:

- Redefining a ‘special school’ to allow for it to become an academy
- Changing the Secretary of State’s powers to amend trust deeds of non-maintained special schools, foundation, voluntary, or foundation special schools so that they can become academies, in consultation with governing bodies, trustees and diocesan authorities, if relevant.
- Adding academy proprietors to the list of public bodies covered by the Freedom of Information Act 2000.

Clause 15 – provides for transitional arrangements in relation to existing academies, city technology colleges and city colleges for the technology of the arts. All agreements made under previous legislation will be deemed to be made under clause 1 of the Act.

Clause 16 – allows for applications by governing bodies prior to the Bill becoming an Act.

The remainder of the Act (clauses 17 – 20) contains general provisions relating to the interpretation of the Act.

Technically the Act extends to England and Wales but its provisions apply to England only.

### **3. Differences between old academies, new Academies and local authority schools**

a) The original academy programme was aimed at ‘*failing*’ schools, mostly in disadvantaged areas of England. Their freedoms, set in new buildings, were supposed to raise standards. They replaced secondary schools although some provide all through education. The academy ‘*freedoms*’ included:

- Ability to set their own terms and conditions for all staff, subject to TUPE protection
- Departure from national curriculum, except in core subjects of English, Maths, Science and ICT
- Flexibility in size and composition of governing body, but with insistence on parental and local authority representation
- Variation in the length of school days and the number of sessions taught.

b) The need for more freedom than local authority schools was questioned by those opposed to the academy programme as local management of schools and delegated budgets have given all schools much more discretion. The academy freedom was to opt out of central government regulation, in place to protect standards, and national pay bargaining which ensures consistency and stability in staff employment terms and conditions.

c) The new Act liberalises academies even more, with a streamlined model funding agreement. The Government is prioritising ‘*outstanding*’ schools for conversion to academy status, rather than ‘failing’ schools. All schools will be able to apply for academy status including primaries and special schools at a later stage. The Government has defined the difference as further freedom from local authorities and greater budgetary control. There will also be more opportunity for formal collaboration with other public and private organisations and engagement in local partnerships to deliver 14 – 19 education, where already successful.

d) The conversion to academy status has been greatly *simplified* (especially once divorced from new-build projects) and ‘outstanding’ schools are expected to become academies within three months after:

- The school expresses interest to the Department for Education (DfE)
- The governing body or foundation has voted in favour
- The Secretary of State approves the proposal

e) The DfE website says that there is *no requirement to consult* the local authority or parents, although it is suggested that students and parents should understand the changes proposed. Staff rights under TUPE are acknowledged but DfE suggests that consultation can commence once the Secretary of State has given approval.

f) ‘Outstanding’ schools do not need a *sponsor*, but other schools will. They can retain their admission criteria and will comply with the School Admissions Code. Selective schools will be able to keep their selective status when converting to an academy.

g) Governance is not covered in the Act and will be in an academy’s articles of association. The Government says that it expects an existing foundation or trust to continue to appoint the majority of governors. The academy governance model will propose a maximum of two staff governors, but academies will be free to choose whether or not they have them. The Government has said that parent governors perform an important role but do not want to be prescriptive about them.

#### **4. Academy funding**

a) Old style academies negotiated a funding agreement in a protracted process that covered the new build. The Government has stressed that there should be no financial benefits or detriment in gaining academy status. The new streamline process includes a *£25,000 grant* towards conversion soon after DfE approval. The Bill’s impact assessment estimated conversion costs of about *£78,000* per academy and suggested that the shortfall could be met from school surpluses.

b) Core funding: *The General Annual Grant*, (GAG) will be based on existing local authority formulae. There will be a grant: *Local Authority Central Spend Equivalent Grant* (LACSEG) in lieu of services no longer provided by the authority. It is estimated that this will cost £33 million in financial year 2010/11, rising to £198 million in 2013/14 and a total of £462 million over four years.

c) VAT will be payable as academies will not have the reclaim facility of a local authority. A grant of 3.4% of total budget will compensate for new liability and reclaims above this amount are possible. The estimated cost is £250,000 per year, per academy.

d) Academies will no longer be within the authority insurable interest and must have insurance cover which is compliant with statutory insurance requirements. As the cost will be greater, there may be an additional grant to cover it.

e) The funding formulae are decided locally by Schools Forums on which academies will be represented. They will vary considerably, depend on the level of existing delegation and be based on the local authority statutory financial statements. The funding will be top-sliced from the Dedicated Schools Grant and given to the YLPA which will also formulate the LACSEG using pupil numbers and the previous local authority spend.

*Academy funding will be adjusted to ensure that it remains the same per pupil as in maintained schools.*

f) The DfE website has a ready reckoner to advise would-be academies on the funding they might expect. The Bill impact assessment suggests that one in three academies will need an additional £50,000 to increase capacity to support a weaker school. It assumes that there will be 200 new academies every year at a cost of £68 million over four years.

g) The financial year for academies is from September to August to reflect the school year unlike maintained schools which are funded from April to March. Academies will be formally notified of their funding allocation in August.

## **5. Impact of academies on local authority school budgets**

a) The LACSEG will be based on current elements of the school budget:

- SEN support services (depends on level of delegation)
- Behaviour support services
- 14-16 practical learning options
- School meals (including assessment of eligibility) and milk
- Repair and maintenance of kitchens
- Museum and library services
- Licences and subscriptions
- Central staff costs (maternity, long term sickness and trade union duties)
- Costs of certain employment terminations.

b) Services funded from other local authority sources:

- Costs of statutory/regulatory duties
- Asset management costs
- School improvement services
- Monitoring national curriculum assessment
- Education welfare service
- Pupil support e.g. clothing grants
- Music services
- Visual and performing arts services

- Outdoor education services
- Certain redundancy and early retirement costs.

c) Academies will be free to buy back services from the local authority or procure them elsewhere. The local authority will retain funding to provide for:

- Home to school transport
- Education psychology, SEN statements and assessment (legal duty)
- Prosecution of parents for non-attendance
- SEN resources for pupils needing tailored provision
- Pupil referral units or the like for pupils no longer registered at an academy.

(Source: DfE website)

Authorities will be able to levy a charge for these services at commercial rates including VAT.

d) A range of other grants, e.g. School Standards, Ethnic Minority Achievement, Extended Schools and Personalisation, will be paid by local authorities until 31 March 2011 after which they will be subsumed into the Dedicated Schools Grant and allocated by the agreed formula.

e) Academies will not be able to run with a deficit, have an overdraft or use a credit card. Financial difficulties will need to be resolved via a restructuring plan agreed with the YPLA.

f) New academies will be exempt charities, required to comply with Companies Acts. They must provide financial accounts in accordance with Financial Reporting Standards (FRS) and Generally Accepted Accounting Principles (GAAP). They must have external auditors, qualified to audit company accounts. Financial returns (no longer Financial Management Standard in Schools or Consistent Financial reporting) will have to be submitted to the YLPA four times a year.

## **6. Free schools**

a) The Academies Act is also the enabling legislation for new free schools to be established. They will have the same legal structure and will need to meet the same requirements as academies. Expressions of interest to found free schools have been invited from charities, universities, business, community or faith groups, teachers and parents.

b) The DfE free schools website includes examples of interested parties and supporters of the policy. There have been about 700 expressions of interest to the charitable group, the New Schools Network, established by the government for the purpose, of which 62 were firm proposals. The Government suggests that the first free schools will open in 2011.

c) Maintained schools can become academies, but not free schools. Independent schools can become state-funded and convert to free schools. They will be required to abide by the Admissions Code and withdraw any selection arrangements. They must not run the school for profit, but can sub-contract some services like other schools.

## 7. Trade union response

a) Education unions opposed the original programme which saw 203 academies open over an eight year period. Faced with a new government determined to rush through a large expansion of schools with academy status of an even worse variety, unions have coalesced under the TUC to develop a joint campaign of opposition.

b) The first task was to ensure that amendments to the Bill were drafted and supported by peers and then MPs. There were nearly 170, most of which were not debated. Trade union action met with some success on SEN, consultation and Freedom of Information. UNISON also focused on an amendment to bring academies within the School Support Staff Negotiating Body. While there was little chance of the Government accepting this or either House voting for it, it was an opportunity to raise the issue in parliament.

c) Joint union materials were produced and loaded on to a UNISON webpage:  
[www.unison.org.uk/education/defendyourschool](http://www.unison.org.uk/education/defendyourschool)

d) Education unions continue to meet and are considering legal challenges, both over the speed of passing the Bill and a consequent reduction in time for Transfer of Undertakings (Protection of Employment) 2006 (TUPE) consultation. A lobby of the Lib Dem conference was planned and an autumn event.

e) Following the passing of the Act, the focus has now moved to trying to persuade schools which have had approval to become academies to reverse their decision.