



Academies

BRIEFING

The new government has signalled its intention to see a dramatic increase in the number of maintained schools becoming Academies. Schools classed as 'outstanding' following an Ofsted inspection are pre-approved to gain Academy status.

Under streamlined procedures the government has stated that the process to become an Academy can be completed within a school term as opposed to the previous norm of around one year.

Even as the Academies Bill progresses through Parliament and the detail of delegated powers is awaited, schools are being encouraged to register their interest in becoming Academies and it is the government's intention that a number will be able to open as Academies in September 2010.

The education team at Winckworth Sherwood understand both the excitement and the concern that many may be feeling at school, governing body, trustee and local authority level arising particularly from the rapid change to policy in this area and its impact. With our experience and expertise, we are well placed to provide all the legal advice and guidance which will be needed.

What are Academies?

Set up in 2002, Academies are all-ability, state-funded independent schools, outside of local authority control, set up (until recently) by sponsors from a variety of backgrounds.

Academies typically replaced one or more existing (largely failing) schools (now changed) though on occasion they could be new schools and typically involved refurbishment of the existing school facilities or the building of new ones. The carrying out of building works was done either under the local authority's Building Schools for the Future (BSF) programme or using what's called the "National Framework".

Charitable Trusts

Academy Trusts are established as charitable limited companies with the purpose of conducting either one or a group of Academies.

The key document regulating Academies is the Funding Agreement, which is a formal contract, made between the Secretary of State and the Academy Trust whereby, in return for the Trust establishing and maintaining an independent school, the Secretary of State agrees to make payments to the Academy Trust. The document sets out the conditions and requirements regulating the way in which the Academy must be run.

The directors of the Academy Trust, who are also the governing body, are responsible for the running of the school. Land for the school is held by the Academy Trust, typically on a 125 year lease from the Local Authority. Staff are employed by the Academy Trust following a TUPE transfer from the local authority (or the governing body where the predecessor school was either a foundation or voluntary school).



Key Freedoms for Academies

- **Pay and terms and conditions of staff**

As employers of all Academy staff the Academy Trust is responsible for agreeing levels of pay, conditions of service, staffing structures, career development, discipline and performance management of its entire staff (existing staff however transfer under TUPE which protects their current conditions). As an independent school the Pay and Conditions Document does not apply to Academies;

- **National Curriculum**

Academies do not follow the National Curriculum though, as a condition of the Funding Agreement, they do need to ensure that they provide a broad and balanced curriculum and the National Curriculum programmes of study for English, Mathematics, Science and ICT are taught during the relevant key stage and participation is offered to pupils in Key Stage 3 and GCSE examinations. Additional freedoms may be negotiated if relevant provisions in the model Funding Agreement are relaxed;

- **Length of terms and school days**

The Academy Trust is free to set the length of school terms and school days (subject to being consistent with staff terms of employment);

- **Admissions**

Academies are required to cater for children of all abilities unless they are converting and are already selective and to comply with the provisions of the Admissions Code as they

apply to the admission authorities of maintained foundation and voluntary aided schools. The Adjudicator, however, has no jurisdiction over Academies. Like all schools with a specialism, Academies are allowed to select up to 10% of their intake for aptitude in their chosen specialism. All Academies are bound by the same School Admissions Code, SEN Code of Practice and Exclusions Guidance as all other state-funded schools;

- **Budgets**

In addition to receiving their General Annual Grant (GAG) to cover the running costs of the Academy, additional funding which the LEA retains to provide some central services would also be provided to Academies called the Local Authority Central Spend Equivalent (LACSEG). Academy Trusts may hold unspent GAG from previous Academy financial years amounting to 12% of the total GAG. The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. It is not clear yet whether any funding will be retained by the Department or local authorities for specialist services such as monitoring, SEN, behaviour support and transport.

New Academies

Recent changes introduced by the Academies Bill and supporting policy include:

- Whilst schools still have to inform their local authority that they are intending to become an Academy, they do not have to get local



authority approval, in effect the local authority loses its veto power;

- Schools do not need to have an external sponsor; it is the existing governing body who applies to convert to Academy status. The fast track process for “outstanding” schools has done away with the need for a formal “expression of interest”;
- Schools do not need to be underperforming to qualify, in fact a streamlined procedure applies to ‘outstanding schools’ whereby they are deemed to be pre-approved for Academy status by the Secretary of State;
- New Academies are required to say that they will support another school which is not performing so well (it is not yet clear what this support will entail);
- Governing Bodies do not need to consult over any proposals to acquire Academy status, except with trustees and foundation bodies;
- Selective schools can retain their admission arrangements when converting to Academy status.

Otherwise, it is anticipated that the existing Academies structure will be replicated for the New Academies.

Building works to be carried out under the BSF programme should not be affected (except that land ownership arrangements will need to be carefully considered), although it is noted that this programme is likely to be the subject of the spending review in the autumn. There are however implications for the legal documents that

governing bodies enter into in connection with BSF (or any previous PFI arrangement) and advice will need to be sought on this.

Legal Support

Governing Bodies considering converting to being an Academy will need advice in the following areas:

- Establishing the Academy Trust including drawing up the Memorandum and Articles of Association;
- Registering the Academy Trust at Companies House;
- Advising on the transfer of staff contracts of employment and the necessary statutory consultation under TUPE;
- Advising on the roles and responsibilities of Academy trustees;
- Advising on any trust law issues where the school is currently a Voluntary Aided school;
- Drawing up and advising on the Funding Agreement;
- Advising on the implications of the new status on the school’s policies and procedures, including governance, admissions and personnel;
- Advising on land issues and agreeing the form of any transfer or lease of land including advising on any proposed development works whether these are to be carried out under BSF or otherwise;
- Advising on the implications for any contracts



(e.g. BSF contracts) that the governing body has or intends to enter into;

- Considering and advising on any tax implications including specifically VAT recovery on supplies made to the Academy Trust.

A grant is available from the Department for Education for expenditure incurred in connection with the process of converting.

Winckworth Sherwood's education team contains specialist advisors and provides a fast and responsive one stop service covering the whole process of establishing an Academy.

If you have any specific queries or wish to discuss instructing us to act for you in converting to Academy status, please contact:

Owen Carew-Jones

DT 020 7593 5034
ocj@wslaw.co.uk

Andrea Squires

DT 020 7593 5039
asquires@wslaw.co.uk

John Rees

DT 01865 297214
jrees@wslaw.co.uk