



Free Schools

BRIEFING

Following its ambitious new Academies programme, the Government has now initiated an innovative Free Schools programme. This promises even greater freedom to head teachers and other education professionals in conjunction with parent groups, charities and other organisations to set up and run state funded schools.

The highly experienced education team at Winckworth Sherwood, in addition to representing the interests of over 700 schools in all aspects of education law, has also acted for numerous old and more recently new Academies and is well placed to assist groups interested in establishing a Free School.

What are Free Schools?

Free Schools will be all-ability, state-funded schools, independent of Local Education Authority control and set up in response to parental demand.

Like new Academies, Free Schools will be governed in accordance with the terms of a contract or Funding Agreement between the school and the Secretary of State for Education, whereby in return for running a school in accordance with the terms of the Funding Agreement, the Secretary of State will pay an annual grant to the school to enable it to continue in existence.

Four stage process to establishing a Free School

- 1) **Preparation:** The Government has established a formal relationship with the New Schools Network (NSW), which is an independent charity, and made available £500,000 of initial funding to support groups interested in setting up Free Schools. All interested groups must contact the NSW as the first stage of the process.
- 2) **Proposal:** Following contact with NSW, all applicants need to complete a proposal form which is available from the Department for Education's (DfE) website. This asks groups to set out details of the aims and objectives of the new school, evidence of parental demand (e.g. petitions) and possible premises that have been considered. The form also asks questions related to the suitability of the main people and organisations involved in the project. All proposals will be published on the DfE website.
- 3) **Full business case and plan:** Although full details of what is required in a business case and plan are yet to be published, these will include: a detailed statement of educational aims and the curriculum, details of proposed premises and a business case for the public value of all start-up costs, as well as financial projections for operating the school on an ongoing basis.



- 4) **Pre-opening:** This stage involves the signing of the Funding Agreement between the school and the Secretary of State and the finalisation of all legal documents related to governance, land transfers and company registration.

Key Freedoms for Free Schools

- **Pay and terms and conditions of staff:** As the employer of all Free School staff, the governing body will be responsible for agreeing levels of pay, conditions of service, staffing structures, career development, discipline and performance management of its entire staff (any existing staff however transfer under the TUPE regulations which protects their current conditions);
- **National Curriculum:** Free Schools will not follow the National Curriculum. Although like new Academies, they will 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 and participation offered to pupils in relevant examinations;
- **Length of terms and school days:** Governing bodies of Free Schools will be free to set the length of school terms and school days;
- **Admissions:** Free Schools will be bound by the same Admissions Code that governs all publicly funded schools. The school will need to provide places for pupils of different abilities who are wholly or mainly drawn from the area

in which the school is situated. Free Schools will be part of local co-ordinated admissions arrangements.

- **Budgets:** Like Academies, Free Schools will be funded on a comparable basis to other state-funded schools with the government intending the funding model to be based mainly on a per-pupil funding level and a pupil premium for disadvantaged pupils.

Length of time to set up a Free School

This will clearly depend on the level of expertise and preparedness of individual proposers and the level of complexity of individual projects. Nevertheless, the first Free Schools are expected to open in September 2011

Legal Support

Organisations and parents groups interested in setting up a Free School will need advice in the following areas:

- Establishing the Free School Trust including drawing up the Memorandum and Articles of Association;
- Registering the Free School Trust at Companies House and possibly Charities Commission;
- Advising on the roles and responsibilities of trustees;



- Advising on any trust law issues where the school is currently an independent school or held on other specific trusts (e.g. Church schools);
- Drawing up and advising on employment, consultant and service contracts, including statutory consultation under TUPE where relevant;
- Advising on all land and property issues, agreeing the form of any transfer of land and advising on planning and construction issues;
- Drawing up and advising on the Funding Agreement;
- Advising on the implications of the legal framework on the school's policies and procedures, including governance, admissions, personnel;
- Considering and advising on any tax implications specifically VAT recovery on supplies;

Winckworth Sherwood's education team contains specialist advisors and can provide a fast and responsive one stop service covering the whole process of establishing a Free School and providing ongoing support.

Those with specific queries or wishing to commence the formal process for establishing a Free School are encouraged to contact us.

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