

**Education Scrutiny Committee**  
Meeting to be held on 15 March 2011

Electoral Division affected: All
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**Academies Act 2010**  
(Appendices "A", "B", "C" and "D" refer)

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**Executive Summary**

The report seeks to provide members with a further update on the position regarding Academies in Lancashire. The Academies Act 2010 is now in place and a number of outstanding maintained secondary and primary schools in Lancashire have converted to Academy status or are consulting on converting. The DfE have also extended the conversion procedures to include outstanding special schools, and primary and secondary schools that are good with outstanding features. Other primary and secondary schools can also apply to convert as part of a group or federation, provided that at least one of the schools is outstanding or good with outstanding features, or they can apply to join an existing Academy Trust.

As requested at the last meeting, the report also contains some information on liabilities.

On 26 January 2011, The Education Bill was introduced into the House of Commons. Part 6 of the Bill sets out a number of provisions in connection with Academies, and these are also summarised in this report.

**Recommendation**

The Committee is asked to agree:

- (a) to note the report
- (b) to identify any further reports they may wish to receive on these matters

**Background and Advice**

At their meetings on 13 July and 2 November 2010 the Committee received reports on the main features of the Academies Bill, on a number of changes made to the Bill as it passed through Parliament prior to receiving Royal Assent on 27<sup>th</sup> July 2010,

and on the emerging position regarding Academies in Lancashire, including the position regarding Free Schools.

The earlier reports noted that Academies are independent schools funded via agreements between Academy Trusts and central government. Academies have some freedoms and flexibilities (for example in connection with the national curriculum, teachers' pay and conditions, and school term and holiday dates). The earlier reports described the three ways in which an Academy can be established under the Academies Act 2010: "Conversion" of an existing maintained school; "Direction" by the Secretary of State where a maintained school is eligible for intervention; "Addition" where the Secretary of State agrees to proposals by an existing independent school or a wholly new "Free School" to become an Academy.

At the meeting on 2<sup>nd</sup> November 2010 the Committee

### **Resolved**

1. That the report be noted.
2. That a copy of the letter dated 23<sup>rd</sup> September 2010 from the Chairman of the Lancashire Schools Forum, together with concerns of the Committee regarding the future implications in relation to Cumbria and Lancashire Education On-line be sent to the Secretary of State for Education and the Local Government Association Children's Board.
3. That the Committee continue to receive further reports regarding the development of Academies, with particular attention to the issue of insurance liability and the County Council's residual responsibility regarding pupils who attend Academies in relation to issues such as assistance with home to school transport.

### **Further updates regarding the development of Academies**

#### **Outstanding Maintained Primary and Secondary Schools in Lancashire that have converted to Academy status**

The following schools ceased to be maintained by the County Council and became Academies on 1 January 2011:

Hambleton Primary School  
Lancaster Girls Grammar School  
Clitheroe Royal Grammar School

In addition, during Autumn 2010 the Secretary of State issued Academy Orders for Lancaster Royal Grammar School and Hodgson High School, and on 25 January 2011 an Academy Order was issued for Ripley St Thomas Church of England High School. Formal notification of conversion dates is awaited.

## **Extension of conversion process – other primary and secondary schools**

In November 2010 DfE announced the extension of the arrangements for conversion, allowing other schools to submit applications.

### **Primary and secondary schools judged by Ofsted to be good with outstanding features**

Good schools with one or more outstanding features that wish to convert to become Academies can now do so, on the same basis as outstanding schools. They do not need a sponsor, but must establish an Academy Trust and enter into a Funding Agreement, and will be expected to agree to support another school to raise attainment.

**Other schools** (i.e. schools that are neither judged by Ofsted to be outstanding nor to be good with one or more outstanding features)

In principle, the Academies Act 2010 enables all maintained primary, secondary and special schools to apply to convert to become Academies. However, schools which are neither outstanding nor good with outstanding features will effectively only be able to apply in conjunction with an outstanding school or a good school with outstanding features. This covers schools in hard federations, where at least one school in the federation is outstanding or good with outstanding features. The federated governing body could apply on behalf of all of the schools.

Similar arrangements are available for schools in collaborative clusters, provided that at least one is outstanding or good with outstanding features, but in this case each school in the group would need to apply and would commit to working in partnership with a high-performing school to raise standards.

Individual schools could also apply to join an existing Academy Trust.

### **Other developments**

Voluntary and foundation schools with an existing foundation/trust (such as church schools) need the consent of the existing foundation/trust before they can apply to convert to become an Academy. DfE have now agreed model documentation with the National Society (Church of England) and the Catholic Education Service that can be used where such schools seek to convert to become Academies. The application from Bishop Rawstone Church of England High School, referred to in the previous report, will be able to proceed with the consent of the Diocese/existing trustees.

## **Extension of conversion process - Outstanding Special Schools**

From January 2011, DfE will consider applications from maintained special schools wishing to convert to Academy status, where the school has been rated outstanding for overall effectiveness by Ofsted. DfE have provided an on-line application form and guidance on their website, and expect the first special Academies to open in September 2011.

The application and conversion process largely reflects the process for outstanding primary and secondary schools, and outstanding special schools converting to Academy status do not need a sponsor. They will have to establish an Academy Trust and enter into a Funding Agreement with the Secretary of State, and are also expected to support other schools to improve the quality of provision for pupils with SEN or disabilities.

Extending the scope of conversion to special schools raises some particular issues in relation to funding and admissions/placement, when compared with the position in "mainstream" Academies.

In so far as stated pupils in primary and secondary schools are concerned, although local authorities may delegate funds to the schools, DfE arrangements for mainstream Academies allow local authorities (LAs) to pay individually assigned funding for pupils with statements of special educational needs (SEN) to the Academy. DfE guidance states that "The LA will continue to have a legal duty to ensure that the statement of SEN is fulfilled and does this by paying the individually assigned funding, and monitoring provision made by the Academy."

It is important to note that all pupils placed in special schools (and, presumably, in special Academies) are expected to have statements of SEN, and the LA's legal duties towards those pupils are no different to those for stated pupils in mainstream schools.

In connection with admissions, DfE advise that admission to a special Academy will be by way of a statement of SEN, that parents may make representations for a placement in a special Academy, and that the LA retains responsibility for deciding whether to name the special Academy in the statement. The LA must consult the special Academy before naming it, but once named the Academy is under a statutory duty to admit the child.

Although they will be independent schools, DfE advise that special Academies will wish to maintain close and collaborative relationships with LAs, who in effect are commissioning their services on behalf of the children and young people for whom the LAs hold statutory responsibility

In connection with funding, DfE appear to assume that special schools are funded on a place-basis, and have indicated that future funding for special Academies will be based on the number of places for which they are funded currently. This raises concerns in several ways, and seems at odds with the notion of a commissioning relationship. It may also limit the flexibility of LAs to respond to parental wishes if, for example, an increasing number of parents seek places in mainstream rather than special schools/special Academies.

### **Other Lancashire Schools applying to convert/consulting on conversion to Academy status**

Schools are not obliged to consult the local authority on a proposal to convert to Academy status, so the information available may be incomplete. It is understood that in addition to the 6 schools mentioned above (Hambleton Primary School,

Lancaster Girls Grammar School, Clitheroe Royal Grammar School, Lancaster Royal Grammar School, Hodgson High School, Bishop Rawstorne CE High School) that are listed on the DfE website (5 January 2011) as having already converted/applied, Ripley St Thomas Church of England High School (Lancaster) has applied and an Academy Order has been issued, and St Michael's Church of England High School (Chorley) has also applied to convert. The Governing Body of Lostock Hall High School has resolved to apply to convert, and Bowland High School is consulting on possible conversion.

A number of other schools are also believed to be considering the matter, and may be carrying out initial consultation.

Where the Secretary of State agrees to issue Academy Orders, these orders enable the schools to convert to become Academies, but in each case the conversion will only happen if the Funding Agreement is signed. Once the Funding Agreement is signed, the Secretary of State will advise the County Council of the date on which the school should cease to be maintained by the local authority.

### **Direction of schools eligible for intervention**

DfE are looking more closely at the use of Direction in the case of schools eligible for intervention (for example, because the school has been deemed by OFSTED to require special measures, or to require significant improvement, or because the local authority has issued a warning notice to the school).

New minimum standards on attainment and progression are being used by DfE to identify underperforming schools, and DfE expect LAs to explore Academy options, working with existing Academy sponsors and trusts. The Secretary of State has made clear that he will use the power of direction where he judges it necessary to bring about change in poorly performing schools and where there has not been decisive action locally.

### **Additional Schools/Free Schools**

There have also been recent developments in connection with additional schools (for example, an existing independent school, or a wholly new school) applying to the Secretary of State to become an Academy. DfE are currently considering an application from the Maharishi School, an independent school for pupils aged 4-16 in West Lancashire. DfE reported on 31 January 2011 that 35 Free School applications nationally have been approved to move to business case and plan stage, and of these, eight have been approved to move into the pre-opening stage. None of these eight is in Lancashire.

There has been no formal contact from DfE regarding two other potential Free Schools (a possible wholly new school in Chorley and an existing independent school in Lancaster).

At the last meeting of the Committee information was provided about the DfE decision to reduce the Harnessing Technology Grant in 2010/11 in-year in order to release capital for the development of Free Schools for March 2011. This had

previously been considered by the Schools Forum, and as noted above the Committee resolved that the letter from the Chair of the Schools Forum together with the concerns of the Committee regarding the future implications in relation to Cumbria and Lancashire Education On-line be sent to the Secretary of State for Education and the Local Government Association Children's Board. A copy of a reply to Mark Hendrick MP on the same matter has been reported to the Schools Forum and is attached at Appendix "A".

### **Schools Commissioner**

On 14<sup>th</sup> January 2011 DfE announced the appointment of Dr Elizabeth Sidwell as the new Schools Commissioner. Her role will be to broker Academy arrangements between schools and sponsors; encourage and recruit more potential sponsors; enthuse leaders of good schools to go for Academy status; and raise the profile of Free Schools among prospective promoters.

### **Responsibilities of Academies, and Liabilities of Academy Trusts and Academy Governing Bodies**

Academies will be responsible for most of the matters that LAs are responsible for in maintained schools, and receive funding for these responsibilities. The relevant activities and responsibilities, as summarised by DfE, are set out at Appendix "B".

Liabilities can be considered in connection with the Academy Trust, the Academy Governing Body, and individual governors. In so far as individual governors are concerned, the situation is similar to that in a maintained school – liabilities and responsibilities will be corporate, and individual governors do not incur personal, individual liability in the exercise of their powers as governors provided that they act reasonably and in good faith, and do not deliberately exceed their statutory or delegated powers. Governors would normally only ever be open to personal liability if they acted fraudulently, or with criminal intent.

DfE advise that (for Academies arising from conversion) the Academy Trust is established by the Governing Body of the predecessor school as a Charitable Company Limited by Guarantee. The Academy Trust enters into the Funding Agreement with the Secretary of State, and has a strategic role, with control of the land and other assets, the power to enter into contracts and employ staff, and the responsibility for taking out Employers Liability Insurance. The Trust appoints the Academy Governing Body, which oversees the running of the Academy on behalf of the Trust. Under the DfE model Articles of Association for single Academies there are definitions of Members of Trusts, Directors and Governors. Some information on powers and liabilities extracted from the DfE model is attached at Appendix "C".

The Governing Body is a corporate body. This means that the Governing Body is a single, separate legal entity – distinct from the individual governors who make up that Governing Body. Decisions are made by the Governing Body as a whole, and not by the governors themselves. It is the Governing Body (or the Academy Trust) which enters into contracts and obligations, and it is the Governing Body (or Academy Trust) which can incur liability for its actions. Individual governors do not

generally have any personal responsibility for the consequences of decisions made by the Governing Body.

There is nothing about the constitution or the principles of an Academy Governing Body which make this position any different than it is for maintained schools.

Insofar as the Academy Trust is concerned, the principle of corporate responsibility applies in exactly the same way. Once again, liability for all actions and decisions will rest with the Trust, which is a company limited by guarantee. By definition, the extent of any such liability upon the company is limited (to the amount specified in the guarantee). There would be no prospect of individual responsibility upon the members of the trust (provided they act in good faith, and within their powers etc.)

## **Insurance**

Advice from DfE to Academies in connection with insurance is set out at Appendix "D". The advice makes clear that Academy Trusts are responsible for making arrangements for the insurance of the Academy, and emphasises that it is imperative that a converting Academy is insured from midnight on the date of conversion so that there is continuity of cover. In obtaining insurance, DfE advise that the Academy Trust must follow normal public procurement rules and ensure that the policy offers value for money, but also note that insurance premiums for Academies are often higher than for maintained schools. DfE, through the Young People's Learning Agency (YPLA) currently reimburse Academies for the actual cost of insurance, including Broker's fees and insurance tax.

Although Academies can approach the LA and seek to be included within the LA's insurance policy, DfE recognise that the LA or its insurer may not be willing to extend the cover to include an Academy. The main reasons are set out at Appendix "D". To date, two Lancashire schools considering conversion have approached the LA about insurance arrangements and likely costs, and the LA has obtained quotes from the County Council's Property insurers. Having considered all the guidance available, including legal advice, it is considered that the LA may only currently offer Property related insurance to an Academy. To date neither Academy has accepted the quotes which the LA has provided to them and certainly one has opted to make all of their insurance arrangements direct with an insurer. If an Academy accepted the quote, there would be a separate contract between the Academy Trust and the insurers, the Academy would not be part of the LA's insurance.

## **Continuing residual responsibilities of the local authority**

The LA remains responsible for the following activities in connection with pupils attending Academies:

- Home – School transport
- Education psychology, SEN statementing and assessment
- Monitoring of SEN provision, parent partnerships etc
- Prosecution of parents for non-attendance
- Individually assigned SEN resources
- Pupil Referral Units and education otherwise

## **The Education Bill**

DfE describe the Education Bill, introduced on 26 January 2011, as an important step in implementing the Government's education reform programme and helping to create an education system that delivers ever higher standards for all children. Part 6 of the Bill proposes some amendments to the Academies Act 2010 and includes the following provisions in connection with Academies:

- Academies will no longer be required to have a specialism in a particular subject area
- The Academies programme will be expanded to allow "16-19 Academies" and "alternative provision Academies". DfE consider that enabling more diverse provision in response to parental demand may increase competition and that overall standards may increase as providers compete for students. DfE also indicate that they will consider the impact on other providers and only make public funding available for provision which is needed and which offers value for money to the taxpayer. DfE consider that greater competition will deliver lower unit costs for alternative provision places.
- Where a voluntary or foundation school that has a foundation is eligible for intervention, before making an Academy Order the Secretary of State must consult the trustees of the school, the person(s) by whom the foundation governors are appointed, and, in the case of a school which has a religious character, the appropriate religious body.
- Where a school is eligible for intervention, the consultation required for conversion to become an Academy may be carried out by the school's governing body or by a person with whom the Secretary of State proposes to enter into Academy arrangements in respect of the school or an educational institution that replaces it.

The Education Bill also contains provisions concerning Academy conversions involving federated schools; transfer of property, rights and liabilities; the impact of new and expanded educational institutions; staff at Academies with a religious character, and references to the adjudicator in connection with Academy admission arrangements.

## **Further information**

Briefings for Headteachers and Chairs of Governors have been held in July 2010 and January 2011. As more details emerge from DfE, further information on the various issues for schools and the County Council will be included in future briefings for Headteachers and Governors, and will be added to the existing information on the Schools Portal. As reported previously, the DfE website includes many supporting documents to assist schools that are seeking to convert.

## **Funding**



As reported previously, DfE advise that Academies will continue to be funded at a comparable level to maintained schools, but will also get a "top-up" to represent their share of central funding that the local authority spends on behalf of maintained schools (Local Authority Central Spend Equivalent Grant or LACSEG). The "top-up" will be calculated pro-rata to pupil numbers, but this does not necessarily reflect either the current basis of allocations or the need to spend on the relevant services or items.

The earlier report to the Committee indicated that DfE was holding discussions with DCLG on the recoument from local authorities of the funding "top-up" that Academies will receive in lieu of certain services from the local authority. The proposed level of recoument is far higher than has been the case for Academies that were opened under the Education Act 2002 arrangements, where recoument has been based only on certain items within the Schools Budget which DfE have recouped from the Dedicated Schools Grant (DSG). In future, the government intend to recoup more elements of DSG and also recoup relevant items from the Local Authority Budget by adjusting the local authority formula grant.

Press reports at the end of January 2011 stated that for 2011/12 the Government would remove £148m nationally from local authority formula grant in 2011/12 and £265m in 2012/13. It seems that this approach to recoument may affect all local authorities, regardless of whether they have any Academies, and presents serious challenges as it is unlikely that pro-rata reductions could be made to LA expenditure – the large number of maintained schools in Lancashire would continue to need broadly current levels of service provision in order to continue to meet needs and discharge responsibilities adequately.

In so far as the Schools Budget (DSG) items are concerned, DfE wrote to local authorities on 9 February 2011, in advance of the publication of the School Finance Regulations for 2011/12, to advise that one of the proposed elements of LACSEG, relating to SEN support services, would not be recouped from DSG in 2011/12, and that as a result LAs should generally provide such services in 2011/12 on the same basis for Academies and for maintained schools. DfE also advised that arrangements for future years will be subject to the wider review of school and academy funding that is taking place nationally.

### **Provision of services to Academies**

In principle, Academies can if they wish seek to purchase services from their former local authority or other local authorities. Lancashire already provides some services to Academies in Lancashire, and to some maintained schools and Academies in other local authorities, and to independent schools and colleges, although the great majority of traded service provision is with Lancashire's maintained schools and other activity is marginal.

It is intended that, where Academies wish to purchase services from the Authority, services will in the great majority of cases be provided, on condition that there would be no detriment to service provision to Lancashire's own maintained schools, and that charges were based upon full cost recovery plus a premium. Academies will also have to pay VAT, for which they receive a VAT grant from DfE.

## **Consultations**

Not applicable

## **Implications:**

This item has the following financial implications:

Some funding issues are referred to in the report. The financial implications are still emerging and a full impact assessment of any funding changes cannot be carried out at this time. This should become clearer as further announcements are made.

## **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
Academies Act 2010	July 2010	Stephen Mercer
Education Bill and Impact Assessment	January 2011	Directorate for Children and Young People 01772 531925
Supporting papers on DfE website		

Reason for inclusion in Part II, if appropriate – N/A