

## Academies Briefing

This briefing updates UCU material on academies to include Department of Education policies centred on the current Academies Bill now in its second reading.

### Academies: as they are now

- Academies are *independent* schools which operate through a contract (known as the funding agreement) between a sponsor and the Secretary of State.
- The legal rules relating to admissions, SEN, discipline and exclusions, the curriculum, governance (including the composition of the governing body), the right of withdrawal from RE and religious worship which apply to all maintained schools automatically (by virtue of Acts of parliament and similar) do *not* apply automatically to Academies as they are *independent* schools, they *only* apply if the particular funding agreement for the Academy in question includes them.
- A model funding agreement has been used for Academies set up under New Labour so funding agreements have gone a long way to applying the same requirements and protections as in maintained schools, at least when it comes to SEN, admissions and exclusions (although it is still not clear whether children/parents would be able to enforce those rights through complaints to the LEA or in court – as they can in a maintained school – because they are, of course, not parties to the contract which controls the Academy).
- It is generally considered that Academies are bound by the Human Rights Act and by obligations on “public authorities” to promote sex, race and disability equality. The previous Government accepted that – the new Government’s position is not yet clear.
- The Freedom of Information Act did not apply to academies but this has recently been changed
- When a maintained school was converted into an Academy, the local authority was obliged to consult widely on the proposal to “discontinue” the maintained school. Parents, pupils, staff, etc could find out about the intended academy and express their views. The local authority, and ultimately an independent Adjudicator, would take those into account when taking the final decision on the discontinuance, without which the Academy could not proceed.
- When an Academy was set up newly as an additional (rather than replacement) school, there was no legal obligation for public consultation, only for consultation with the local authority.

## What the Bill proposes

- The Bill extends the range of schools which can be Academies to include primary schools, special schools and grammar schools.
- Academy status is no longer targeted at schools which have been considered to be failing: the Secretary of State has prioritised the most successful schools (rated by OfSTED) for conversion first.
- Although Academies are to be charities, they are to be exempted from investigation by the charity commissioners.
- The Bill is mostly concerned with the process of setting up an Academy and currently says almost nothing about how Academies will now actually operate – nothing on SEN, admissions, etc – all of that is left to the detail of the “Academy Arrangements” to be applied to each Academy.
- “Funding Agreements” (last government) are to be replaced with “Academy arrangements” (the Bill) which can take the form of either an “Academy Agreement” or “arrangements for Academy financial assistance”. Academy Agreements are like the old Funding Agreements – a contract with the Secretary of State with a 7 year rolling contract term.
- “Funding Arrangements” for Academy financial assistance are a grant process which could give the Secretary of State even greater capacity to control an Academy - indeed, all academies - than with a contract
- But in either case, the other party to the arrangements could be either a sponsor (as before) or, newly, a company created for the purpose by the governing body of an existing maintained school.
- The most fundamental change in setting up Academies is the bypassing of the old process of public consultation previously associated, as above, with the formal closure of a maintained school. That will no longer be required. Instead, the governing body of a maintained school can apply to the Secretary of State for an “Academy Order”. He can also make an Order at his own initiative for schools which are eligible for intervention. If he makes the Order (as he is likely to do), that has essentially the same effect as the old “discontinuance” process – it ends the maintained school – but without the public involvement. That does not, of course, prevent governing bodies from deciding to consult anyway before deciding to apply for an Order.
- The effect of the Bill (and other related changes) is that the governing body of a maintained school could, without consultation (other than the limited TUPE consultation with staff):
  - set up a company (including members of the governing body as directors);
  - ask the Secretary of State to make an Academy Order;
  - acting as directors of the new company, enter into an “Academy Agreement” or “grant arrangements” with the Secretary of State and then take over the assets of the former maintained school and run the Academy under that Agreement/arrangements.

- The LEA will have no role in either overseeing or supporting the Academy which will – in effect – *be answerable only to the Secretary of State through the Academy arrangements.*
- The Bill provides only the loosest of frameworks for how the resulting Academy, as an independent school, would have to operate: the curriculum must be “broad and balanced”, the school must be for pupils of different abilities, and it must draw pupils wholly or mainly from its local area. The Academy, like all other independent schools, would, of course have to comply with some basic general requirements (like the prohibitions on sex, race or disability discrimination) and offer a limited right to make complaints about the school.
- Although Michael Gove has accepted an early Tory amendment that the Freedom of Information Act should apply to all academies, any rules relating to SEN, admissions, exclusions, staff, the composition of the governing body, withdrawal from RE, etc do NOT apply unless they are written in to the “Academy Agreements” or conditions on the grant.
- Academies will (as before) mostly get their funding directly from the Secretary of State. The Bill does not change that. And it says nothing about how much they will get.
- The existing 203 Academies will operate under the new framework. But the Bill does not affect their existing Funding Agreements. If those are to be changed, that would need to be by agreement between the existing sponsors and the Secretary of State.
- The Bill provides no mechanism for an Academy to revert to being a maintained school.
- It is not clear whether the new Government considers that Academies are bound by the Human Rights Act or the duties which apply to “public authorities” when it comes to promoting race, sex and disability equality (and the point has never been argued out in court).
- The Act says nothing about whether, having set up a company to take control of an existing school, the current governors could then, in practice, sub-contract the running of the school to a private company through a contract under which that other company could make a profit. This enables Gove’s other major ideology, so-called ‘free schools’ which could be run by profit-making private companies.
- The Act does not provide parents/pupils with any way of complaining about or challenging the operation of the Academy [which in maintained schools they do through the LEA and ultimately the courts or, in the case of children with SEN, to the Special Educational Needs and Disability Tribunal (SENDIST)].

### **‘Extra Money’ for academies?**

It is being suggested that Academies could benefit substantially from the distribution of money which LEAs have previously held centrally, the much fabled Department for Education ‘extra money’ that academies may access.

But LEAs have already been under pressure for many years to delegate as much as possible of their central funds to schools. LEAs will still have statutory obligations to provide home to school transport, for children who cannot be educated at school, for Pupil

Referral Units, for assessing the needs of children with the most significant special educational needs and arranging provision for them. The Bill does not change those things. So it is not clear how much scope there really is for additional funds to transfer, certainly not without additional obligations also being placed on new academies.

The Impact Assessment that accompanies the Bill suggests that the average academy would get £275,000 per year to buy back services from 'other providers' that currently cost local authorities about £103,000 per year to supply. This is hardly value for money but nice work for the private sector companies massing around schools to 'help' them become academies.

Academies will only be guaranteed funding for the first year because the government has not yet decided where the 25% funding cuts will fall and also because next on the Coalition agenda is a consultation on the school funding system which will almost certainly change to accommodate the 'pupil premium' required by the Liberal Democrats, in all probability leading to another set of 'winners' (academies) and 'losers' (maintained schools).

### **Academies and demography**

The schools that have expressed an interest in becoming an academy are very different from existing Academies. Existing Academy schools have a far greater percentage of pupils who are eligible for free school meals, and a larger percentage of students with special educational needs (both with and without statements).

They also contain larger percentages of pupils who are ethnically non-white, and fewer pupils. In terms of educational outcomes, it is clear that existing Academy schools have poorer performance. The existing Academy schools and their pupils are more disadvantaged than the schools which have recently expressed an Academy interest. The serious worry is that the Bill, because it fast-tracks 'outstanding' schools with lower percentages of ethnic and lower social class students, will exacerbate already existing educational inequalities. (A Note on Academy School Policy by Professor S. Machin and James Veroit, Centre for Economic Performance (CEP), 12 July 2010).

The current arrangements for LEAs to commission and plan 16-19 provision after the winding up of the LSC include academies, but as the Academies Bill will remove the local authority veto on academies and simultaneously fast-track 'successful' schools into academy status, these conditions will generally make nonsense of LEA led rational planning at local level, with duplication and waste of both programmes and facilities. (It is also being strongly rumoured around the FE sector that the Department for Education wants to remove local authority 16-19 commissioning powers as soon as possible in favour of direct funding of schools and FE institutions by the Young People's Learning Agency).

## **A new type of academy: University Technical Colleges/Technical Academies**

The proposal by Lord Baker, ex-Conservative Education Secretary of State, to turn 100 'failing schools' into 14-19 vocational schools, 'University Technical Colleges' (UTCs) within the academy programme has been warmly welcomed by Michael Gove and is analysed in full in the UCU briefing at <http://www.ucu.org.uk/index.cfm?articleid=4721>.

UTCs/Technical Academies will have very high start-up costs as they will concentrate on subjects which require specialised, modern and expensive equipment. These costs compound the fact that the curriculum offer in UTCs will compete with that of most general FECs, raising the possibility that both capital investment and recurrent funding of existing curriculum areas offered by FECs could be diverted away from them to UTCs.

In a keynote speech at the recent Compass Conference (12 June) NUT GS Christine Blower urged schools and governing bodies to jointly scupper Michael Gove's academy policy, wherein 'centralisation of power completely flies in the face of the coalition Government's stated intention to involve local communities in schools and other public services'.

Overall, 'Technical Academies' or 'University Technical Colleges' add over-determination of the curriculum on offer to 'non-academic' 14 year-olds, further substantiating the differentiation by class, housing status, location and ethnicity that already exists in academy policy.

### **TUC and education TU views on the Academies Bill**

The TUC convened a meeting of the school workforce unions on 8<sup>th</sup> June 2010 to discuss the implications of the Academies Bill. The discussion at this meeting referred to many of the concerns previously raised by the unions about academies, including the lack of evidence about their impact on improving school standards, the undermining of school accountability in particular as regards the role of local authorities, and the attack on the rights of school staff to be covered by national or local bargaining arrangements.

However, there was a clear consensus at the meeting that the approach by the Coalition Government represented a strategy on a completely different scale to the previous academy programme, entailing the dismantling of both the state schooling system and national/local bargaining arrangements for the school workforce. There was also a clear consensus that the decision to expand academies on this scale would be much more costly than supporting schools to improve their standards within the family of maintained schools and with the vital support of local authorities.

While the TUC and trade unions consistently criticised the academy programme of the previous government, it was also acknowledged that there was little 'doubt [about] the government's commitment to improving educational achievement and tackling poverty in our most disadvantaged communities.' There are currently around 200 academies largely located in disadvantaged areas. The first phase of the new Academies programme will in

principle allow up to 3,000 schools rated as outstanding, many of which are located in advantaged areas, to apply to be fast-tracked to become academies. As well as acquiring even greater flexibilities than the original academies, the potentially vast numbers of schools breaking away from the local authority will have a hugely detrimental effect on local schooling.

These academies will receive their share of the state funding used by the local authority to provide central support services for all schools. It is questionable whether all these new academies will have the capacity to access equivalent paid-for support services from elsewhere, especially in some key areas (e.g. special educational needs). In addition, the combined effect of depleting this central funding and encouraging high performing schools to become academies will mean that local authorities will be left with much less funding to support those schools in their locality with the greatest needs, especially those serving the most disadvantaged communities.

### **Issues for amendment to the Bill might include:**

- Consultation in the new process for closing a maintained school to make way for an Academy (including the provision of information on how the Academy will actually run in practice)
- Provision for children with SEN and application to the SENDIST
- The framework for discipline and exclusions
- The framework for admissions
- The curriculum
- The right to withdraw from RE, etc
- Freedom of Information: now *will* apply to academies via a Conservative backbench amendment but needs further examination
- The Human Rights Act
- Other obligations to promote race, sex and disability equality
- The composition of the governing body
- Complaints procedures
- The position of staff
- A mechanism for an Academy to return to being a maintained school
- What will the Academy Agreements (etc) look like?
- The provision of information about how Academies run
- Exemption from the public obligations on charities

A total of 195 amendments have been laid, making Michael Gove's original 'new academies up and running by September 2010' target unlikely to be met even though Michael Gove has taken the unprecedented step of allowing maintained schools to 'express an interest' in becoming an academy (to date, 1,700 from a total of 2,900 capable of being fast-tracked due to their 'outstanding' OfSTED status) under existing academy arrangements but prior to the actual passage of the Bill.

## Sources

This briefing, like the TUC Academies Conference notes, leans heavily on the brief by barrister David Wolfe of Matrix Chambers prepared for Fiona Millar's The Truth About Our Schools website

(<http://www.thetruthaboutourschools.com/2010/03/05/independent-state-schools-and-accredited-providers/>) which is in turn linked closely with the Anti Academies website (<http://www.antiacademies.org.uk/>)