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A new future for education

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On 26 May 2010 the Government launched its Academies Bill. With the Conservatives making election promises to increase the number of academies and their freedoms, the content of this legislation has been much anticipated. In the first of a two-part series, Graham Burns sets out the main provisions of the Bill and the anticipated changes that this will make to the current academy programme.

The new Academies Bill was introduced with much press fanfare to the House of Lords on 26 May 2010. The Bill is the focal point of the coalition government's education proposals, seeking to expand the remit of the current academy programme. Much of the Bill's proposals build on the existing academy processes, however there are many significant changes to consider which will impact upon how academies are set up. The legislation heralds the dawn of a new era for maintained schools.

What are Academies?

Academies are all ability independent state schools. They differ from other state schools as they are not maintained by the local authority, but have their running and funding costs met by central government. The Bill seeks to build on this existing framework by expanding both the number of academies that are set up, and the freedoms to which they are entitled.

Applying to become an Academy

Under the Bill all maintained schools will have the opportunity to apply to become an academy. Currently only secondary schools are able to convert to academy status, however the Bill introduces a new application process which not only allows secondary schools to apply to convert, but also primary and special schools. Unlike under the current regime, schools will no longer need to consult their local authority before applying to become an academy. Initially the new government is concentrating on converting "outstanding schools", and it is understood that more than 600 outstanding schools have expressed an interest in converting.

Under the Bill's proposals, the Secretary of State has the power to determine whether a school's application for academy status is successful. This is done by the means of an "Academy Order". If an academy order is granted, the predecessor school will be converted into an academy, and following the conversion date will no longer be maintained by the local authority.

It should be noted that as well as creating academies under the application process, the Secretary of State can also impose an academy order on failing schools ie schools which are "eligible for intervention". This is expected to apply to all schools which have been in special measures for at least 12 months.

Foundation and Voluntary Schools

As would be expected, there are some differences to the application process for foundation and voluntary schools. Voluntary schools and those foundation schools which have existing foundations will be required to consult their foundation before applying to become an academy. Such schools will only be able to make an application with the consent of the school's trustees. For example, as a number of voluntary schools are schools with a religious character, such schools would need the consent of their diocese or other appropriate religious body before applying to become an academy. The new proposals do not prevent schools with a religious character from keeping their religious character if they do convert to academy status.

Governance and Funding

Under the existing academy process, academies are required to operate under an "Academy Trust" - which is the legal vehicle that runs the academy. The academy trust is set up as a company limited by guarantee, with charitable objects instilled within the trust's articles of association. The academy trust is currently required to apply to the Charities Commission to gain charitable status. The governing documents for the existing academies are based on standard form documents prepared under the former Department for Children, Schools and Families.

The new proposals envisage a similar process, with the legislation referring to academies being run by "academy proprietors". Such proprietors will be required to run the academy, again through a company limited by guarantee with charitable objects.

Under the proposed legislation the charitable registration of the company will no longer be necessary. Providing the new academy proprietors comply with the necessary governance requirements, they will automatically be classed as “exempt charities”, therefore negating the registration requirement. Instead the new government envisages a principal regulator being appointed by the Cabinet Office to regulate academy proprietors. Model governing documents for the new academy conversions have not yet been released.

The new funding process anticipates new academies being funded by means of an “Academy agreement”. Similarly to the existing academy funding agreement, this agreement will last for at least seven years subject to the other requirements of the agreement being met.

The Department of Education has stated on its website that it recognises that schools may incur costs in the academy set up process and therefore will provide a flat-rate grant of circa £25,000 to put towards such costs. The Department does not intend to finance the whole cost of the conversion process and has stated that the flat-rate set up grant allocated gives schools “an incentive to keep costs to the necessary minimum”.

Admissions and Selection

For selective schools, the provisions of the Bill specifically allow that those schools that currently admit on a selective basis to retain those existing arrangements on conversion to academy status.

Although there is no specific provision in the Bill on this issue, the Department has set out on its website that on conversion to academy status, the academy will become its own admission authority. Schools will also be required to comply with the School Admissions Code, but the detail of this will depend upon the terms of the funding agreement.

Surplus

The Bill sets out that where an academy is granted an order to convert to academy status, the local authority will be required to ascertain whether the converting school has a surplus balance which has not been spent by the governing body or headteacher of the school. If this is the case, the local authority will be obliged to pay any outstanding surplus to the new academy proprietor. There is no specific provision allowing for the transfer of deficits to the academy.

Academy Land

The new legislation proposals indicate that where a predecessor school's land is owned by the local authority the Secretary of State has the power to make a transfer scheme specifying that the land is transferred to the academy proprietor. The transfer scheme must specify whether the transfer is for a freehold or a leasehold interest in the land.

Where the land of the predecessor school is owned by a foundation body, governing body or trustees the transfer requirements will differ. The Bill sets out that where the land is “publicly funded” (ie land that has previously been held by the local authority, obtained by money from a local authority or enhanced by investment from public money), the Secretary of State may make a “transfer direction” in respect of the land. A transfer direction can set out that the governing body, foundation body or trustees:

- transfer the land to the local authority (for such payment as is appropriate);
- pay the Secretary of State or local authority the whole or part value of the land; or
- transfer the land to the academy company.

Other Property

The Bill also gives the Secretary of State power to make a “property transfer scheme” in relation to a school granted academy status. This scheme applies to property other than land or surplus. The property transfer scheme may include contractual rights or liabilities of the predecessor school. The purpose of the scheme is to allow contractual arrangements that are already in place at the school to continue, despite the change of the school's legal status.

Conclusion

The provisions of the Bill seek to clarify the new academy process allowing new freedoms for those schools that do seek conversion. As the Bill makes its progress towards the statute books, more details will need to emerge on how some of these new provisions will work in practice, especially in terms of land transfer. What is clear is that the new proposals substantially relinquish local authorities' influence over the academy process, with local authorities no longer entitled to an input into academy proposals. If a large number of schools convert, this is likely to have a significant impact on LEAs.

Voluntary and foundation bodies in particular, are likely to want to understand in much greater detail the impact of the proposals on their ownership of school land, and will want to understand more about their role in the new academies.

What is clear is that there will be a change in the landscape for maintained schools, and the Academies Bill provides the first glimpse of what will emerge. As the Academies Bill continues to be debated, and with further new proposals to be introduced to promote “free schools”, a period of change is certainly underway.

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