

ACADEMIES BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Academies Bill [HL] as introduced in the House of Lords on 26th May 2010. They have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. Academies are all-ability state funded schools. They have sponsors from a wide range of backgrounds, including universities and colleges, educational trusts, charities, the business sector and faith communities. Academies have largely replaced city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs), set up by the Education Reform Act 1988, and all but three of them have now converted to become Academies. The first Academies opened in 2002 and there are currently 203 Academies in 83 local authorities. Of these, 6 converted from independent schools, 53 have a faith designation and 23 are all-through Academies, which include primary provision. Most Academies have replaced weak or underperforming schools, and others have been new schools in areas which needed extra school places.

4. The Bill will enable all maintained schools to apply to the Secretary of State to become an Academy. It is the Secretary of State's current intention to approve all schools which have been judged 'outstanding' by Ofsted unless there are good reasons not to.

5. Primary and special schools will be encouraged to apply to become an Academy in their own right for the first time. Academies are currently required to have a curriculum with an emphasis on a particular subject or subjects (see section 482(2)(b) of the Education Act 1996 ('the EA 1996')). For secondary schools, this requirement for a specialism will continue,

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but it will not be extended to primary schools or the primary curriculum of an all-age Academy.

6. The Bill will make the process of applying to become an Academy as simple as possible and without a requirement for local authorities to be consulted.

7. The Secretary of State expects that a significant number of Academies will open in September 2010 and for the number to continue to grow each year.

8. Academies will be funded at a comparable level to maintained schools.

9. There will be no expansion of selection but grammar schools and other schools which select or partially select pupils will be able to continue to do so on the terms on which they presently select.

10. The Bill will treat Academy proprietors as charities.

OVERALL STRUCTURE OF THE BILL

11. The Bill has 16 clauses and 2 Schedules. The Bill is arranged as follows.

COMMENTARY ON CLAUSES

Academy arrangements

Clause 1: Academy arrangements

12. This clause replaces similar existing provisions in section 482 of the EA 1996. It enables the Secretary of State to make ‘Academy arrangements’ with another person, to establish and run an Academy. That person will be funded by the Secretary of State further to either a contractual agreement (an ‘Academy agreement’) or, by new *subsection (2)(b)*, through grant funding under section 14 of the Education Act 2002 (‘the EA 2002’).

13. If the Academy is to be a mainstream school (rather than a special school) then it must have the characteristics specified at *subsection (6)* which include having a broad and balanced curriculum, having a specialism (if secondary education is provided) and providing education for mainly local pupils, of all abilities. Special schools which become Academies need not have those characteristics. *Subsection (7)* provides that an Academy may not charge for admission or attendance at the school or for education provided there (unless the Academy agreement or grant under section 14 of the EA 2002 specifically permits it).

Clause 2: Payments under Academy agreement

14. This clause makes provision about the terms of an Academy agreement. Provision about the terms of grant arrangements is made by sections 14 to 16 of the EA 2002. *Subsection (1)* of clause 2 enables an Academy agreement to provide for capital as well as current expenditure (such as running costs). *Subsection (2)* provides that payments under an Academy agreement must continue (provided its terms are complied with) for a minimum period of 7 years or indefinitely with 7 years' notice. *Subsections (3) and (4)* provide that Academy agreements may include terms for repayment of funding to the Secretary of State and for the Secretary of State to provide an indemnity to the person entering into an Academy agreement in the event of the termination of the agreement.

Academy orders

Clause 3: Application for an Academy order

15. This clause allows a maintained school in England to apply to the Secretary of State to become an Academy.

16. A voluntary or foundation school with an existing foundation must consult that foundation before applying and can only make an application with the consent of the school's trustees and any other persons who are entitled to appoint foundation governors to the school. This means, for example, that a school with a religious character would need the consent of its local diocese or other religious authority before it could apply to become an Academy. 'Foundation' in this clause has the meaning that it has in the School Standards and Framework Act 1998 (*subsection (5)*) and in general means a body of persons (other than a governing body), whether incorporated or not, holding land for the purposes of a school. It also includes foundation bodies, which are incorporated bodies holding land for the purposes of 3 or more schools, and who appoint foundation governors.

Clause 4: Academy orders

17. This clause permits the Secretary of State to make an Academy order which enables the conversion of a maintained school into an Academy in two circumstances: firstly, on the application of a school's governing body under clause 3; or secondly, if the school is eligible for intervention (*subsection (1)*). 'Eligible for intervention' has the meaning given in section 59(2) of the Education and Inspections Act 2006, and covers schools requiring special measures. These Academy orders will not be made by statutory instrument but will be administrative orders (*subsection (6)*).

18. *Subsection (5)* provides that where a school applies to become an Academy but the Secretary of State decides not to make an order allowing it to do so, the governing body, the head teacher and the local authority must be informed of that refusal and the reasons.

Clause 5: Effect of Academy order

19. This clause provides that when an Academy order has been made, the local authority must cease to maintain the school on the date when the Academy opens. This date is known

as the ‘conversion date’ (*subsection (2)*) and will be the date specified as the Academy’s opening date in the funding agreement or grant arrangements.

20. On the conversion date, the school will be treated automatically as having met the independent school standards that are applicable under section 157 of the EA 2002 (*subsection (5)*). These are currently contained in the Education (Independent School Standards) (England) Regulations 2003 (SI 2003/1910). This means that the Academy will not need to be inspected by Ofsted before being registered as an independent school or prior to opening. This automatic registration will not mean that the Academy will be able to avoid meeting the usual requirements placed upon Academies after conversion and it will be inspected thereafter in the usual way by Ofsted in accordance with section 5 of the Education Act 2005.

21. Schools with a religious character will keep that religious character upon conversion to Academy status and will be designated, on conversion, as independent schools having a religious character (*subsection (8)*). Similarly, selective schools will be able to keep their selective status upon conversion (see *subsection (3)*), but selective status will not be available to converting schools, or other types of Academy, which do not have existing selective arrangements (see clause 1(6)(c)).

22. Where an Academy order has been made, a converting school or its maintaining local authority will not need to follow the school closure procedures in section 30 of the School Standards and Framework Act 1998 or sections 15 to 17 of the Education and Inspections Act 2006 (see *subsection (9)*).

Clause 6: Transfer of school surpluses

23. This clause requires that, where the Secretary of State approves a maintained school’s application to become an Academy under this Bill, the local authority must determine whether the school has a budget surplus, and, if so, the amount of that surplus and transfer that amount to the Academy proprietor.

24. Under existing legislation, surpluses of closing schools remain with the local authority. This includes situations where an existing school becomes an Academy. This clause requires local authorities to transfer a school’s surplus to the Academy proprietor where the school has been successful in its application to the Secretary of State under this Bill to become an Academy.

25. A surplus consists of any unspent portion of the school’s budget share (made available under section 50 of the School Standards and Framework Act 1998) as well as any unspent portion of any other funding made available to the school by the local authority, including government grants; and includes amounts brought forward from previous financial years.

26. The clause provides for the Secretary of State to prescribe in regulations the procedure to be followed for the determination and payment of any surplus, including timings, and for a right to apply for a review of a determination.

Clause 7: Transfer of other property

27. This clause permits the Secretary of State to make a property transfer scheme in relation to the property, rights or liabilities of a maintained school which are held for the purposes of the school by the local authority or the school's governing body. Such a scheme can have effect to transfer to the Academy school various property or contractual rights or liabilities which were previously the property, rights or liabilities of the maintained school which the Academy replaces. This would permit the school, for example, to retain its electronic hardware, furniture and cleaning or catering contracts.

Academies: other provisions

Clause 8: Charitable status of Academy proprietors etc

28. This clause applies to the legal entities that enter into Academy arrangements with the Secretary of State. If these entities ('Academy proprietors') comply with the requirements of *subsection (2)* then they will be qualifying Academy proprietors for the purposes of the clause and will be treated as charities (under *subsection (1)*).

29. *Subsection (4)* provides that they will be exempt charities and will thus not need to register with, or be regulated by, the Charity Commission. The Cabinet Office will appoint a principal regulator for such Academy proprietors.

Clause 9: Academies: land

30. Clause 9 introduces Schedule 1, which makes provision about land in relation to Academies. References below to paragraphs are to paragraphs of that Schedule.

31. Paragraph 1 re-enacts and extends paragraph 1(1) of Schedule 35A to the EA 1996 to allow the Secretary of State to make a scheme in order to transfer to the Academy land used for the purposes of any maintained school that has closed or is about to close (and not just community schools, as provided in Schedule 35A).

32. Paragraph 2 re-enacts paragraph 1(2) of Schedule 35A to the EA 1996, which provides that the Secretary of State may make a scheme in relation to land held by a local authority and specified in a notice published under section 7 of the Education and Inspections Act 2006 (invitation for proposals for establishment of new schools).

33. Paragraph 3 makes provision about what is required to be included in a scheme under paragraph 1 or 2. The power in paragraph 1(3) of Schedule 35A to the EA 1996 is extended so that as well as being able to specify the transfer of the whole of a freehold or leasehold interest, the scheme can specify the grant of a lease.

34. Paragraph 4 provides that where an Academy order is made in respect of a voluntary, foundation or foundation special school, the Secretary of State may make directions in respect of publicly funded land held by the governing body, foundation body or trustees of the school. The powers are similar to those contained in paragraph 5 of Schedule 22 to the School Standards and Framework Act 1998, which applies on the discontinuance of a foundation, voluntary or foundation special school which holds publicly funded land.

35. Paragraph 5 provides for land held by the governing body of a maintained school that is closing, other than land held on trust, to transfer automatically to the local authority on dissolution of the governing body (unless the Secretary of State directs transfer to a person concerned with running an Academy). This is similar to the existing provision in paragraph 7 of Schedule 22 to the School Standards and Framework Act 1998.

36. Paragraph 6 re-enacts and extends provisions in paragraph 8 of Schedule 35A to the EA 1996 relating to land of former Academies. The paragraph allows the Secretary of State to make a scheme to transfer land held by a school back to the local authority, should the school cease to be an Academy or cease to occupy the land as an Academy.

37. Paragraph 7 makes further provision about the closure of Academies and in particular provides for a power for the Secretary of State to make a direction in respect of publicly funded land which was originally held by a person other than a local authority.

38. Paragraphs 8 to 12 include various technical and consequential provisions, including a disapplication of certain existing legislation in relation to disposals for the purpose of an Academy. Paragraph 11 provides a power for the Secretary of State to make regulations to address technical and practical matters arising out of such land transfers.

Clause 10: Academies: amendments

39. This clause introduces Schedule 2 which makes a number of amendments to existing legislation, some of which are minor and technical, some of which are not. Paragraphs 2 and 22 of Schedule 2 amend the definition of 'special school' in section 337 of the EA 1996 (and the new version of section 337 to be substituted by section 142 of the Education and Skills Act 2008), to permit special schools to include Academies. Paragraphs 3 and 9 of Schedule 2 make changes to existing powers of the Secretary of State to amend trust deeds of non-maintained special schools and foundation or voluntary special schools or trusts relating to property held for the purposes of such a school, to allow them to be modified to permit the conduct of an Academy if the current trust deed is not sufficient. In all cases, consultation with the governing body, trustees and (if relevant) diocesan authority is required.

General

Clause 11: Transitional provisions

40. Clause 11 provides for transitional arrangements in relation to existing Academies, CTCs and CCTAs. It also provides for existing agreements with Academies made under section 482 of the EA 1996 ('section 482 agreements') to be treated as agreements made under clause 1 of the Bill (*subsection (6)*).

41. *Subsections (1) to (5)* of the clause ensure that existing legislative or other references to section 482 agreements, other than those contained in this Bill, are treated as including references to 'Academy arrangements' within the meaning of clause 1, references to Academy arrangements are treated as including references to section 482 agreements, and references to Academies are treated as including references to CTCs and CCTAs. *Subsection (8)* permits proprietors of CTCs and CCTAs to agree with the Secretary of State that the college will become an Academy, but does not affect the operation of an existing section 482 agreement with such a college if such an agreement is not made (*subsection (9)*).

Clause 12: Pre-commencement applications etc

42. Clause 12 allows steps taken by schools before clause 3 comes into force with a view to converting to an Academy to have effect as if taken under the Bill. Thus an application made by the governing body of a maintained school to the Secretary of State to become an Academy prior to the date on which clause 3 comes into force will be treated as though made under the Bill. Likewise, an application by the governing body to its foundation for consent to make an application will also be treated as having been made after clause 3 has come into force (*subsection (4)*) and any consent given by the foundation prior to commencement of clause 3 will be treated as given under the Bill (*subsection (6)*).

Clause 13: Interpretation of Act

43. Clause 13 contains definitions of terms used in the Bill and in particular defines 'maintained school'. The main freestanding provisions of the Bill are treated as being part of the EA 1996 (*subsection (3)*), and therefore the definitions in that Act will also apply for the purposes of this Bill. The Parliamentary procedure specified in that Act for regulations will also apply to regulations made under this Bill.

TERRITORIAL EXTENT AND APPLICATION

44. The Bill extends to England and Wales only. The Bill only has application to England.

45. The Bill does not extend to Scotland or Northern Ireland.

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FINANCIAL EFFECTS AND EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

46. The Academies Bill will enable the Secretary of State to enter into Academy arrangements with any person who wishes to establish and run a primary, secondary or special Academy.

47. The Bill will make it possible for outstanding schools to convert to Academy status very quickly (possibly by September 2010) and allow the Secretary of State to require under-performing schools to convert to Academy status (possibly by September 2011) - in both cases without the need to consult the local authority.

48. The proposals will require local authorities to carry out administrative tasks related to the conversion of maintained schools to Academy status. These tasks will, generally, be simpler than those associated with the existing conversion process, but there could be a greater volume of converting schools. Overall we believe these costs will be neutral.

49. The Academies Bill will otherwise affect local authorities in that they will be required to cease to maintain schools that are either successful in their application to become Academies, or eligible for intervention as under-performing schools. This could affect their role in relation to schools which continue as maintained schools.

SUMMARY OF IMPACT ASSESSMENT

50. The Bill will be accompanied by a full impact assessment. This will be available through the Vote Office, in the House Libraries and on <http://www.education.gov.uk/academies/bill>

COMPATABILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

51. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

52. Having considered the possible implications, the appropriate Minister has made a statement saying that in his view the provisions of the Academies Bill are compatible with the Convention rights. There is only one area where the Minister considers that some further explanation might be useful.

53. Schedule 1, which is introduced by clause 9 of the Bill, makes provision for the transfer of land from maintained schools which are converting into Academies so as to be available for use by the Academy on the conversion date. 'Conversion date' is defined in clause 5(2). The Minister has considered whether the property rights of a private landowner under Article 1 of the First Protocol to the Convention might be engaged by the provisions in this Schedule.

54. The Minister considers that to the extent the property, rights or interests of any person might be engaged by the provisions of the Schedule, the Schedule provides for adequate compensation and therefore Article 1 is not breached. This is because the Schedule proceeds on the basis that in relation to such land held by private entities, or in which a private entity may have an interest, the private entity would be compensated for any deprivation of property or interest, by compensation from the local authority, to the extent that any transfer was made a requirement of a scheme or direction. This is the effect of the powers in paragraph 4(3) of the Schedule and which are largely a reproduction of powers that already exist in Schedule 22 to the School Standards and Framework Act 1998.

55. Wholly privately-owned land, where there has been no public enhancement at all, falls outside the remit of the Schedule and would not fall to be subject to any scheme or transfer under it. Any land or other property transfers in those situations will occur on the basis of a consensual arrangement between the private owner and the Academy school, such that no issue of engagement of Article 1 of the First Protocol arises.

56. To the extent that Article 1 of the First Protocol is engaged by the Bill therefore, the Minister is satisfied that any provisions that might require the transfer of property will also provide for any owner of that property to be compensated adequately, and that any such transfer scheme or direction would be solely for the purpose of an existing school continuing on the site in a different legal form. The powers are framed, and would be utilised, only to protect land originating in public hands or on which public money has been spent, to prevent its benefit being lost to the public sector.

COMMENCEMENT

57. Commencement of the provisions of the Bill is by order of the Secretary of State with the following exceptions.

58. Clauses 11 to 16 come into force on the day on which the Bill receives Royal Assent.

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