



Briefing 10-27

Queen's Speech 2010: Academies Bill

To APSE main contacts throughout England and Wales and of special interest to elected members

Key issues

- The Queens speech referenced a number of Bills that will impact upon local government
- The planned Academies Bill sets out the main elements of education reform that would allow for the rapid formation of Academies.
- The Bill will have consequences for frontline service providers, LEAs and will be an area of specific interest to Elected Members

1. Introduction

The Queens Speech announces the programme for Government and was delivered on the 25 May 2010. Measures for local government, included within the Queens speech, set out a range of Bills to be laid before Parliament and one such Bill is the Academies Bill.

The coalition Government has suggested that such a Bill would 'enable more schools to achieve academy status and give them greater freedoms over the curriculum.'

2. Devolution:

The provisions of the Academies Bill will only apply in England and will therefore only permit an Academy to be established in England.

England and Wales is a single legal jurisdiction and so all laws passed are part of the law of England and Wales. The application of laws can apply to one country or the other but the provisions of the Academies Bill will have no practical impact on, or application to, the organisation of schools in Wales.

3. Purpose of the Bill

Government cites that the Bill will *'enable more schools to become Academies and give them the freedoms and flexibilities they need to continue to drive up standards'* and will *'create a world beating school system in which every parent has access to a good school and all pupils achieve high standards. Our central aims are to raise standards for all children, while narrowing the gap between the attainment of the most and least advantaged.'*

4. Main elements of the proposed Bill

The proposed Bill is likely to contain provisions that will:

- Allow maintained schools to apply to become academies and power for the Secretary of State to issue an Academy Order requiring the local authority to cease to maintain the school;
- Remove the requirement to consult the local authority before opening an Academy, (which the Government argues will simplify and accelerate the process);
- Require the consent of any existing (mainly church) foundations before a school applies to become an Academy.
- Deem Academy trusts to be exempt charities;
- Provide for secondary, primary and special schools to become Academies;
- Ensure there is no change of religious character in the conversion process (such changes can be made through separate existing provisions);
- 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; and
- Retain the existing legal requirement for funding agreements to last at least seven years (the agreement can still provide for intervention or termination, if the Academy fails).

In addition the Government cites that the Bill will:

- Provide schools with the freedoms to deliver an excellent education in the way they see fit, within a broad framework where they are clearly accountable for the outcomes they deliver;
- Enable all maintained schools to apply to become an Academy. For the first wave of applications, the key test for approving an academy conversion will be that the school is currently rated outstanding by Ofsted. The Secretary of State normally expects he will approve applications from outstanding schools unless they have a substantial financial deficit (more than £100,000) or other exceptional

circumstances apply. This is a significantly different approach to Academies which were originally set up by the previous government to address failing schools.

- Allow primary and special schools to apply to become an Academy in their own right for the first time ;
- Make the process of applying to become an Academy as simple as possible without a requirement for Local Authorities to be consulted;
- Allow schools which apply to become Academies to keep any surplus balance they hold; and
- The Bill will automatically make all new Academies charities.

5. Funding and standards

The Government believes that the move to more Academies will see standards rise and that a 'significant number' will open in September 2011 with further Academies following on from that.

On the issue of funding Academies would get to keep the proportion of central funding currently used to fund services provided by the LEA. These funds would not be the subject of a ring-fence and therefore the schools will be able to use that funding in anyway which they choose to allocate. Academies would continue to be funded at a comparable level to maintained schools.

6. Existing legislation in this area is:

Section 482 of the Education Act 1996, as amended by Section 65 of the Education Act 2002, provides for the establishment of Academies, and specifies the core characteristics of Academies.

7. APSE Comment

The Academies bill raises a number of issues for APSE member authorities as follows:-

i. Assets and land

There are considerable questions as to the issue of assets on school land and buildings. Most Academies so far established have been the subject of a 125 year lease but it is not yet clear whether this would be the case with a new round of Academies or whether there would be moves to provide a freehold transfer of the land. It is unlikely that the local authority would be able to realise any money from the freehold transfer or long lease arrangements.

As asset management has featured strongly in efficiency drives from Government the Academy proposals could deplete the asset base whilst failing to recover any money from the transfer of the land. Whilst arguably this would mean a transfer of responsibility, for maintenance and so forth, it could also mean that the local authority has less room to manoeuvre on future school provision in the event of changes – such as school reorganisation due to decline in pupil numbers. In such circumstances it is often the case that authorities would look at their asset base and consider moves to shared site facilities. Such options may be fettered if there are greater volumes of Academies.

There is also a question about the impact of the Academy proposals on church schools. Often in the circumstances of church schools the land and buildings will be owned separately by the local authority and the church (or diocese) and therefore the split of assets may prove to be contentious. Would a church relinquish for example land or buildings to a third party when future controls of the school may be the subject to changes in direction due to a new Academy board? This will be a complex issue over which there is likely to be extensive negotiations.

ii . Building schools for the future (BSF) funding

The future of BSF funding has been called into question as part of the spending review announced and the emergency budget. However there are some existing arrangements which might also need to be considered.

Where a BSF project has been subject to a PFI scheme it is likely that a school will have agreed to a 'top –slicing' arrangement with the LEA or local authority to help meet PFI related charges, including in some circumstances contractual obligations on services to the school or schools such as security, facilities management and building maintenance . Whilst the Academy route may appear attractive to 'free up ' funds previously paid to the LEA for services and so forth the arrangements for PFI repayments and contractual re-charges are likely to continue. Therefore the volume and value of any money paid to the LEA, which would under an Academy route be retained by the Academy, may be considerably less than speculative media reports have suggested. Local authority and LEA finance managers will need to raise these issues specifically with any PFI based schools seeking to go down the Academy route. Any buy-out arrangements for PFI related charges or services may prove to be prohibitively costly.

The future of BSF funding has also been called into question due to the on-going review of capital projects. The amounts saved from an Academy having control of its total budget are unlikely to be sufficient to finance the capital investment levels through a BSF route. For Elected Members involved with schools, scheduled to benefit from such investment,

either through a new build or refurbishment route, the capital funding question will be a critical one in exploring Academy status.

iii. Services to schools

Of the 1000 schools expressing a request for more information on Academies 250 of these are thought to be primary schools.

Primary schools remain a major client of grounds maintenance, building maintenance, and soft facilities management services such as school meals catering, building cleaning and caretaking. It would appear from APSE's own data that the retention of local authority services to the secondary sector is less evident. However recent endeavours such as healthy schools meals, and additional funding sources through the school food grant, has seen an increase in take-up of local authority provided school meal provision, including increased take up on free-school meals, an important factor in anti-poverty and child health terms. Further fragmentation of the client base could see catering contracts subject to new tendering arrangements alongside school cleaning arrangements. Whilst the Academies would be entitled to place such services out to tender (and most work from schools is already awarded on a tender basis) the impact of further service fragmentation could well be evidenced in loss of economies of scale in the services provided.

It is more cost-effective to provide a service across a group of schools and develop responses to strategic policy changes (such as those evidenced by the adoption of new nutritional standards for school meals) and there are concerns that the further fragmentation of the client base could lead to loss of efficient service delivery, as well as under-mining the progress on health and nutrition issues.

iv. TUPE and staff transfers

Under the revised Transfer of Undertaking Protection of Employment (TUPE) Regulations 2006 the regulations will apply where there is a 'service provision change'. The term 'service provision changes' covers situations whereby a contract to provide a service to a client is let, re-let or ended by bringing the service back in-house or in the case of an Academy, the Academy choosing to provide a service for itself. This means that Academies, even if choosing to sever links with the Council / LEA will not be at liberty to abdicate its responsibilities for staff under the terms of TUPE.

There is also a note of caution to the local authority on TUPE. The new regulations provide for 'joint and severable' liability. There would therefore need to be a strict overview of TUPE issues in respect of Academies to minimise the risk of successful challenge for which

there could be liability issues on the local authority. This will be an issue for detailed consideration in respect of catering, cleaning and other similar services provided to schools.

For teaching and ancillary staff the TUPE regulations will no doubt apply but again the local authority will need to be clear that its own risks, liabilities and obligations are met in full alongside those of the new Academy.

v. Pensions

Academies may seek to join as employers into the LGPS for support and ancillary staff currently within the scheme or for new staff. This will be a thorny issue as the LGPS faces further challenges on sustainability and minimising risks to the scheme, including its funding base. It is likely that scheme administrations will wish to look towards some form of pooling arrangements for Academy employers. Similar measures for membership of the TPS will also need to be considered. This will be a difficult issue for teaching and support staff trade unions and will need to be considered in full by the governing bodies. The issue of any past or future pension deficits will also need to be considered and costs apportioned and accounted for.

vi. Continuing to provide local authority services to schools

It is not yet clear if Academies will be deemed to be 'bodies governed by public law' and subject to the EU public procurement rules. The Government has stated that Academies will be considered to be charities, however the funding is directly provided by the State. Therefore there will be questions arising as to the status of the Academy in public procurement terms. A similar question on Registered Social Landlords (RSLs) provoked a response from Europe that they ought to be treated as a body governed by public law and therefore comply with European procurement rules. In any event Academies would be subject to open and transparent tendering processes, providing an opportunity for local authority services to continue to be provided, for example, buying in catering, cleaning and caretaking services from the local authority.

The ability to provide such services is already well established under a range of powers and most recently through the trading and charging provision of the Local Government Act 2003. More details are provided on the [APSE trading and charging web portal](#). Furthermore one proposed new Bill arising from the Queens Speech is the proposed *Decentralisation and Localism Bill* which will include a power of general competence. Should this Bill be successful it may open up more avenues for the continuation of services to Academies by local authority service providers ([see APSE briefing 10-26](#)).

Nevertheless, and regardless of new and existing powers available to local authorities to provide services to Academies, managers within these areas should consider the preparation of an outline response to the continuity of services to Academies, for their own service areas.

On a wider basis whilst there is a perceived financial benefit for Academies procuring certain services outside of the LEA there is no evidence base to support this. However equally there is nothing that would appear to prevent an LEA continuing to provide services to Academies on a charged for basis. Indeed certain services such as legal support, payroll and business services may prove to be expensive once the economies of scale at an LEA level are lost and therefore Academies remaining part of the LEA family, for support services, may prove to be more cost-effective than purchasing small bundles of services or buying in services on a 'spot purchase' basis.

vii. VAT and taxation

The proposed Bill suggests that Academies would be considered to be charities but would not need to register as a charity with the Charities Commissioner. It will be important for those involved with schools, and elected members in particular, to look at any taxation or VAT implications of these changes. This will be of particular importance where there is on-going discussion to look at future capital investment initiatives to ensure that the most tax efficient ways are utilised. A specialist taxation report may be deemed advisable.

viii. Further support and comments from APSE members

If you have any comments on the issue of Academies or would wish APSE to arrange a specific round table meeting to discuss Academies with other APSE members, including formulating a response to the continuation of local authority services to Academies please email Mo Baines on mbaines@apse.org.uk and we will do our best to assist.

Mo Baines

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