

The Academies Act 2010

Presentation for ACSeS

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The Presentation

- Snapshot
- Background
- Case Law to date
- The New Regime
- Annual Report
- Practicalities
- Freedoms
- Funding Agreement
- NAO Report



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Snapshot



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An 'Academy' is a school whose 'proprietor' is:

- **Independent** (RR7 "The Independence of Charities from the State" - Charity Commission)
www.charity-commission.gov.uk/publications/rr7.aspx
- **Company limited by guarantee** (Model Articles of Association)
- **A charity**
- **Funded directly by SoS**

Background



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Academies before the 2010 Act

- S.482 Education Act 1996
- Simple contractual structure
- Two statutory criteria
 - a balanced and broadly based curriculum but with emphasis on subject area
 - pupils of different abilities wholly or mainly drawn from the area in which the school is situated
- Sponsors



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Case Law



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Conclusions from the Courts: (1)

- Judicial review?

R v Governors of Haberdashers' Aske's Hatcham College Trust,
ex P T [1995] ELR 350

- Two routes to establish an Academy:

- s.482 Education Act 1996 (SoS)
- s.7 Education and Inspections Act 2006 (LA competition)

R (Chandler) v London Borough of Camden [2009] EWHC 219 (Admin)

- EU procurement law did not apply if the provider was not intending to make a profit (Chandler)

Conclusions from the Courts: (2)

- School closure involved significant procedural steps and consultation. Courts pragmatic but left open the possibility of litigation.

R (ota Elphinstone) v Westminster City Council [2009] ELR 24



The New Regime



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Snapshot

- All maintained schools (including special and primary) can apply to 'convert'
- 'Outstanding' schools pre-approved
- LA consultation not required
- Consent of Foundation required for conversion
- Freedom of Information Act applies
- Exempt charity (YPLA regulator)

The Act

- Academy arrangements
 - Contractual agreement
 - Arrangements for financial assistance
- Statutory characteristics
 - s.78 Education Act 2002 applies
 - Emphasis on subject area (if secondary)
 - Pupils of different abilities
 - Wholly or mainly drawn from area
 - SEN obligation equivalent to maintained schools

Two Routes:

- Converting maintained schools
 - via an Academy Order
- Additional school ('free schools')

Conversion



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Conversion by Academy Order (1)

- Application by governing body or
- SoS if eligible for 'intervention'
- Foundation trustees must consent
- LA must cease to maintain on conversion date
- No duty to consult as if the LA schools were being shut

Conversion by Academy Order (2)

- Selective and religious schools carry over their status
 - Any surplus to be paid over by the LA
- SI 2010/1930 Academy Conversions (Transfer of School Surpluses) Regulations 2010**
- “Property Transfer Scheme” transfers property other than land to the academy proprietor (computers, cleaning, catering etc)

Conversion by Academy Order (3)

- Transfer of pupil data :
SI 2010/1940 - Educational (Individual Pupil Information) (Prescribed Persons) (England) (Amendment Regulations 2010)
- Consultation by governing body with “such persons as they think appropriate” on whether the arrangements should be entered into

Additional Schools

Additional Schools (1)

Defined as a school which:

- does not replace a maintained school that has been or is to be discontinued;
- and
- is not 'converted' by an Academy Order

Additional Schools (2)

- SoS must take into account the impact on maintained schools, Academies, FE institutions in the area
- Promoter must consult “such persons as the person thinks appropriate” on whether the arrangements should be entered into



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Annual Report



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SoS Annual Report

- Academy arrangements entered into during the year
- Performance of Academies during the year



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Practicalities

Funding

DfE guidance:

www.education.gov.uk/academies/academy-funding

- Academies receive awpu plus whatever was retained by the LA.
- LAs retain funding for transport, statementing, expensive SEN provision, PRUs and prosecution for non-attendance

Regulation

- Independent Schools Standards: SI 2003/1910;
- Companies House;
- Role for SoS?
- YPLA



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Staff

- Staff – TUPE applies to conversions and requires consultation with staff
- Pensions, DfE guidance:
www.education.gov.uk/academies/supporting-documents

Contractual Documents

- Need to negotiate funding agreement, lease of land and buildings, licences, supply agreement etc.

Freedoms



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Freedoms

- To set own pay and conditions
- From much of the National Curriculum
- To change school days and terms



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Legal Challenges



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Legal Challenges?

- To the governors' decision to pursue academy status
- To the SoS decision to make an academy order
- To the refusal by SoS to make an academy order
- To the lack of consultation either with the LA or the local community (see Q&A section of DfE website)

Legal Challenges (2)

- To consideration of equality duties
- Over compliance with TUPE
- Over deprivation of property – “adequate compensation”

Funding Agreement

Funding Agreement

- Compliance with the Admissions Code
- Exclusions agreement with the LA
- Community cohesion
- Assessments of pupils
- Maximum pay subject to any DfE guidance
- Emphasis on SEN pupils
- Maintained school obligation for looked-after children

Funding Agreement (2)

- The curriculum must include English, Maths & Science
- Religious Education and daily act of worship
- DfE guidance on sex and relationship education – nature of marriage
- Free school meals
- Public examinations – maintained school obligations

National Audit Office Report (September 2010)

“The Academies Programme”

Key findings:

- Most academies achieve increases in academic attainment
- Significantly higher proportion of early academies rated ‘outstanding’ or ‘good’ by Ofsted compared with similar maintained schools or later academies

National Audit Office Report (2)

- Generally more popular than predecessor school drawing pupils from wider range of backgrounds
- 74% participate in statutory reciprocal 'fair access' arrangements with local schools in relation to children with challenging behaviour
- Performance of children: eligible for free school meals; with English as additional language; or with SEN; has improved, but gap in attainment greater with more advantaged pupils

National Audit Office Report (3)

- Reduced by more than half, their number of 'NEET' pupils
- Scope for more co-operation between established academies and neighbouring schools

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