

TO: SCHOOLS FORUM
DATE: 14 JULY 2011

THE ACADEMY PROGRAMME AND IMPLICATIONS FOR BRACKNELL FOREST
Director, Children, Young People and Learning

1 PURPOSE OF DECISION

- 1.1 This report outlines the latest developments in the coalition government's programme for schools to become academies, the initial financial implications, and the potential impact that this might have on services provided by the Council. Recent changes to the programme have been included in the Education Bill, details of which are covered in this paper.

2 RECOMMENDATION

- 2.1 **That the Schools Forum notes the report**

3 REASONS FOR RECOMMENDATIONS

- 3.1 **It is appropriate for the Schools Forum to be aware of, and where relevant, comment on these matters.**

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not applicable.

5 SUPPORTING INFORMATION

What is an Academy?

- 5.1 An Academy is a state funded independent school which is exempt from local authority control. Under the previous government it was predominantly underperforming secondary schools which became Academies whilst under the coalition government it was initially high performing state schools (primary and secondary) rated as outstanding by Ofsted that have been encouraged to convert to academy status. From 2011 the academy route has been open to all primary, secondary and special schools.
- 5.2 There are two forms of Academies. Sponsored Academies replace schools which have been deemed to be unsuccessful and may have been in an Ofsted category, for example in Special Measures. The Secretary of State can direct a school to close and be replaced by a sponsored academy. Sponsors include faith groups, successful schools, charities, universities, companies and philanthropic individuals. Converter Academies are successful schools that chose to change to the status of an Academy.
- 5.3 The DfE have published extensive guidance for schools wishing to convert to an Academy and a small grant is available to assist with the process.

What are the freedoms that Academies have?

- 5.4 The main areas where academies have freedoms include:
- Staff pay and conditions – Academies cannot pay more than a teacher could reasonably expect under the School Teachers' Pay and Conditions Document, but could pay newly appointed teachers less.
 - The curriculum – however, it must be broad and balanced, include English, mathematics, science and RE*, and meet the National Curriculum assessment requirements. (For Academies without a religious character, this will be the locally agreed syllabus).
 - Financial and accounting arrangements – Academies do not have to comply with local authority financial and accounting arrangements. Their arrangements are set out in the funding agreement and payment is direct from the Young People's Learning Agency (YPLA).
 - School improvement – the local authority cannot intervene when the performance of an Academy causes concern although intervention is possible by the Secretary of State under the funding agreement.
 - School organisation – the local authority cannot make proposals to increase or decrease the number of pupils; or the age range of pupils; or to close an Academy. The funding agreement states the planned capacity of the school and age range, also specifying the number of sixth form or nursery places.
 - Infant class size – academies do not have to comply with current requirements for maximum class size of 30 for pupils in Key Stage 1.
 - The length of term and school days – the length of the school day and term can be extended or reduced.
 - Academies may not charge for attendance or admission or for the provision of education.
- 5.5 The coalition government's second major Education Bill was published on the 26th January 2011. Broadly it implements the proposals set out in *the White Paper – "The Importance of Teaching"*. The Bill:
- Allows the establishment of 16 to 19 Academies and alternative provision Academies and removes the requirement for Academies to have a specialism.
 - Changes the consultation requirements for the setting up of an Academy, and to the way a school in a federation becomes an Academy.
 - Increases the Secretary of State's ability to make land available for free schools.
 - Introduces a presumption that when local authorities set up new schools they will be Academies (including free schools).
- 5.6 The Government stated that becoming an Academy should not bring about a financial advantage or disadvantage to a school. However, Academies would have greater freedom on how they use their budgets.

Establishing an Academy

- 5.7 Any person can enter into an arrangement with the Secretary of State to establish and run an Academy, and will receive funding either under a contractual agreement (an "Academy Agreement") or through grant funding under Section 14 Education Act 2002 direct from the Secretary of State.
- 5.8 Academies established under the 2010 Act are companies limited by guarantee having charitable status. They do not require external sponsorship (changing the requirement of the 1996 Act) for schools rated by OFSTED as "outstanding" in the most recent inspection.

Proposals for New Schools

- 5.9 The Education Bill 2011 currently in Parliament introduces new provisions into the Education and Inspections Act 2006 which will require a Local Authority which thinks a new school needs to be established to seek proposals for the establishment of an Academy. Any proposals that are made in response must be notified to the Secretary of State, together with a site proposed for the school, and any other matters prescribed by regulations identified. Before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State, and the authority will no longer be able to publish any of its own proposals for a new foundation or community school.
- 5.10 The effect of these proposals would be that Academy proposals will have to be referred to the Secretary of State for him to decide if he wishes to enter into Academy arrangements with the proposer and the local authority will not be involved in the approval of any such proposals.
- 5.11 If no proposals are made, or if none result in Academy arrangements being made, the local authority may, having first obtained the consent of the Secretary of State, publish proposals for a competition for establishment of a new school under Section 7 of the 2006 Act, but it will not be able to publish any of its own proposals for a new foundation or community school at that stage.
- 5.12 The Bill creates a presumption that in future any new schools will be established as Academies. The Secretary of State's consent would not however be required for local authority proposals for a new community or foundation primary school to replace a maintained infant or junior school, for proposals to establish a new voluntary aided school, for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation; or for local authority proposals for a new community school or foundation school where following publication of a notice under S7 EIA 2006 no proposals are approved by the local authority, no Academy arrangements are entered into (by the Secretary of State) or no proposals are received.
- 5.13 The Bill removes the requirement for Academies to have a specialism, allows the establishment of Post-16 education Academies and alternative provision Academies, makes provisions for faith schools in respect of employment and makes changes to the Secretary of State's ability to make land available for free schools.

Funding Arrangements for Academies

5.14 Funding comes from the Secretary of State and is regulated by provisions referred to in the 2010 Act as Academy Arrangements. The principle of funding an Academy is that it:-

- should receive the same level of funding for each pupil from the Government as a local authority would provide to an equivalent sized maintained school.
- will receive “top-up” funding to meet any additional services it must provide, which are no longer the responsibility of the local authority.
- will not be financially advantaged or disadvantaged by converting to Academy status, but has greater freedom in how its governing body applies its budgeted funds.

An Academy is funded from September to August. The funding consists of a general annual grant and an earmarked annual grant covering recurrent operating expenditure, and a capital grant covering capital expenditure, such as expenditure on land and buildings and any major repairs or replacements.

5.15 Academies receive their revenue funding from the YPLA on the following basis:

- their school budget share, based on the LA Funding Formula for Schools and funded through the Dedicated Schools Grant (DSG);
- a funding element from the Local Authority’s Schools Budget (DSG funded), i.e. a percentage of the funds used to deliver central services including Behaviour Support, school admissions, supply cover for maternity leave, jury service etc.
- a funding element from the Local Authority’s own resources i.e. outside of the Schools Budget and funded mainly from Revenue Support Grant (RSG).

5.16 Other than the school budget share, which is based on the latest budget information, the calculation of funding due to an academy for its new responsibilities is determined from financial returns made by the relevant LA from the 2010-11 financial year. Members of the Forum will be familiar with these Section 251 returns from previous reports that have been presented relating to financial benchmarking.

5.17 The basic calculation for top-up funding is made from taking relevant central expenditure data from Section 251 statements, in both the Schools Budget and the LA Budget, and dividing it by the total number of pupils in the LA to obtain a per-pupil figure. Separate calculations are made for primary and secondary schools. Per-pupil top-up funding for School Budget items, such as behaviour support services, 14-19 more practical learning options and licenses and subscriptions are paid to academies at 100% of the total budget, with LA budget items, such as special medical needs, education welfare, school improvement and statutory and regulatory functions paid at 90%.

5.18 In terms of funding removed from LAs for conversions, this can be a very different amount from what is passed on to academies. The school budget share will be a very similar amount to that determined through the Funding Formula, with the potential for minor adjustments, mainly around funding for pupil admissions, business rates and insurances. Funding deducted from the centrally managed items in the Schools Budget can be negotiated with the YPLA for each school, with adjustments possible where it can be demonstrated that individual academies do not currently benefit from some of the budget lines on the Section 251 statement.

- 5.19 In respect of funding from the LAs own resources, for the 2011/12 financial year the Government has applied a general top-slice from the RSG settlement for every Local Authority, based on an assumption of an average number of academy conversions during the year. Bracknell Forest Council's RSG has been 'top-sliced' by £309,000 in 2011/12 to reflect potential academy conversions, which is expected to increase to a £553,000 reduction in 2012/13 compared to the 2010/11 funding level. Some LAs have challenged the DfE decision to apply a general top slice rather than making a reduction in relation to the amount each LA can save from academy conversions and have commenced applications for Judicial Review of the decision. Clearly, under the current top slice methodology, LAs with few or no conversions, such as BFC are losing significantly compared to LAs that are experiencing a relatively large number of conversions. In response to this, the DfE are currently reviewing the top slice arrangements.
- 5.20 The DfE have issued guidance on how to treat schools balances when they become academies. Where applications for conversion are approved under the new arrangements, the Academies Act requires the local authority (LA) to pay over the school's surplus to the academy. Where a school converting under the new legislation has a deficit, then the DfE will reimburse the LA for the deficit, and the YPLA will then recover it from the academy over a period of time by reduced payments of General Annual Grant. The guidelines also state that where an academy is set up under the previous procedures, i.e. with a trust/sponsor, then surpluses and deficits would continue to revert to the LA.
- 5.21 Resources are available to schools to facilitate the process of conversion, i.e. £25,000 grant to address Legal, HR and other processes. The LA does not receive any additional resource to manage the process and as identified previously in this paper RSG and DSG funding would reduce thereby placing increasing constraints on the LA's capacity and resource levels.

Traded Services

- 5.22 The Council provides a wide range of services available for trading with schools. There is an excellent rate of buy back and satisfaction surveys indicate that the vast majority of services are highly regarded. During 2010/11, schools bought back approximately £2.2m of services. However, any commitment in the longer term will be dependent on a number of factors: range and quality; competitiveness of pricing structure; the ability of the Council to sustain capacity and expertise. Any variation to buy-back levels would have a direct and immediate effect on services available from the Council, and in particular Finance, Human Resources, Legal and Property Services.
- 5.23 As a first step to assessing future trading arrangements with schools, the LA will undertake a review of the cost of providing services to schools to ensure that charges cover full costs and that pricing structures are appropriate to the changing market. The outcomes from this exercise will be reported to the Forum as part of the 2012/13 budget preparations. In the short term, it is proposed to maintain the status quo, and therefore continue to charge academies for the whole of the 2011-12 financial year at the same rates as those being charged to maintained schools, unless significant extra work is required by an academy, in which case additional charges will be made.

Underperforming Schools

- 5.24 In the case of Secretary of State determined academy conversions, ie failing and underperforming schools, the Local Authority will incur the financial liabilities for schools converting as part of an established Academy Trust partner. This would include any severance/redundancy costs arising from the closure of the school prior to re-opening as an Academy together with liabilities from any budget deficit or outstanding loans.

Commercial Transfer Agreements

- 5.25 The Local Authority and School Governors are required to work together, with their legal advisers, to complete a Commercial Transfer Agreement (CTA) to underpin an academy conversion. This is a requirement under the Academy Act and covers the transfer of liabilities including: employment and pension liabilities; land and property assets; outstanding loans or budget deficit; any outstanding capital works; any shared facilities including dual-use and SEN Unit provision.

LA Residual Statutory Functions

- 5.26 The Local Authority will retain a range of residual statutory functions irrespective of school status including: the provision of school places, co-ordination of admissions, SEN, excluded pupils (PRU), behaviour intervention and children out of school. The funding top-slice to RSG and DSG associated with each academy transfer may, cumulatively, constrain the overall Council capacity and resource to exercise these statutory functions.

Accountabilities

- 5.27 Academies have no direct accountability to the Local Authority in which they are located. Should there be a case in which an academy is in serious breach of financial regulations or where standards are falling, it will be important to have clarity as to which agency will be required to intervene, and where the liabilities lie.

Distinguishing between Free Schools and Academies.

- 5.28 The 2010 Act is the enabling legislation for Free Schools (although this terminology does not appear in the Act) described by the Secretary of State on 18th June 2010 as “independent state schools run by teachers not bureaucrats or politicians and accountable to parents.” It appears free schools will have the same legal structure and be subject to the same legal framework as Academies and will be afforded the same Academy freedoms and as an Academy will be funded by the Secretary of State.
- 5.29 The main distinction is that a free school is a new school, which has not converted from a predecessor school; an existing maintained school cannot become a free school. A free school may be established by an organisation or group such as charities, Universities, Businesses, community or faith groups or parents or teachers. The 2010 Act provides that the Secretary of State must take into account what the impact of establishing a free school would be likely to be on maintained schools, Academies and FE institutions in the area where the free school is proposed to be.

New Housing Development Impact

- 5.30 The Government has not given any indication how the presumption in favour of Academies will affect authorities dealing with planning applications for developments that will generate a need for the provision of further school places, and there is no information available on whether the Secretary of State intends to make use of S106 contributions when entering into Academy Arrangements with proposers.

Transfer of land and property

- 5.31 When a maintained school becomes an Academy the land and property is transferred from the local authority to the school on a 125 year lease.

Local interest in becoming academies

- 5.32 Inevitably we have had some interest shown by our schools to start to consider becoming an Academy and there has been discussion at Governing Body meetings and with headteachers. Ranelagh VA secondary school has received consent from the Secretary of State to convert to an Academy and will do so at the end of July 2011. The Council's Legal team is currently working on the CTA for Ranelagh school to the very short timescale dictated by the DfE. As a VA school this is much simpler than the CTA required for a maintained school where land and assets are in the ownership of the Council. There is no time limit on becoming an Academy and governors will no doubt take a measured view on such an important decision. A number of schools in neighbouring LAs have converted to Academy status and the DfE have contacted schools in Bracknell Forest to offer advice.
- 5.33 Ranelagh has indicated their intention to sustain purchase levels of LA services as at 2010/11, so in the short term there appears a low risk to be able to maintain current traded services. Clearly, were there to be an escalation in the numbers of Bracknell Forest schools seeking conversion, and in-year funding adjustments, it will be necessary to 'downsize' a range of central services to reflect any loss on trading.

Risk of a two tier system

- 5.34 The current programme risks a fragmented two (or more) tier state funded education system of Academies and maintained schools. A way forward would be for all schools to have access to the benefits of academy status whilst retaining the supportive partnerships between schools and building on the strong relationships with the local authority. This principle would help provide for a level playing field and that equitable funding and curriculum choice are open to all schools.
- 5.35 This therefore leads to an important question - If the academy freedoms are so important do we not want them for all our schools? Where this has been proposed elsewhere the DfE have expressed some concerns about the capacity of all schools to take on the new range of freedoms. However the most recent announcement indicates that a weak school could partner with a successful school and obtain Academy status through being part of the same Trust or a Federation.
- 5.36 Were all schools in the LA to become Academies the result would be to take all the schools out of the influence of the Council and could at the same time lead to the establishment of an alternative local education body supporting schools, but outside of any political influence locally.

School places

- 5.37 Academies are independent schools and therefore the LA will not be able to propose changes to Academies, such as expansion or closure. However, the LA will still have overall responsibility for ensuring a sufficient supply of school places to meet demand, and Academies will therefore be included in the authority's school place planning processes. If an individual academy made a request to the Secretary of State to expand its pupil numbers and/or age range the decision taken would be informed by the views of the LA, as the commissioner of pupil places.
- 5.38 As the Local Authority will not be able to expand Academies or re-organise provision, if more and more schools adopt academy status it may mean that the Local Authority's capacity to manage the supply of school places is limited.

Initial financial implications

- 5.39 As set out above, funding arrangements for academies are complex and uncertain. Initial financial implications arising from work associated with the Ranelagh conversion indicates that as well as the £25,000 one-off conversion grant, the school would ordinarily have received around £240,000 in a full year to fund the central services currently provided to maintained schools without charge. Assuming conversion takes place on 1 August, Ranelagh would receive approximately £160,000 in the 2011-12 financial year,. There will be some additional costs that the school will incur in providing services previously made available without charge, with the precise amount dependent on decisions taken at the school.
- 5.40 In terms of the financial impact on the LA, Central government has already reduced general LA funding by £309,000 to fund the national programme. In addition, the Schools Budget will be reduced by a figure to be agreed with the YPLA to reflect the centrally managed services funded from DSG which will no longer be available to Ranelagh. This part year top slice is expected to range from between £16,000 and £54,000 and is dependent on which centrally managed Schools Budget items the YPLA determine need to be included. The final amount will be deducted from the Council's DSG and will result in an equivalent over spending in the Schools Budget, unless expenditure reductions can be identified.
- 5.41 Whilst final funding calculations have yet to be agreed, at this stage it seems that for the 2011-12 financial year, Ranelagh will receive around £160,000 from the YPLA to finance new responsibilities with the Council's funding from RSG and DSG, being reduced by between £325,000 and £363,000 i.e. £309,000 reduction in RSG and between £16,000 and £54,000 reduction in DSG.

Conclusion

- 5.42 Bracknell Forest prides itself on the strong partnership that exists with all our schools. At present we have not seen a great desire from our schools to take on Academy status and many schools have stated that they do not want to become Academies and prefer to remain as maintained schools.
- 5.43 Over the past year the DFE has constantly expanded the entry requirements for schools seeking to become Academies and any school can now apply. The timescales are such that conversion can take place over a relatively short period of time. We know that schools are discussing Academy status at Governing Body meetings. Should we suddenly get applications we want to be in a position to have discussed options with schools and the Schools Forum, so that we can respond

appropriately. The views of the Schools Forum are important to us and we welcome the opportunity to discuss the Academy programme.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor's comments have been incorporated elsewhere in this report.

Borough Treasurer

- 6.2 The financial implications of the report are outlined in the supporting information.

Human Resources

- 6.2 As part of the process for consideration to convert to an academy schools are required to consult with stakeholders including staff and trade unions. Should a decision be made to convert then the school will become the employer of their own staff and the TUPE relations will apply. To enable this further consultation should take place between staff and trade unions to identify whether there are any suggested changes to the pay, terms and conditions as a result of the transfer. Although there has only been one school to undertake this process to date the one issue to have arisen relates to the flexible benefits packages – mainly childcare vouchers. The Council are looking to resolve this issue by giving the school the opportunity to purchase these directly from the service provider.

Impact Assessment

- 6.4 There are no specific impact assessments arising from this report.

Strategic Risk Management Issues

- 6.5 The academy programme presents financial, organisational and educational risks, the significance of which will be determined by the number of conversions that take place and the extent to which the Council continues trading. The likelihood of a significant impact from these risks will increase if more schools convert. At this stage, with only one school known to be converting, overall risks are considered to be relatively low. Risks will be further evaluated during the coming months.

7 CONSULTATION

- 7.1 Not applicable to this report.

Background Papers

Academies Act (2010)

Contact for further information

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