

EDUCATION BILL 2011: More Academies?

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Introduction

1. The new coalition government has made it very clear that Academies – publicly funded schools, independent of local authority control – are to play an increasing role in the education of the nation’s school-children. Indeed, it was striking that one of the first pieces of legislation in the new Parliament, enacted at great pace last summer, was the Academies Act 2010 (“the 2010 Act”). This legislation made it possible for existing maintained schools to ‘convert’ to Academy status, and for entirely new schools to be set up as Academies, colloquially known as ‘free schools’.
2. The Academy provisions of the Education Bill 2011 (“the 2011 Bill”) build on the work started in last year’s Act. The new provisions reflect a desire to expand the Academy programme beyond traditional ‘schools’. The new provisions also fill in some of the gaps left by the 2010 Act.

Removal of requirement for specialisms

3. Section 1(6)(b) of the 2010 Act provides that the curriculum for secondary education at new Academies must have ‘an emphasis on a particular subject area, or particular subject areas’, and that this should be specified in the Academy arrangements made with the Secretary of State.
4. The need for a specialism has presumably been regarded as too prescriptive, and may have turned off potential applicants for conversion to Academy status. Accordingly, clause 50 of the 2011 Bill removes the requirement for specialisms. If enacted, new Academies will not be required to focus on particular subjects.

5. They will only be required to provide a balanced and broadly based curriculum, in accordance with the requirements of section 78 of the Education Act 2002.

16-19 Academies and 'alternative provision Academies'

6. The 2011 Bill will empower the Secretary of State to enter into Academy arrangements with institutions other than those providing primary or secondary education.
7. A new section 1B to the 2010 Act will describe '**16 to 19 Academies**'. These are educational institutions that are 'principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19'. For these purposes, 'education' is to include 'vocational, social, physical and recreational training'.
8. Unlike 'regular' Academies, there will be no requirement for 16 to 19 Academies to have a 'balanced and broadly based curriculum', or to provide education for pupils of different abilities, or to provide education for pupils who are 'wholly or mainly drawn from the area in which it is situated'.
9. A new section 1C to the 2010 Act will describe '**Alternative provision Academies**'. These are educational institutions that are 'principally concerned with providing full-time or part-time education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them' – echoing the language of section 19(1) of the Education Act 1996.
10. As with 'regular' Academies, Alternative provision Academies will be required to provide education for pupils of different abilities, and to provide education for pupils who are 'wholly or mainly drawn from the area in which it is situated'. They will not,

however, be required to provide a 'balanced and broadly based curriculum', satisfying the requirements of section 78 of the Education Act 2002.

Foundation or voluntary schools

11. Section 3 of the 2010 Act provides the machinery for converting an existing school into an Academy. This may be done on application to the Secretary of State for an Academy Order by the governing body of a maintained school (section 3(1)). Where that school is a foundation or a voluntary school with a foundation, the governing body has to consult with the foundation before making an application, and the application can only be with the consent of the trustees of the school and the person or persons by whom the foundation governors are appointed.
12. An Academy Order can also be made by the Secretary of State in respect of a school which is 'eligible for intervention (within the meaning of Part 4 of EIA 2006)': section 4(1)(b) of the 2010 Act.
13. The 2010 Act did not require the involvement of the trustees, the foundation or foundation governors, or the relevant religious authority, in the conversion to Academy status. This lacuna will be filled in by amendments to section 4 of the 2010 Act, introduced by clause 53 of the 2011 Bill.
14. Before making an Academy order under section 4(1)(b), in respect of a foundation or a voluntary school with a foundation, the Secretary of State will be required to consult (a) the trustees of the school, and (b) the person or persons by whom the foundation governors are appointed, and (c) in the case of a school which has a religious character, the appropriate religious body.

15. If the Secretary of State decides to make an Academy order, he must give a copy of the order to such persons; and if he decides not to make an Academy order the Secretary of State must inform such persons and the reasons for his decision.

Consultation

16. The 2011 Bill introduces new consultation requirements before a school can be converted to an Academy.

17. The new section 5 of the 2010 Act will provide that:

(1) Before a maintained school in England is converted into an Academy, there must be a consultation on the question of whether the conversion should take place.

(2) The consultation may take place before or after an Academy order, or an application for an Academy order, has been made in respect of the school.

(3) In the case of a school that is eligible for intervention (within the meaning of Part 4 of EIA 2006), the consultation may be carried out by—

(a) the school's governing body, or

(b) a person with whom the Secretary of State proposes to enter into Academy arrangements in respect of the school or an educational institution that replaces it.

(4) In any other case, the consultation must be carried out by the school's governing body.

(5) The consultation must seek the views of such persons as the person carrying it out thinks appropriate.

(6) In the case of a federated school, references in this section to the governing body include references to any of the members of the governing body."

'Impact' of new and expanded educational institutions/and consultation

18. Under the 2010 Act, where an 'additional school' is being set up – that is, a totally new school where none existed previously, or where there is to be an enlarged age range

for an existing school – the Secretary of State must take into account what the ‘*impact*’ of establishing the additional school would be likely to be on maintained schools, Academies and institutions within the further education sector in the area in which the additional school is (or is proposed to be) situated: section 9(2).

19. A new section 9 will be introduced by the 2011 Bill. This essentially replicates the existing obligation on the Secretary of State to take into account ‘*impact*’, but applies it to the new range of educational institutions that can be created (the term ‘additional school’ is no longer used): this will include 16 to 19 Academies, and Alternative provision Academies, which can be set up from scratch. The Secretary of State will, therefore, have to consider the ‘*impact*’ of setting up these new types of Academy.

20. In addition, the focus of the Secretary of State’s inquiry as to ‘*impact*’ will be broadened. The new section 9 obliges the Secretary of State to consider, for all of the new educational institutions, the impact of their establishment on ‘*alternative provision* in the area in which the institution is to be situated’. So, if an Alternative provision Academy is being set up, the Secretary of State will, for instance, have to consider its ‘*impact*’ on existing Pupil Referral Units.

21. The consultation obligations on the person setting up an additional school that currently apply under the 2010 Act will in future also apply to the person setting up a new educational institution. The 2011 Bill provides for a new section 10 to the 2010 Act. As with the 2010 Act, this will provide for consultation ‘before a person enters into Academy arrangements’, on the ‘question of whether the arrangements should be entered into’. The consultation ‘must seek the views of such persons as the person carrying it out thinks appropriate’.

22. The obligation to consult will not apply, however, where the new educational institution is the subject of proposals under section 7 of the Education Inspections Act 2006 (“the 2006 Act”) (proposals to establish a new school following invitation from local

authority). The Explanatory Notes to the 2011 Bill explain that 'A local authority has a duty to consult those they think appropriate under section 9' of the 2006 Act 'before issuing a notice inviting proposals for a new school under section 7'. There is, therefore, no need for two consultation exercises.

Staff at Academies with religious character

23. Where Academies have a religious character, the 2011 Bill will introduce provisions that replicate those that already exist for foundation or voluntary controlled schools. These schools must include "reserved" teachers: that is, teachers who have been selected for their fitness and competence to give religious education in accordance with the tenets of the religion or religious denomination of the school, and who are appointed on such grounds. For foundation or voluntary controlled schools, the proportion of "reserved" teachers must not exceed one-fifth of the total number of teachers including the principal.
24. Where foundation or voluntary controlled schools with a religious character convert to Academy status, the 2011 Bill will insert a new section 124AA into the School Standards and Framework Act 1998 ("the 1998 Act") to provide that at these Academies, there must be "reserved" teachers, and that these must not exceed one-fifth of the total number of teachers including the principal.
25. The Secretary of State will have power, however, to disapply the new section 124AA for individual schools converting to Academy status from these categories of maintained school. In those circumstances, section 124A of the 1998 Act will apply to them.
26. Section 124A of the 1998 Act provides that independent schools which have a religious character may also apply preference in the appointment, promotion and

remuneration of *all* teachers at the school in accordance with the tenets of the religion or religious denomination of the school.

Admission Arrangements

27. The 2010 Act was silent about admission arrangements for Academies. The 2011 Bill rectifies that somewhat. Amendments will be made to the 1998 Act so as to allow the Adjudicator to consider and determine eligible objections or referrals relating to the admission arrangements for Academies, as they do for maintained schools. The decision of the Adjudicator will be binding on the Academy.

28. The requirements for admission arrangements are set out in the Academy agreement between the Secretary of State and the Academy. There is, therefore, no statutory obligation for the Academy to comply with the Admissions Code.

29. A recent newspaper report has highlighted the possibility that the children of founders of 'free schools' will get priority in admission arrangements for the new Academy¹, something which would clearly be prohibited by the Admissions Code.

Conclusion

30. The Academy provisions in the 2011 Bill continue the coalition government's quest to free schools from local authority control. The 'obstacle' of requiring a particular subject specialism has been removed, and new types of Academy can now be created. We will have to see how many existing educational institutions will take the plunge, and how many new providers will be interested in the opportunity to create 16-19 provision, or alternative provision.

March 2011

¹ See "Free schools: founders' children could gain priority admission", *The Guardian*, 11th March 2011. <http://www.guardian.co.uk/education/2011/mar/11/free-schools-priority-admissions>.