



Article by Annie Moy, Partner

AN OUTLINE OF THE NEW ACADEMY PROCESS

Introduction

On 27th July, the Academies Bill received the Royal Assent, becoming the Academies Act 2010 ("The Act"). The Act enables schools to begin the process of conversion to Academies (the Department for Education has indicated that priority will be given to the Governing Bodies of outstanding schools, although this restriction is not reflected in the Act).

Steps required under the Act

This guidance note sets out some further information on the steps that are required under the Act and on some important practical points to consider:

- In the first instance, a Governing Body Resolution must be passed confirming the school's intention to become an academy. If the school is a VA or foundation school, the written agreement of the diocese or a supporting resolution of the foundation trust should also be obtained. This is submitted to the Department for Education, along with a completed intention to convert form (available on the DfE website), for approval.
- If the DfE approves the submission, the Governing Body will receive a non-refundable grant of £25,000 to assist with its costs. The next step in the conversion process is for the Governing Body to set up a Charitable Trust, in the form of a company limited by guarantee, to run the Academy. Template company documents are available from the DfE, which require updating and tailoring to the particular arrangements of each Governing Body before the trust can be registered as a company at Companies House. It is important to note the difference between the rights and responsibilities of the trustees (i.e. the individuals who set up the trust and will own its assets and the site, AKA the members) and the directors of the trust (who manage the company). The Governing Body should ensure it understands this distinction and individual governors may wish to seek legal advice on the liabilities of directors and of trustees before taking on a role as either – particularly where same person will be both a director and a trustee.
- Once the company has been registered, and provided the Governing Body still wishes to proceed, the DfE and the trust will enter into a Funding Agreement, allowing the trust to receive funding to operate the school directly, subject to certain conditions of grant. These conditions of grant set out the terms on which the Trust shall run the school, and go to the heart of the educational provision at the Academy. The Funding Agreement is a binding contract between the trust and the DfE and is the primary means by which the academy is held accountable if the conditions of grant are breached.
- The statutory process for the closure of the existing school is replaced by the DfE making an academy order requiring the Local Authority to cease to maintain the school. As the Local Authority need not be consulted and cannot object to an academy order, the process is likely to be much quicker – with the DfE currently anticipating that it will be possible to convert many schools to academies in around three months.

- The trust and the Local Authority will, with the DfE's assistance, agree arrangements to transfer the school's assets, staff and site. This may include the assignment of contracts for the operation of the school and any other specific arrangements which are required, e.g. relating to shared or community use of facilities on the site. From a commercial perspective, the trust may be taking on a number of new legal and financial liabilities, for example relating to staff pensions, employment claims and public procurement and will benefit from ensuring it has carried out some due diligence on these liabilities so it can take appropriate steps to minimise its risk. If the Governing Body currently employs school staff, it will need to carry out TUPE consultations with the employees and possibly the unions ahead of the school converting to an Academy.

Practicalities of operation

In reality, many existing governors will not have the time to take on a greater role in the day to day management of an academy and the trust may decide to outsource the operation of the Academy to an external provider. Subject to ensuring that the appointment of any external provider complies with procurement law, the trust is free to delegate the running of the Academy in part or in whole to another organisation.

Sharpe Pritchard has extensive experience of working for Local Authorities and Governing Bodies and can provide expert advice on all legal issues arising from setting up a new academy, including explaining and amending the DfE model documents, drafting leases and joint use agreements, advising on employment, TUPE and pensions issues, incorporating charitable companies, providing briefings on director's duties and advising on letting and assigning the full range of contracts relating to the operation of a school.

FOR FURTHER INFORMATION AND ADVICE PLEASE CONTACT ANNIE MOY on 020 7450 4600. E-mail: amoy@sharpepritchard.co.uk

**This note is intended to provide a brief overview of the legal principles under discussion.
It is not intended to be a comprehensive guide or to constitute legal advice.**

