



Academies Bill [HL]

Bill No 57 of 2010-11

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This Research Paper has been written for the House of Commons Second Reading debate on the *Academies Bill* [Bill 57] on 19 July 2010, following its passage through the House of Lords. The Bill allows the governing body of each maintained school in England to apply to the Secretary of State to convert the school to an academy. The Secretary of State will also be empowered to convert schools that are 'eligible for intervention'. The Bill also makes provision for 'free schools'. These will be new schools set up by parents, teachers, charities, universities, business or community or faith groups where there is parental demand. Free schools will have the same legal requirements as academies.

During the Bill's passage through the House of Lords, Government amendments were made on special educational needs (SEN) provision in academies, consultation during the conversion process, and applying Freedom of Information legislation to academies. Other Government amendments were made to require the Secretary of State to consider whether establishing an 'additional school' (i.e. a free school) would have an impact on maintained schools and existing academies, and to require those who wish to set up an additional school to consult with persons thought to be appropriate. There were also technical Government amendments to the provisions governing the transfer of land where a school converts to an academy, and several minor changes. Many non-Government amendments were proposed, of which two were successful. One, requiring the Secretary of State to publish an annual report on academies, which the Government welcomed; and the other, relating to services for children with low incidence SEN, which the Government opposed.

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Summary

This Research Paper has been written for the House of Commons Second Reading debate on the *Academies Bill* [Bill 57] on 19 July 2010, following the Bill's passage through the House of Lords. The Bill was presented in the House of Lords on 26 May 2010. The Lords' Committee debates were on 21, 23 and 28 June 2010; Report Stage was on 6 and 7 July 2010, and the Bill was given a Third Reading in the Lords on 13 July 2010.

The Bill enables the governing bodies of all maintained schools, including primary and special schools, to apply to the Secretary of State to become academies. All schools have been invited to apply to become academies; however, Ministers have stressed that the Bill is permissive, not coercive. It is the Secretary of State's intention to approve all applications from Ofsted-rated outstanding schools, unless there are good reasons not to do so. The Secretary of State would be empowered to make an 'academy order' for the conversion of a school into an academy where an application is made by the school's governing body or where a school is 'eligible for intervention' (i.e. schools subject to warning notices, and those requiring significant improvement or special measures).

The Bill makes provision for free schools (referred to as 'additional schools' in the Bill). These will be new schools set up by parents, teachers, charities, universities, business, community or faith groups where there is parental demand. Free schools will have the same legal requirements as academies.

The proposals, which are controversial, seek to implement the policies set out in the Conservative Party's Election Manifesto.

While many Peers expressed support for existing academies, serious concerns were raised about the potential effect on the school system if many schools convert to academy status; more specific issues raised included: the academy conversion process, school admissions, special educational needs provision, academy governance, the effect of the Bill on remaining maintained schools, the future role of local authorities, Freedom of Information, and making academy trusts exempt charities.

During the Bill's passage through the House of Lords, Government amendments were made relating to the statutory framework for special educational needs (SEN) provision, consultation during the conversion process, and applying Freedom of Information legislation to academies. Other Government amendments were made to require the Secretary of State to consider whether establishing an 'additional school' (i.e. a free school) would have an impact on maintained schools and existing academies, and to require those who wish to set up an additional school to consult with persons thought to be appropriate. There were also technical Government amendments to the provisions governing the transfer of land where a school converts to an academy, and several minor changes.

Many non-Government amendments were proposed, of which two were successful. One, requiring the Secretary of State to publish an annual report on academies, which the Government welcomed; and the other, relating to services for children with low incidence SEN, which the Government opposed.

The Bill's provisions apply to England only.

1 Introduction

1.1 What are the key features of existing academies?

Currently, academies are all-ability, state-funded schools that have sponsors from a range of backgrounds, including individual philanthropists, the business sector, faith groups, charities and universities. They are independent of the local authority and receive their funding from central government, operating in accordance with their funding agreement.¹ No fees are paid by parents.

The academies programme was a major part of the Labour Government's strategy to improve educational standards in secondary schools in disadvantaged communities and areas of poor educational performance. The first academies opened in 2002. Initially, academies were established to replace poorly-performing schools, but subsequently the programme included new schools in areas that needed extra school places. The Labour Government was committed to opening 400 academies, and had a target for 200 academies to be open by 2010. By March 2010 there were 203 academies open in 83 local authority areas, and a further 100 were planned to open in 2010.²

Academies developed out of previous Conservative Governments' City Technology Colleges (CTCs) established in the mid-1980s, and city academy programmes. The *Learning and Skills Act 2000* made provision for the creation of city academies, subsequently renamed academies under the *Education Act 2002*. The 2002 Act permitted academies to be set up in any area, not just in urban areas.³ CTCs, which were established under the *Education Reform Act 1988* were the first state schools to be free from local authority control. That Act also enabled local authority maintained schools to opt out of local authority control by becoming Grant-Maintained (GM) schools. The Labour Government's *School Standards and Framework Act 1998* overhauled the categories of school and brought GM schools back into the local authority maintained system.

Currently, section 482 of the *Education Act 1996*, as amended, makes provision for the Secretary of State to enter into agreements for the setting up of academies. Key documents and information relating to the existing academies programme (including the academies that are already open, their location and the age range covered) are available on the former Department for Children, Schools and Families [DCSF academies website](#).

Academies have to operate in accordance with the funding agreement between the individual academy and the Secretary of State. A model funding agreement for academies introduced under the Labour Government is available on the [DCSF academies website](#), and the individual signed funding agreements of academies are available on the [DCSF FOI website](#).

As charitable companies, academies are currently required to prepare and file annual accounts with the Charity Commission. They are also required to prepare an annual report for the Charity Commissioners.

All academies have a specialism in one or more areas.⁴ Currently, academies are all-ability schools; however, like other state-funded schools with a specialism, they can admit up to

¹ Some commentators have taken issue with the description of academies as state-funded independent schools, see, for example, a letter to the *Guardian* from Peter Newsam, a former chief schools adjudicator, who argued that academies should be described as government-controlled schools: *Guardian*, 11 June 2010, [Democracy at issue in the creation of academy schools](#).

² HC Deb 8 March 2010 c15

³ Background on how the Government's policy on city academies developed was provided in [Library Research Paper 01/107](#) (pp 42 to 47)

⁴ Section 482(2)(b) of the *Education Act 1996*

10% of pupils each year on the basis of their aptitude for the specialism concerned, as can maintained schools that have specialism. The admission arrangements for each academy are agreed with the Secretary of State as a condition of the funding agreement, and all academies must comply with the recently strengthened [School Admissions Code 2010](#). Generally speaking, academies are oversubscribed: on average academies have about three applications per place.

Academies are required, under their funding agreements, to use their best endeavours to meet the special educational needs of pupils, have regard to the *Special Educational Needs Code of Practice*, and to have an SEN policy.

In a statement to the House of Commons on 10 July 2007, Ed Balls, the then Secretary of State for Children, Schools and Families highlighted the importance the Government attached to its academies programme, and announced a relaxation in the sponsorship requirements to encourage the development of the programme. He also announced curriculum requirements for new academies⁵

Library Standard Note SN/SP/5544, [Academies - an overview](#), outlines how the academies programme developed under the last Labour Government.

The Office for Standards in Education (Ofsted) inspects academies. Of the 30 academies inspected by Ofsted in 2008/09, five were rated outstanding, 12 were rated good, eight were judged to be satisfactory and another five inadequate - three of these required significant improvement and two were made subject to special measures.⁶

There has been much debate about the effect of academies on educational performance. The Labour Government stressed that, in general, standards in academies were rising at a faster rate than the national average. However, critics question whether academy status in itself accounts for success, and stress that some academies have serious shortcomings. Concerns have also been raised about the influence of sponsors, and about accountability.

Library Standard Note SN/SP/5544, [Academies - an overview](#), outlines the findings of key reports and evaluations of the academies programme.

Academies make up 6.1% of all state funded secondary schools in England and educate 5.9% of state secondary pupils. The majority of academies are located in urban areas. Nearly all replaced existing schools and their pupil intake generally comes from more economically deprived backgrounds⁷, has higher levels of special educational needs, a greater proportion of pupils whose first language is not English and is more ethnically diverse than average. GCSE attainment at existing academies is below average, as might be expected given their pupil intake and the results of their predecessor schools. In 2009 35% of pupils at academies⁸ achieved 5+ grades A*-C at GCSE/equivalent including English and Maths. This compares to 52% across all state funded mainstream schools. Academies have closed this gap slightly – the increase in this measure at academies was around double the national improvement over the past two years. However, there is greater scope for improvements from a lower base and their improvement was broadly similar to that achieved at maintained secondaries with similar levels of past performance.

When pupil intake is taken into account pupil progress at academies was better than average by around the equivalent of one GCSE grade in a single subject per pupil. The latest

⁵ HC Deb 10 July 2007 cc1321-2

⁶ [Annual Report of HM Chief Inspector of Education, Children's Services and Skills](#), November 2009, p33

⁷ Levels of free school meal eligibility which are around double the national average

⁸ Excluding CTC conversions and former independents

PricewaterhouseCoopers evaluation report found that GCSE improvement at academies to 2007 was faster than the national average. Their progress was also compared to a comparison group of schools with a similar intake or past performance. The comparison group also improved faster than average, but not as fast as the academies that were open at the time. The report also highlighted the variation in progress between academies.⁹ More detail and background sources are given in the standard note [Academies: Statistics](#).

The *Apprenticeships, Skills, Children and Learners Act 2009* set up a new body – the Young People's Learning Agency (YPLA). Amongst other things, its remit included carrying out certain functions in relation to academies in place of the Secretary of State. It was intended that the YPLA would, at a regional level, take on support and monitoring of academies. The change was controversial.¹⁰ The new agency was established in April 2010, and is due to start its new role from September 2010. Information about YPLA's work with academies will be posted on the [YPLA website](#).

1.2 Summary of how existing academies differ from local authority maintained schools

Those putting the case for academies stress their independence and the freedoms academies have, compared to local authority maintained schools. A written answer to a parliamentary question in 2007 summarised these freedoms as follows:

Jim Knight: Academies have a range of freedoms which are not automatically available to local authority schools.

These freedoms include:

Freedom to establish their own pay and conditions system for staff, with the exception of those who transfer from the predecessor school under the Transfer of Undertakings and Protection of Employment Regulations.

A greater degree of flexibility in their curriculum provision than community schools. Following the Secretary of State's statement on 10 July 2007, all future Academies will follow the National Curriculum programmes of study in the core subjects: English, Science, Maths and ICT. However Academies do not have to follow the National Curriculum disapplication procedures.

Greater flexibility over the size and composition of governing bodies. Academy governance is not prescribed in regulations, but the Department does insist on parental and local authority representation in all cases: all Academies must have one elected parent and one governor appointed by the local authority. Beyond this, Academies are free to determine their own governance arrangements.

Freedom over the length of school days and the number of sessions taught. This allows Academies to tailor the school day to target underachievement and raise standards as effectively as possible.¹¹

However, those arguing against academies have pointed out that maintained schools already have considerable independence from local authorities, and that what academy status offers is more freedom from rules imposed by central government on the curriculum, discipline procedures and the pay and reward of school staff.¹² On the latter, it is also argued that allowing academies to determine their own pay and conditions creates uncertainty for staff,

⁹ *Academies Evaluation: Fifth Annual Report*, PriceWaterhouseCoopers

¹⁰ e.g. see [Quango to control all academies](#), TES, 6 February 2009, p5

¹¹ HC Deb 17 July 2007 c287W

¹² [LGA responds to schools being invited to apply for academy status](#), LGA Press Release, 26 May 2010

and could make it harder for the most deprived schools in the toughest areas to recruit staff.¹³

Some commentators have pointed out that academies should not be seen as a ‘miracle cure’, and have stressed that academies succeed for the same reasons as non-academy schools do: excellent head teachers and motivated staff who are committed to maximizing pupils’ potential.¹⁴

2 General Election manifestos and policies on academies

2.1 Labour Party

As noted above, the academies programme was a major part of the Labour Government’s strategy to improve educational standards in secondary schools in disadvantaged communities and areas of poor educational performance. Although Labour wanted to expand the programme, it did not believe that all schools should become academies. Ministers stressed that academies could not be the solution for all secondary schools.¹⁵ The Labour Government wanted high-performing maintained schools to lead school improvement interventions in weak schools by enabling them to sponsor academies, form federations and propose new schools. Shortly before the General Election it introduced a new accreditation process to identify the most suitable organisations to be accredited school providers and accredited school groups.

2.2 Conservative Party

A major plank of the 2010 Conservative Election Manifesto proposed a ‘schools revolution’, drawing on the Swedish ‘free schools’ model and the ‘charter school’ movement in the US, to allow parents, charities, teachers and others to set up new small academy schools. The manifesto also said that a Conservative government would enable all existing schools to have the chance to acquire academy status; that ‘outstanding’ schools would be pre-approved; and that the academy programme would be extended to primary schools.

2.3 Liberal Democrats

While the Liberal Democrats wanted all schools to be free to innovate, their 2010 Manifesto favoured replacing academies with ‘sponsor managed schools’, commissioned by and accountable to local authorities, with educational charities and private providers involved.¹⁶

3 The Coalition Government’s policies: academies and free schools

The Conservative-Liberal Democrat Coalition Government’s *The Coalition: our programme for government*, published on 20 May 2010, proposes school reform to ensure that new providers can enter the state school system in response to parental demand, and to provide that all schools will have greater freedom over the curriculum while being held properly to account. (No mention is made of the role of the local authority.) As part of the Coalition’s plans to promote diversity and to improve vocational education, ‘Technical Academies’ will be created.¹⁷ *The Coalition: our programme for government* also states that that all new academies will follow an inclusive admissions policy, and that that the Government ‘will work

¹³ [ATL says Academies Bill is irresponsible](#), 25 May 2010

¹⁴ e.g. [Heads can see clearly through academies mist](#), *TES*, (editorial) 23 April 2010, p.2; [Academies: really doing something that’s new?](#), *TES*, 21 August 2009, p.24; [Rapid expansion of academy scheme threatened quality, warn heads](#), *TES*, 5 February 2010, p.6

¹⁵ HC Deb 8 March 2010 c16

¹⁶ [Liberal Democrat Manifesto 2010](#)

¹⁷ [The Coalition: our programme for government](#), HM Government 2010, section 26

with faith groups to enable more faith schools and facilitate inclusive admissions policies in as many of these schools as possible'.¹⁸

Both the Conservatives and the Liberal Democrats favoured the introduction of a pupil premium. *The Coalition: our programme for government* also states that the Coalition Government 'will fund a significant premium for disadvantaged pupils from outside the schools budget by reductions in spending elsewhere'. The Coalition Government's other proposed school reforms include plans to change 'existing rigid national pay and conditions rules to give schools greater freedoms to pay good teachers more and deal with poor performance'. A full list of the commitments on schools is given in section 26 of the programme document.¹⁹

3.1 The Secretary of State's letter inviting schools to apply to become academies

On 26 May 2010, Michael Gove, Secretary of State for Education, wrote to schools saying that he wants to open up the academies programme to all schools - including, for the first time, primaries and special schools, and he invited schools to register their interest in becoming an academy. He pledged to make the process of becoming an academy quicker and less bureaucratic, removing local authority powers to block schools that want to become academies.

Schools that are rated 'outstanding' by Ofsted will be fast-tracked through the process. The Secretary of State expects he will approve all applications from Ofsted-rated outstanding schools unless they have a substantial financial deficit, or other exceptional circumstances apply. Subject to Parliamentary approval of the *Academies Bill*, the first tranche of these academies will open in September 2010.

Other primary, secondary and special schools will be able to convert at a later stage with the final decision on which schools will become academies resting with the Secretary of State. The new Department for Education (DFE)²⁰ [academies pages](#) website has relevant material on the proposals including the letter Mr Gove sent to Ofsted-rated outstanding schools and the letter he sent to all other maintained schools.

The 'academy freedoms' he identified include:

- freedom from local authority control
- the ability to set their own pay and conditions for staff
- freedom from following the National Curriculum
- greater control of their budget
- greater opportunities for formal collaboration with other public and private organisations
- freedom to change the length of terms and school days
- freedom to spend the money the local authority currently spends on their behalf.²¹

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ Following the General Election, the Department For Education replaced the Department for Children, Schools and Families

²¹ *Gove: 'Teachers not politicians know how best to run schools*, DFE Press Notice, 26 May 2010

The Government is also planning further freedoms for academies in the way they engage in local partnerships and deliver 14-19 education.²²

3.2 Ofsted-rated outstanding schools

As noted above, schools rated 'outstanding' by Ofsted will be fast-tracked through the process. The Secretary of State expects he will approve all applications from Ofsted-rated outstanding schools unless they have a substantial financial deficit, or other exceptional circumstances apply. Subject to Parliamentary approval of the *Academies Bill*, (see below) the first tranche of these academies will open in September 2010.

An Ofsted-rated outstanding school can start the process to convert to an academy at any time. A [diagram](#) of the steps such schools will need to take in this process is included on the [DFE's academies pages](#). The first step is to register an interest with the DFE. The school governing body (and foundation, if relevant) will need to pass a resolution in favour of academy conversion. The Secretary of State will be asked to approve the proposal. Michael Gove, Secretary of State for Education, has made it clear that he wants outstanding schools that acquire academy status to work with other schools to improve standards.²³

It is envisaged that for an Ofsted-rated outstanding school the academy process from registration to opening will take three months unless there are complicating issues. The [Frequently Asked Questions page](#) on the DFE's academies website states that there will be no requirement for consultation with the local authority or with parents. However, the FAQ page notes: 'In converting to an academy it will be important for you to discuss this intention with students and parents to ensure they understand the change proposed'. It also points out that all schools have staff and parent governors, and to become an academy the governing body will be required to pass a resolution. As best practice, schools that are converting 'will be encouraged to keep staff, students and parents informed as proposals develop'. One of the questions on the [Frequently Asked Questions page](#) relates to the TUPE consultations that are part of the staff transfer process to academies.²⁴

An Ofsted-rated outstanding school converting to academy status will not be required to have a sponsor, but other schools will need to have a sponsor to become an academy.²⁵ Some commentators have drawn a parallel between Ofsted-rated outstanding schools converting to academies not being required to have a sponsor, and the Grant-Maintained schools that opted-out of local authority control in the 1990s under Conservative Governments.²⁶

Outstanding schools that become academies will be able to retain the admission criteria that they currently use, and they will continue to comply with the *School Admissions Code*.²⁷ Currently academies are all-ability schools; however, as with other schools that have a specialism they may admit up to 10% of pupils each year on the basis of their aptitude for the specialism concerned. The Government proposes that under the *Academies Bill* selective schools (including grammar schools) will be able to keep their selective status when converting to an academy.

²² DFE [Academies Education](#) website

²³ See: 'How to become an academy' [diagram](#) on the DFE academies website; and HC Deb 2 June 2010 c468

²⁴ TUPE is an acronym for legislation designed to protect employees who are being transferred to a new employer.

²⁵ *Academies Bill Impact Assessment*, DFE, 26 May 2010

²⁶ e.g. *Gove takes Blair's big idea full circle – but it's no magic formula*, Guardian, 27 May 2010, p13; *Gove's claim to be 'freeing' schools is a cloak for more control from the centre*, Guardian, 28 May 2010, p37

²⁷ DFE academies website [Frequently Asked Questions Page](#)

3.3 Funding of maintained schools converting to academies

The [DFE academies website](#) (FAQ section) states that the funding for existing schools converting to academy status will be based on the level of local authority funding already calculated for the school, plus additions for central services that would normally be provided by the local authority (LA) and to cover VAT. Grant payments to academies to replace local authority services will depend on the level of central expenditure in the LA, and may vary considerably from area to area. The DFE has produced a [ready reckoner](#) which gives schools an estimate of the funding they might receive. There will also be a contribution to the costs of the conversion process, which will be a flat-rate grant, normally £25,000. The Bill's [Impact Assessment](#) estimated the average cost of conversion at £78,000 per academy or £66,000 without VAT. It added that the cost to the DFE could be reduced to £25,000 per academy if the rest of the costs were met from the existing balances of converting schools.²⁸

The Government has stressed that becoming an academy should not bring about a financial advantage or disadvantage to a school, rather the change is to enable converting schools to have greater freedom on how they use their budgets, and other freedoms. However, commentators have questioned the effect of the changes on non-academy local schools, the ability of local authorities to provide central services where many schools in an area become academies, and the funding implications where schools converting to academy status have surpluses or deficits, for example. These issues were raised in the debates on the Bill in the Lords (see below).

The standard note [Local education authority spending](#) sets out the types and amount of education spending currently carried out by local authorities, how much they 'hold back' from schools and how much of that could be transferred to academies.

3.4 Expressions of interest in becoming an academy

A poll carried out by the *Times Educational Supplement* shortly before the General Election suggested that many head teachers could want to make the switch to academy status.²⁹ In the same article, the *TES* noted that Ofsted figures from January 2010 show that 19% of all 3,200 state secondary schools and 14% of all 16,900 state primary schools were given the top Ofsted rating of 'outstanding'.

In a letter to the *Daily Telegraph* on 27 April 2010, 31 head teachers and governors said that they backed the Conservative pledge to give high-performing state schools academy status.³⁰ However, Chris Keates, general secretary of the NASUWT, was quick to point out that that did not constitute a 'groundswell of opinion'.³¹

The DFE has said that it is difficult to predict the number of schools converting to academies each year; however, its initial estimate was that there would be 200 converters in each year from 2010-11 to 2013-14.³²

In the House of Commons debate on the Queen's Speech on 2 June 2010, the Education Secretary said that there had been an 'overwhelming' response from schools wanting to become academies:

Since I issued my invitation last week, I have been overwhelmed by the response. In less than one week, more than 1,100 schools have applied for

²⁸ [Academies Bill Impact Assessment](#), DFE, 26 May 2010

²⁹ [Heads rush for Tory 'freedoms' but is it really safe to cross over?](#), *TES*, 23 April 2010, pp 1, 14 and 15

³⁰ [Top heads back Tory pledge to free state schools](#), *Daily Telegraph*, 27 April 2010, p1

³¹ [Academies support](#), *TES*, 30 April 2010, p4

³² [Academies Bill Impact Assessment](#), DFE, 26 May 2010

academy freedoms, more than half of which are outstanding-626 outstanding schools, including more than 250 outstanding primaries. More than half the outstanding secondary schools in the country have applied, and more than 50 special schools have expressed an interest. That is a vote of confidence in greater professional autonomy from those driving improvement in our schools- inspirational head teachers.³³

In his statement to the House on 21 June 2010, the Education Secretary updated the figures saying that more than 1,700 schools had expressed an interest in acquiring academy status, with more than 70% of outstanding schools contacting the DFE. He stressed that schools newly acquiring academy status will be expected to support at least one failing or coasting school.³⁴

On 25 June 2010, following Freedom of Information requests, the Department of Education published the names of schools that have registered an interest in becoming academies. Lists of outstanding schools and non-outstanding schools registering an interest are available at: <http://www.education.gov.uk/academies/schools-registering-interest>

Replying to oral parliamentary questions on 12 July 2010, the Education Secretary said that a total of 1,836 expressions of interest had been received from schools in England. Vernon Coaker (Labour) and John Pugh (Liberal Democrat) suggested that in some cases schools may have been seeking information rather than actually wanting to convert to academy status; however, the Education Secretary said that he had made it clear that all those who had expressed an interest had only ever expressed an interest.³⁵

Some commentators have questioned whether the DFE will have the capacity to manage the conversion of so many schools over the summer, particularly with a recruitment freeze in the civil service.³⁶ However, the DFE has stressed that the Government has 'deliberately not set targets precisely so that schools go through this (converting to an academy) process at their own pace and don't feel pressured to convert by September.'³⁷

Analysis of schools expressing an interest

As of mid-July a total of 1,836 schools had registered an interest in becoming an academy.³⁸ The latest published list of schools registering an interest includes 1,562 schools. 826 (53%) of these schools are rated as 'outstanding' by Ofsted and are therefore pre-approved for conversion to an academy. A further 736 are not rated as outstanding.³⁹ These schools have not yet made any commitment to become academies, so the number that will convert in September 2010 and afterwards is not yet known or easily predictable. The majority of schools listed are maintained secondary and primary schools made up a large minority. There are around five times as many primaries as secondaries,⁴⁰ so secondary schools have so far been much more likely to register an interest in converting. The remainder of the list consists of a small number of special schools and independent schools and three maintained nursery schools.

³³ Debate on the Queen's Speech, HC Deb 2 June 2010 c467

³⁴ HC Deb 21 June 2010

³⁵ HC Deb 12 July 2010 cc 647 and 653

³⁶ [Academies expansion in jeopardy](#), *Times Educational Supplement (TES)*, 11 June 2010

³⁷ [DfE response to reports in TES about future Academy programme roll out](#), 14 June 2010

³⁸ HC Deb 13 July 2010 c646

³⁹ *Schools registering interest*, DFE www.education.gov.uk/academies/schools-registering-interest

⁴⁰ *School pupils and their characteristics January 2010*, DFE

At the end of spring term 2010 there were just over 3,000 schools with an outstanding rating from Ofsted, excluding academies, nursery schools and Pupil Referral Units.⁴¹ Therefore 28% of outstanding schools have expressed an interest. Around 4% of schools without an outstanding rating from Ofsted have registered their interest in becoming academies.⁴²

So far 80 existing academies have been inspected by Ofsted, 19 were rated as outstanding, 23 good, 31 satisfactory and 7 inadequate.⁴³

An analysis of the DFE list carried out by Education Data Surveys (EDS), sister company of the *Times Educational Supplement* (TES), found that the expansion of the academies programme will be dominated by schools in affluent areas, particularly the home counties.⁴⁴ The Centre for Economic Performance (CEP) has compared the schools that have expressed an interest in academy status with existing academies, and concluded that the latter have a far greater intake drawn from the poorest pupils, and a larger proportion of children with special educational needs.⁴⁵ The DFE has stressed that schools that become academies under the Bill would be expected to form partnerships with schools in more difficult circumstances.

3.5 Free schools

The *Academies Bill* is also the enabling legislation for free schools.⁴⁶

On 18 June 2010, the DFE posted details of the Government's free schools policy on the [DFE free schools website](#). This included examples of the bodies that had expressed an interest in, and/or support for the policy. The [DFE free schools website](#) explains that while free schools will have the same legal structure as academies they will be different in that they will be new schools:

What is the difference between Free Schools and academies?

Free Schools will have the same legal requirements as academies. Free Schools are normally brand-new schools set up by charities, universities, business, community or faith groups, teachers and groups of parents where there is parental demand. Academies are usually a change to an existing maintained school.

Legally the structure is the same, and they are expected to meet the same requirements as other academies. Free Schools will also benefit from the same freedoms and flexibilities as academies, including

the ability to set their own pay and conditions for staff

freedom from following the National Curriculum

greater control of their budget

freedom to change the length of terms and school days

freedom from local authority control.

⁴¹ *Inspection judgements 2009/10 for maintained schools: autumn and spring term*, Ofsted. Personal communication -Ofsted

⁴² *ibid*; *School pupils and their characteristics January 2010*, DFE

⁴³ *ibid*.

⁴⁴ Wealthy to dominate academies, *TES*, 2 July 2010, p1

⁴⁵ [Schools Interested In Academy Status Very Different From Existing Academies - New findings from CEP Policy Analysis](#), 12 July 2010

⁴⁶ HC Deb 21 June 2010 c27; HL Deb 21 June 2010 c1187

Can an existing maintained school become a Free School?

No. Free Schools will normally be brand-new schools set up in areas where there is a demand locally. Existing maintained schools can apply for academy status on the Department's website.

Can an existing independent school become a Free School?

Yes. Independent schools can apply to become a Free School and become state-funded independent schools. These schools will need to meet the entry criteria – including an agreement that their admissions policy is in line with the Admissions Code, demonstrate they have a good record of success as an education provider and financial viability. Independent schools applying to become Free Schools will not be able to retain any existing academic selection admission arrangements.

Independent schools wanting to apply need to follow the outlined process and start by filling out the proposal form.

On 21 June 2010, the Education Secretary made a statement on free schools to the House of Commons. He set out why he believed the policy was crucial to improve standards, and referred to more than 700 expressions of interest in free schools:

As well as showing enthusiasm for greater academy freedoms in existing schools, teachers are enthusiastic about the opportunities, outlined in our coalition agreement, to create more great new schools in areas of disadvantage. More than 700 expressions of interest in opening new free schools have been received by the charitable group the New Schools Network, and the majority of them have come from serving teachers in the state school system who want greater freedom to help the poorest children do better.⁴⁷

In a written answer to a parliamentary question on 12 July 2010, the Schools Minister said that the New Schools Network had received 'several hundred inquiries of which 38 have already led to formal proposals.'⁴⁸

The [DFE free schools website](#) explains the four stages that proposers (groups wanting to set up a free school) should follow. This guidance says that proposers interested in setting up a free school should contact the [New Schools Network \(NSN\)](#) to discuss their ideas. The NSN is acting as the first point of contact for groups wanting to set up a free school, and provides information and advice on the process of setting up a new school. The role of the NSN in this context has been questioned by commentators opposed to free schools.⁴⁹ In a written answer to a parliamentary question on 12 July 2010, the Schools Minister said that the role of the NSN is to help interested groups develop their ideas and prepare to submit their proposals, not to assess applications. However, it will be for the DFE to assess proposals, which Ministers may approve.⁵⁰ The [DFE free schools website](#) sets out the details that will

⁴⁷ HC Deb 21 June 2010 c25

⁴⁸ HC Deb 12 July 2010 c559W

⁴⁹ "We have donors who wish to remain anonymous", *Education Guardian*, 6 July 2010, p5

⁵⁰ HC Deb 12 July 2010 c559W

need to be supplied in the business case and plan for a free school application. The criteria that will have to be met are set out on the [DFE free schools website](#).⁵¹

The Government expects the first free schools to open in September 2011.

The [DFE free schools website](#) states that free schools, like schools converting to academies, will be funded on a comparable basis to other state-funded schools. There will be a funding model, and the FAQ website states that this will be as simple as possible, based mainly on a per-pupil funding level, and a pupil premium for disadvantaged pupils. The website also notes that there will be start-up capital funding. The Education Secretary's 18 June 2010 announcement said that £50 million of funding from the Harnessing Technology Grant would be reallocated to create a Standards and Diversity Fund, and that this will provide the capital funding for free schools up to 31 March 2011. He also said that funding for free schools will be a top priority.

School chains in Sweden such as Kunskapsskolan have recently come to England to sponsor academies but academy sponsors are barred from making a profit here. An Ipsos Mori poll conducted in April 2010 found that the general public oppose the involvement of profit-making firms in running schools.⁵²

The Government expects all free schools to be established on a non-profit-making basis. "All income and assets of the charitable trust must be spent and used for the charitable purpose of the trust, which will run the school, i.e. to advance education for the public benefit. However, like all state schools, the trust will be able to subcontract elements of the running and management of the school to other organisations, including private companies. The trust will remain accountable for the performance of the school and for the effective and proper use of public funding."⁵³

Research published by Policy Exchange and the New Schools Network emphasises that the current system for setting up academies is bureaucratic and expensive.⁵⁴ The authors note that academies are usually takeovers of existing secondary schools whereas the Swedish 'free schools' and US 'charter schools' are usually new supply - they do not inherit pupils or buildings, but are new ventures. The Policy Exchange and the New Schools Network research says that setting up a new school is a simpler task. It notes that Sweden has a relatively simple authorisation process, with funding reflecting pupil numbers. In the US there is great variety in charter school arrangements from state to state, and there is no geographical monopoly on authorisation. In Sweden there are few building requirements beyond general fire and safety requirements. The authors note that a factor that marks out both Swedish free schools and US charter schools from the existing English academy system is the level of creativity in approaches to using space for new schools. In the case of free schools and charter schools space is rented not bought, with offices, churches etc. converted for small school provision. In Sweden there are no limits on the number of schools a particular provider can run, and they are allowed to make a profit.

The [DFE free schools website](#) (FAQ page) states that the Government expects many free schools to be able to find premises to rent, and notes:

⁵¹ [DFE free schools website](http://www.education.gov.uk/freeschools/frequently-asked-questions#f2) FAQ page: <http://www.education.gov.uk/freeschools/frequently-asked-questions#f2>

⁵² "No profit survey", *TES*, 2 April 2010, p4

⁵³ <http://www.education.gov.uk/freeschools/frequently-asked-questions#f4>

⁵⁴ Anna Fazackerley, Rachel Wolf and Alex Massey, *Blocking the Best*, Policy Exchange and New schools Network, 2010

For those projects that may require an up-front capital outlay, we will work with the proposer to ensure that there is a strong value-for-money case to support the investment.

For all proposals for capital funding, we would expect proposers to show how their planned approach

supports the education aims of the school

meets the policy aim of increasing parental choice

provides the flexibility, where necessary, for the school to grow and develop over time

provides value for money including in relation to local benchmarks for rental and/or refurbishment costs.

On the issue of how premises will be provided for free school, the [DFE free schools website](#) (FAQ page) notes:

We will remove the unnecessary and burdensome regulations that get in the way of local communities securing sites for new schools. This will include allowing a wider range of sites to be used as schools without the need for 'change of use' consent. In addition, the Secretary of State for Communities and Local Government will aim to update guidelines, before summer recess, to local planning authorities to make it clear there is a presumption in favour of setting up new schools. The Department for Education will also extend powers to protect existing school sites, to make sure they are kept available for use by new schools where there is demand.

It is up to each proposer to look into possible sites available to set up their new school. As part of the proposal, they will be asked to set out plans for the proposed site or buildings for the new school and the extent of any work that needs to be carried out. We will work with Partnerships for Schools, the Department's delivery agency on school building programmes, to ensure that proposers are supported in finding appropriate sites and buildings.⁵⁵

A written answer to a parliamentary question in the House of Lords on 5 July 2010 referred to the preparations for the proposed planning consent changes, and noted that the DFE and Partnerships for Schools are looking at how the school premises regulations and other legislation and guidance that affects school buildings can be simplified to make it easier to set up a free school.⁵⁶

The perceived benefits of free schools

The evidence relating to the educational performance of 'free schools' and 'charter schools' is mixed. There was much debate on the subject in the run-up to the General Election.⁵⁷

Those who are sceptical about the educational and social benefits of free schools point to the overall fall of Sweden in international league tables for pupil performance since the free schools were introduced, and point out that the free schools tend to be attended by children from relatively affluent backgrounds. Furthermore, they note that pupils attending them do not do better in post-school education. However, others argue that the free schools have

⁵⁵ <http://www.education.gov.uk/freeschools/frequently-asked-questions#f2>

⁵⁶ HL Deb 5 July 2010 cc24-5WA

⁵⁷ <http://news.bbc.co.uk/1/hi/programmes/newsnight/8504961.stm>;
<http://news.bbc.co.uk/1/hi/programmes/newsnight/8506214.stm>

performed better than other schools, and that this, in turn, has led schools to improve their organization and teaching in order to improve results.⁵⁸

The arguments for and against free schools, and some of the relevant evidence, were debated in recent exchanges between the Education Secretary and the Shadow Education Secretary in the House of Commons. The former pointed to the academic research on the subject, and the latter stressed the comments made by the Swedish Schools Minister, and the position of Sweden in TIMSS (Trends in Mathematics and Science Study) league table in maths and science.⁵⁹

Information on educational performance in Sweden, and the factors that may have influenced it, can be found in a review initiated by the Swedish National Agency for Education, *What Influences Educational Achievement in Swedish schools?* The review notes the educational reforms and societal changes since the mid 1990s, and changes in school management and internal organization.⁶⁰ Additional information is found on the websites of [The Swedish National Agency for Education](#); [The Swedish Schools Inspectorate](#); and [The Swedish Association of Independent Schools](#).

The Government has compiled a note of evidence supporting the free school model, *The case for school freedom: national and international evidence*.⁶¹ This cites evidence in support of the US charter schools and the Swedish free schools, and includes information on 'debunking myths about school freedoms', which addresses questions about whether such schools only benefit the well-off, covertly select pupils, hamper the performance of neighbouring schools and neglect the needs of pupils with special needs.

Research by the Institute of Education at the University of London suggests that the Swedish free schools have had a positive effect on pupils' academic achievements. However, research published by Bristol University concludes that while the experience of Sweden is helpful, it is limited in the extent to which it can help predict the impact of school reforms in England. The research is noted in a summary produced by the Institute of Education, University of London:

Swedish free schools and academic achievement

Research from the IOE on Sweden's 'free school' reforms suggests that the entry of new schools had a positive effect on pupils' academic achievements. But according to a survey of the evidence by Rebecca Allen, the benefits are small, they are predominantly focused on children from highly educated families and they do not persist: scores are no higher in the end-of-school exams.

The findings appear in the latest issue of *Research in Public Policy* (published by the Centre for Market and Public Organisation, CMPO).

Allen concludes that the experience of Sweden is helpful, but necessarily limited, in the extent to which it can help predict the impact of school reforms in England. One reason for this is that the schools also underwent a radical decentralisation of the education system, which would seem to be critical for promoting diversity and productivity gains through experimentation in free schools.

⁵⁸ e.g. see Channel 4 blog summarising evidence: <http://blogs.channel4.com/factcheck/2010/05/04/do-swedish-free-schools-mean-higher-standards/> ; "Private companies will run 'free schools'", Guardian, 25 May 2010

⁵⁹ HC Deb 21 June 2010 cc 25-28

⁶⁰ Swedish National Agency for Education, *What Influences Educational Achievement in Swedish schools?*

⁶¹ Posted on the DFE website on 24 June 2010 – it is a word document found under: <http://www.education.gov.uk/news/news/freeschools> (scroll to 'For more on Free Schools, American 'Charter Schools' as well as a myth-buster, please see our [relevant document](#)')

Sweden also has fewer reasons to be concerned that a free school system will produce greater school stratification since the country's lower levels of income and skill inequalities mean there is far less need for parents to choose schools based on social composition. It is also possible that Sweden's stronger tradition of non-standard schooling – such as Steiner and Montessori schools – is leading to a greater diversity of provision than parents in England would ever demand.⁶²

4 The Bill

4.1 Overview of main provisions

The Queen's Speech announced that legislation will be introduced 'to enable more schools to achieve academy status, give teachers greater freedom over the curriculum and allow new providers to run state schools'.⁶³

On 26 May 2010 the *Academies Bill*⁶⁴ was introduced into the House of Lords to enable all maintained schools to apply for academy status. At that time, the Government had not announced how it intended to implement its plans for free schools, and what legislative changes would be made. Since then the Government has clarified that free schools will be set up under the Bill, and that they will have the same legal requirements as academies.⁶⁵ Existing maintained schools will not be able to become free schools but they will be able to apply for academy status under the Bill.⁶⁶

A second education Bill, to give effect to the Government's other education reforms, is expected in the autumn, following a white paper. Information on that is given in a briefing on the *Queen's Speech - Education and Children's Bill* on the No 10 website.

The *Academies Bill* [HL Bill 1] received a Second Reading in the House of Lords on 7 June 2010. The Lords' Committee Stage debates were held on 21, 23 and 28 June 2010. The Lords' Report Stage was on 6 and 7 July 2010. The Bill was given a Third Reading in the Lords on 13 July 2010. The *Library's Bill Gateway website* provides information on the progress of the Bill and links to relevant information.⁶⁷

There was no formal consultation on the proposals before the Bill was introduced; however, it implements the policy on academies set out in the Conservative Party Manifesto.

When the Bill was introduced in the House of Lords, *Explanatory Notes* on the Bill⁶⁸, an *Impact Assessment*⁶⁹, an *Equalities Impact Assessment*⁷⁰ and a *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*⁷¹ were published by the Department for Education (DFE).

⁶² Institute of Education, University of London, *Swedish free schools and academic achievement*, 23 June 2010. The full article is available online at: <http://www.bristol.ac.uk/cmipo/publications/bulletin/researchissue10.pdf>, pp4–7

⁶³ *Queen's Speech, 25 May 2010*

⁶⁴ *Academies Bill HL Bill 1*

⁶⁵ HL Deb 21 June 2010 c1187; HC Deb 21 June 2010 c27

⁶⁶ See FAQs on the *DFE's free schools web pages*

⁶⁷ This is an intranet site; information is also provided on the internet at: <http://services.parliament.uk/bills/2010-11/academieshl/documents.html>

⁶⁸ *Academies Bill Explanatory Notes HL Bill 1 - EN*

⁶⁹ *Academies Bill Impact Assessment*, DFE, 26 May 2010

⁷⁰ *Equalities Impact Assessment: Academies Bill*, DFE

⁷¹ *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, DFE, 26 May 2010

The Bill was brought from the Lords on 13 July 2010 as [Academies Bill](#) [Bill 57].⁷² It is due to have its Second Reading debate in the House of Commons on 19 July 2010. New [Explanatory Notes](#)⁷³ have been prepared on the amended Bill [Bill 57].

The following is a brief account of the main provisions of the Bill drawing on these documents and other relevant information. It is not intended to describe every provision in detail; Members are referred to the complete documents for fuller information on all provisions.

The Bill [Bill 57], as introduced into the House of Commons, has 20 clauses and 2 Schedules. The provisions apply to England only.

Clause 1 of the Bill empowers the Secretary of State to make ‘academy arrangements’ with another person, to establish and run an academy. Such arrangements take the form of an ‘academy agreement’ or ‘arrangements for academy financial assistance’ under section 14 of the *Education Act 2002*. The difference between the two funding routes is that the first is the conventional academy funding agreement route (such agreements usually last for seven years), and the second route, which would most likely be used to fund the new free schools, could be for a shorter period.⁷⁴ The clause replaces similar existing provisions on academy agreements contained in section 482 (1) to (5) of the *Education Act 1996*, which Schedule 2 of the Bill omits.

If the academy is to be a mainstream school (rather than a special school) then it must have the characteristics specified at subsection clause 1(6) of the Bill. These are that the school must have a broad and balanced curriculum, a specialism (if secondary education is provided), provide education for pupils who are wholly or mainly pupils from the area, and provide for pupils of different abilities. However, the latter does not apply where a school has existing selective arrangements (see clause 6(3)).

Clause 1(7) and (8) were added to the Bill at Report Stage to require academy arrangements to impose special educational needs obligations on academies equivalent to those imposed on maintained schools in Part VI of the *Education Act 1996*. The change was made by the Government to address concerns raised by Peers.⁷⁵ (For further information see the key issues section of this paper below).

Under clause 1(9) an academy may not charge for admission or attendance at the school or for education provided there (unless the academy agreement or grant under section 14 of the 2002 Act specifically permits it).

Clause 2 makes provision for the terms of an academy agreement. It enables an academy agreement to provide for capital as well as current expenditure. Under clause 2(2) payments under an academy agreement must continue (provided its terms are complied with) for a minimum period of seven years or indefinitely with seven years’ notice. Academy agreements may include terms for repayment of funding to the Secretary of State and for the Secretary of State to provide an indemnity to the person entering into an academy agreement in the event of the termination of the agreement.

Subsections (5) and (6), which were added to the Bill at Third Reading, were opposed by the Government. Clause 2(5) amends the school finance regulations so that expenditure on

⁷² [Academies Bill, brought from the Lords on 13 July 2010, Bill 57](#)

⁷³ [Academies Bill Explanatory Notes, Bill 57 - EN, 13 July 2010](#)

⁷⁴ [Letter dated 27/06/2010 from Lord Hill of Oareford to Lord Greaves regarding the Secretary of State's powers to fund free schools. Library deposited paper: 2010-1397](#)

⁷⁵ HL Deb 7 July 2010 cc 247-53

services for academy pupils with low incidence⁷⁶ special educational needs or disabilities would become a class of expenditure for the purposes of the non-schools education budget. Clause 2(6) provides for the Secretary of State to make alternative arrangements where a local authority fails to secure satisfactory provision for such children.⁷⁷ (For further information see the key issues section of this paper below.)

Under **clause 3** the governing body of a maintained school in England may apply to the Secretary of State to make an 'Academy order' for it to become an academy. A maintained school is defined as a community, foundation or voluntary school, or a community or foundation special school (**clause 17(2)**).

Currently, maintained schools are funded through the local authority. In the case of community schools the local authority employs the school's staff, owns the school's land and buildings and is the admissions authority. Community special schools, which are the special school equivalent of mainstream community schools, cater wholly or mainly for children with 'statements' of special educational needs. At foundation schools the governing body is both the employer and the admissions authority. The school's land and buildings are either owned by the governing body or by a charitable foundation. Foundation special schools, which are the special school equivalent of the mainstream foundation school, cater wholly or mainly for children with 'statements' of special educational needs.

There are two kinds of voluntary school: voluntary aided schools and voluntary controlled schools. The governing body is the employer and the admissions authority for voluntary aided schools. The school's land and buildings (apart from playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation. The governing body contributes to the capital costs of establishing the school and subsequent capital building work. In the case of voluntary controlled schools, the local authority is the employer and the admissions authority. The school's land and buildings (apart from the playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation. Foundation, voluntary aided and voluntary controlled schools may be designated by the Secretary of State as having a religious character.

Under the Bill, a voluntary or foundation school with an existing foundation will be required to consult that foundation before applying to become an academy, and can only make an application with the consent of the school's trustees and any other persons who are entitled to appoint foundation governors to the school. The *Explanatory Notes* state that this means, for example, that a school with a religious character would need the consent of its local diocese or other religious authority before it could apply to become an Academy. Further information on how the provisions will affect schools with a religious character was provided during the Bill's passage through the Lords.⁷⁸

Clause 4 empowers the Secretary of State to make an 'Academy order' in two circumstances: when the governing body of a maintained school applies to the Secretary of State to convert to an academy school (clause 4(1)(a)) or when a school is 'eligible for intervention' (clause 4(1)(b)) and the Secretary of State wishes it to convert to an academy school. A school is eligible for intervention under section 59 of the *Education and*

⁷⁶ The term 'low incidence' is generally used to describe needs that occur less frequently but may require a specialised response, and may include children with severe sensory/multi-sensory impairments, severe autistic spectrum disorders and severe behavioural, emotional and social difficulties.

⁷⁷ HL Deb 13 July 2010 cc 610-620

⁷⁸ e.g. see: [Letter dated 02/07/2010 from Lord Hill of Oareford to Lord Bishop of Exeter regarding academies. Library deposited paper: 2010-1401](#); [Letter dated 21/06/2010 from Lord Hill of Oareford to Lord Bishop of Lincoln and Bishop McMahon regarding academies. Library deposited paper: 2010-1333](#); and [Letter dated 02/07/2010 from Lord Hill of Oareford to Lord Adonis regarding faith admissions in new academies. Library deposited paper: 2010-1400](#)

Inspections Act 2006 where it is subject to warning notices, requires significant improvement or requires special measures. Where a school applies to become an academy but the Secretary of State decides not to make an order allowing it to do so, the governing body, the head teacher and the local authority must be informed of that refusal and the reasons (clause 4(5)).

Academy orders will be administrative orders; they will not be made by statutory instrument (clause 4 (6)). The DFE's *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform* states that the nature of these orders will be largely administrative and technical and will contain a level of detail not suitable for parliamentary scrutiny.⁷⁹

Under **clause 5**, before a maintained school in England is converted into an academy the school governing body must consult persons as they think appropriate. The consultation may take place before or after an application or before or after an academy order is made, but it must take place before the academy arrangements are entered into.

At present, under section 482(3)(a) of the *Education Act 1996*, before entering into an agreement for an academy the Secretary of State must consult the local education authority in whose area the school is to be situated. The *Academies Bill* removes this requirement. However, in response to representations made during the Lords' Second Reading and Committee debates, the Government amended the Bill on Report to add clause 5 to the Bill to require governing bodies of converting schools to consult those persons whom they think appropriate before entering into funding arrangements with the Secretary of State.⁸⁰

Clause 6 provides that when an Academy order has been made, the local authority must cease to maintain the school on the date when the academy opens. This date is known as the 'conversion date' and will be the date specified as the Academy's opening date in the funding agreement or grant arrangements. On the conversion date, the school will be treated automatically as having met the independent school standards. These are currently contained in the *Education (Independent School Standards) (England) Regulations 2003*.⁸¹ The *Explanatory Notes* state that this means the academy will not need to be inspected by Ofsted before being registered as an independent school or before opening. Once open, the academy will have to comply with the usual requirements for academies, and will be inspected thereafter in the usual way by Ofsted in accordance with section 5 of the *Education Act 2005*.

Schools with a religious character will keep that religious character upon conversion to academy status and will be designated, on conversion, as independent schools having a religious character (clause 6(8)).

Provision is made for selective schools to be able to keep their selective status when converting to an academy (clause 6(3)).

Under clause 6(9) of the Bill, where an Academy order has been made a converting school or its maintaining local authority will not need to follow the school closure procedures in section 30 of the *School Standards and Framework Act 1998* or sections 15 to 17 of the *Education and Inspections Act 2006*.

⁷⁹ *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, DFE 26 May 2010, p3, paragraph 3

⁸⁰ HL Deb 8 July 2010 c313

⁸¹ SI 2003/1910

Clause 7 requires that, where the Secretary of State approves a maintained school's application to become an Academy under the Bill, the local authority must determine whether the school has a budget surplus, and, if so, the amount of that surplus and transfer that amount to the academy proprietor. Clause 7(4) and (5) provide for the Secretary of State to prescribe in regulations the procedures to be followed for the determination and payment of such surpluses, including timings, and for the review of any determination upon the application of the academy proprietor. These regulations will be subject to the negative resolution procedure.

Currently, surpluses of closing schools remain with the local authority. This includes cases where an existing school is closed to become an academy.

Clause 8 permits the Secretary of State to make a 'property transfer scheme' in relation to the property, rights or liabilities of a maintained school which are held for the purposes of the school by the local authority or the school's governing body. The *Explanatory Notes* state that such a scheme can have effect to transfer to the academy school various property or contractual rights or liabilities which were previously the property, rights or liabilities of the maintained school which the academy replaces. This would permit the school, for example, to retain its electronic hardware, furniture and cleaning or catering contracts.

Clauses 9 and 10, which were added to the Bill by the Government at Third Reading, relate to free schools, referred to as 'additional schools' in these new clauses.⁸² Clause 9 requires the Secretary of State, when deciding whether to enter into academy arrangements for an additional school, to take into account the impact of the additional school on existing maintained schools in the area. Clause 10 requires any promoter of an additional school to consult those it thinks appropriate.

Clause 11 requires the Secretary of State to make annual reports on academy arrangements and performance. The report must be laid before Parliament. The clause was added to the Bill at Third Reading, and was welcomed by the Government.⁸³

Clause 12 relates to the charitable status of academy proprietors. A 'qualifying academy proprietor' will be an exempt charity, and will therefore not need to register with, or be regulated by, the Charity Commission. The Young Person's Learning Agency will be the principal regulator for such academy proprietors.

The Children, Schools and Families Bill as originally introduced by the last Labour Government sought to make academies exempt charities (clause 42). The intention was to reduce bureaucracy and ensure a consistent approach between academies and voluntary and foundation schools. However, the Labour Government removed the clause after discussion with the Charity Commission about how the objective could be achieved by simplifying the registration process. At the time, the Conservative opposition were in favour of retaining the clause to make academies exempt charities.⁸⁴

Clause 13 of the *Academies Bill* introduces **Schedule 1**, which makes provision about land in relation to academies. Schedule 1 re-enacts, in part, Schedule 35A to the *Education Act 1996* (which provides for schemes in relation to local authority land for the purposes of academies and former academies) and elements of Schedule 22 to the *School Standards and Framework Act 1998* (which provides for the disposal of land on the discontinuance of various types of maintained school). The provisions are complex and technical. An outline

⁸² HL Deb 13 July 2010 cc 630-638

⁸³ HL Deb 13 July 2010 cc 638-644

⁸⁴ For background, see [House of Commons Library Research Paper 10/12](#), Committee Stage Report on the *Children, Schools and Families Bill* p21

of their intentions is provided in the *Explanatory Notes* and in the *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, which notes:

11. The provisions of Schedule 1 are intended to deal with three distinct situations: the creation of new Academy schools on local authority land on the closure of a predecessor school (or on the creation of a wholly new school); the creation of new Academy schools by virtue of an Academy order being made in respect of a maintained school; and the disposal of land which has been used by an Academy school but which is no longer, or is about to cease to be, used for the purposes of an Academy.

12. As the land on which maintained schools are situated can be held in a number of ways by different bodies, the Schedule needs to make provision for a wide variety of different circumstances.

Clause 14 introduces **Schedule 2** which makes a number of amendments to existing legislation. The *Explanatory Notes* state that some of the changes are minor and technical, and some are not. It highlights the changes relating to special schools, and the FOI change:

Paragraph 2 of Schedule 2 amends the definition of 'special school' in section 337 of the EA 1996 to permit the definition of special schools to include Academies. Paragraphs 3 and 9 of Schedule 2 make changes to existing powers of the Secretary of State to amend trust deeds relating to non-maintained special schools, or to trust deeds relating to foundation, voluntary, or foundation special schools, or property held for the purposes of such a school, to allow them to be modified to permit the conduct of an Academy if the current trust deed is not sufficient. In all cases, consultation with the governing body, trustees and (if relevant) diocesan authority is required. Paragraph 10 of Schedule 2 amends Part 4 of Schedule 1 to the Freedom of Information Act 2000 to add Academy proprietors to the list of public bodies covered by that Act.

The Government amended **Schedule 2** on Report to provide for the *Freedom of Information Act 2000* to apply to academies.⁸⁵

Clause 15 provides for transitional arrangements in relation to existing academies, city technology colleges, and city colleges for the technology of the arts. Section 482 (1) to (5) of the *Education Act 1996* will be repealed under Schedule 2 of the Bill. The effect of clause 15 will be that all agreements made under section 482 of the *Education Act 1996* will be deemed to have been made under clause 1 of the Bill. References to section 482 in other legislation will also be treated as references to the Bill.

Under **clause 16** (pre-commencement applications etc.) an application made by the governing body of a maintained school to become an academy prior to the date on which clause 3 comes into force will be treated as though made under the Bill. An application by the governing body to its foundation for consent to make an application will also be treated as having been made after clause 3 has come into force, and any consent given by the foundation before commencement of clause 3 will be treated as given under the Bill.

The effect of clause 16 is to allow preparations for conversion to academy status to be taken by schools before commencement of the Bill's provisions, and for such steps to be treated as if they had been taken after the Act came into force. Such steps are:

a consultation by the school with its foundation;

a governing body's application to the Secretary of State to become an academy;

⁸⁵ HL Deb 7 July 2010 cc 327-28; Schedule 2, paragraph 10 of the *Academies Bill* [Bill 57]

an application by the governing body to its trustees or other appointer of foundation governors for consent to make an application to convert; and

any consent given by the trustees or appointer of governors.⁸⁶

Similar clauses on pre-commencement in other education legislation include the Labour Government's *Children, Schools and Families Bill* in the last parliament, which contained pre-Act consultation in clause 2(7) on the pupil and parent guarantees to count as consultation as though taken after the Act had commenced. There was also section 40(9) of the *Education and Inspections Act 2006*, which provided for a consultation on the *School Admissions Code* to satisfy the requirements of the amended provisions of section 85 of the *School Standards and Framework Act 1998*.

The remainder of the Bill contains the general provisions relating to the interpretation of the Act, its extent, commencement and short title (**clauses 17 to 20**).

Although technically the Bill extends to England and Wales, its provisions apply to England only.

4.2 Impact assessment: costs and benefits⁸⁷

The Impact Assessment (IA)⁸⁸ for the Bill mainly compares the financial costs and benefits of the provisions on academies.

Costs

One-off costs of conversion to an academy are estimated at £78,000 per school. Part of this is VAT, so the economic costs to the public sector are given as £66,000 each.⁸⁹ It should be noted that the full costs would fall on the Department for Education (DFE) unless it received specific additional funding to compensate for the VAT costs. An additional £50,000 is thought to be needed in one in three of converters to take on additional capacity from weaker schools. The IA assumes that there would be 200 new academies each year and its cost estimates cover the four years to 2013-14. Thus total one-off costs are £17 million per year or £68 million over the four years.⁹⁰

Ongoing annual costs are made up of the VAT grant to academies and the cost of non-recoupable Local Authority Central Spend Equivalent Grant (LACSEG). The VAT grant is estimated at £250,000 per year for each converter. It will be slightly higher when the increased VAT rate starts from January 2011. Academies are liable for VAT and do not have the reclaim facility of a local authority. As with the VAT aspect of one off costs the IA states that there is zero economic cost to the public sector as it is in effect a transfer from one part (DFE) to another (HM Revenue and Customs). Again, the resources will have to come from the DFE's budget and it will be worse off financially without additional support to cover this. Non-recoupable LACSEG is estimated at £275,000 million per converter. These are costs of administration services that the new academies will face, but which is not recouped from

⁸⁶ Information provided to the Library by a DFE official, 16 June 2010

⁸⁷ Section 4.2 of this paper was written by Paul Bolton, Social & General Statistics Section, House of Commons Library.

⁸⁸ *Academies Bill Impact Assessment*, DFE, 26 May 2010

⁸⁹ The IA estimates that this could be cut to £25,000 if contributions were made from existing school balances. This might be the transfer from the DFE to individual academies, but the public sector cost would still be the larger figure.

⁹⁰ Impact Assessment p.6

local authorities at present.⁹¹ The IA states that DFE plan to talk to the Department for Communities and Local Government about how these costs might be handled in the future. Assuming that 200 academies convert at different points during each year the IA estimates public sector costs of £33 million in financial year 2010/11 rising to £198 million in 2013/14. A total of £462 million for the four year covered.⁹²

THE IA acknowledges that the number of converters is difficult to predict. Clearly the number of schools registering an interest so far (1,562) is much higher than the IA's estimates. But it remains to be seen exactly how many convert. Special schools are likely to have to wait until September 2011 and non-outstanding rated schools may also have to wait this long. There may therefore be more schools converting to academies in the first few years than the estimate of 200 per year. If, for instance, the number of new academies was double this estimate in the first three years; one-off costs for the period 2010/11 to 2013/14 would increase to £119 million and total ongoing costs to £890 million. The *additional* costs to the DFE in funding to cover VAT costs of academies would be around £500 million over the same four year period using the IA estimate of academy numbers or around £830 million if numbers were doubled in the first three years. The increased VAT rate from January 2011 will further increase this element.

Elsewhere in the IA an average school size of just over 1,000 pupils is assumed.⁹³ This is the average size of maintained secondary schools. It is unclear what size or type of school has been assumed in the cost section of the IA. If the schools that convert to become academies are smaller than assumed (i.e. more primaries and special schools) then the unit cost assumptions will be too high. The final numbers, sizes and types of schools that convert to academies will determine whether, or to what extent, the impact of greater numbers of converters is offset by lower unit costs due to smaller school sizes.

Benefits

The IA's evidence of economic benefits centres on the improvement in GCSE results at existing academies. Between 2008 and 2009 the proportion of pupils in academies achieving 5+ grades A*-C at GCSE/equivalent including English and Maths increased by 5.0 percentage points – twice the national average. The IA says that improvement against comparison schools (schools that are 'likely' to become academies) was 'slightly better'.⁹⁴ It was stated earlier that improvement over each of the past two years at schools that started with similar levels of attainment as academies was broadly similar as that seen in academies. Other earlier evidence found that academies improved their GCSE results at a faster rate than similar schools, but the gap was smaller than with the average for all schools.⁹⁵

The IA sets out what it describes as 'very tentative' estimates of the economic benefits it links to academy status. This assumes:

- 200 new academies each year between 2010-11 and 2013-14
- An average improvement of 1.5 percentage points in the proportion of pupils achieving 5+ grades A*-C at GCSE/equivalent including English and Maths
- The improvement in GCSE results is a one-off effect only and is over and above what they would have achieved had they not converted.
- Average school size of 1,020 pupils

⁹¹ If they were fully recouped then the economic costs of academies would be limited to the one-off costs. If all costs were fully recouped from local authorities using an average figure per school then local authorities could be worse off. They have fixed costs associated to their operations and the marginal benefit in administration costs of having fewer schools to look after is likely to be close to zero in most LEAs.

⁹² Impact Assessment p.7

⁹³ *ibid.* p.9

⁹⁴ *ibid.* pp6-10

⁹⁵ The standard note [Academies: Statistics](#) give more detail

- Average increase in lifetime productivity from an extra individual gaining 5+ GCSEs of £100,000 for men and £85,000 for women.

This gives benefits of £282 million each year or £1.1 billion over the four years. These are lifetime economic benefits discounted over time and allocated to the year in which the school converts to an academy. If the number of new academies were doubled then, by extension, the economic benefits would be doubled. Clearly it is very difficult to make precise predications about the impact of possible improvements in exam results on someone's future earnings. A single economic benefit figure is given in the IA with no range indicating the scale or existence of the uncertainties involved.

The IA assumes that the change of status to an academy is the sole cause of the observed difference in GCSE attainment trends. The choice of comparator group is an essential element of this calculation. Ideally they would be as close as possible to the predecessors of academies to try to isolate the impact of the change in status. Schools operate in real world rather than laboratory conditions so comparisons will never be perfect. The IA bases its estimates of improvement on 'half'⁹⁶ of the relative improvement seen in existing academies. As this evidence comes from schools which were generally underperforming it is unclear how applicable it will be to new academies. The IA accounts for this by assuming a 1.5 percentage point improvement to reflect the fact that new academies are likely to have a very different background from existing ones. With better initial levels of performance there is less scope for further improvement. In addition they will also receive 'much less start-up funding'.⁹⁷

While only half of the observed relative improvement of academies has been used, the choice of baseline figure could be questioned. If their improvement against any one of the comparison groups had been used then the starting point would have been smaller and still subject to down-rating. Using data on more than one year's improvement might also have given a different figure. Again a single estimate rather than a range is used when there are elements of uncertainty that the IA acknowledges.

A further point to note is that in the benefits section the IA assumes that the 200 new academies each year are all secondaries. There is no evidence on the potential impact of primary or special academies.

5 Reaction to the Bill's provisions

The following provides an outline of reaction from the official Opposition, responses to the Bill during the debates in the House of Lords, and a small selection of reaction from external sources.

5.1 Reaction from the Shadow Education Secretary

In the House of Commons debate on the Queen's Speech Ed Balls, Shadow Education Secretary, claimed that the Coalition Government's policy was a perversion of Labour's academies programme, and would lead to a two-tier school system:

Where our academy policy gave extra resources and flexibility to the lowest-performing schools, the new Secretary of State proposes to give extra money to his favoured schools by taking money away from the rest. Where our academies went ahead with

⁹⁶ The IA first states that academies improved by 2.5 percentage points more than the national average (p.8). It then goes on to state that the estimated improvement is 'based on attainment data from existing academies and then down rated by half' (p.10). If they are referring to the same data then half the improvement would be 1.25 points, not 1.5.

⁹⁷ Impact Assessment p.10

the agreement of parents as well as of local authorities, the new Secretary of State is proposing in legislation to abolish any obligation on schools to consult anyone at all before they become academies-no one will be consulted, including parents and local authorities.

We brought in external sponsors such as universities to raise aspirations, but we were clear that profit-making companies were not welcome to sponsor academies. However, the right hon. Gentleman is abolishing the requirement to have sponsors at all and encouraging private companies to tout around the country to parents, offering their services for profit to provide education. Our academies were non-selective schools in the poorest communities, but his new academies will be disproportionately in more affluent areas and he will allow selective schools, for the first time, to become academies too. Where we used accredited schools groups to encourage school-to-school collaboration to raise standards, he is allowing schools to opt out and go it alone.

The policy is not an extension or even a radical reshaping; it is a complete perversion of the academies programme that the right hon. Gentleman inherited and that my noble Friend Lord Adonis and I drove through in government. It is not a progressive policy for education in the 21st century, but a return to the old grant-maintained school system of the 1990s. It will not break the link between poverty and deprivation, but entrench that unfairness even further, with extra resources and support going not to those who need it most, but to those who are already ahead. My very real fear is that that will lead to not only chaos and confusion, but deep unfairness and a return to a two-tier education policy as the Secretary of State clears local authorities out of the way and then encourages a chaotic free market in school places.

I am not the only one who is concerned. Let me quote the chair of the Local Government Association, Margaret Eaton. I am sorry; I should have said the new Conservative peer Baroness Eaton, who said:

"Safeguards will be needed to ensure a two-tier education system is not allowed to develop".

Those are very wise words, and such concerns are widespread in local government and across the school system. Will schools that do not become academies pay financially for those that do? Will the admissions code apply to new academies and be properly enforced? Will academies co-operate, as now, on behaviour policy, or will the Secretary of State allow high-performing schools to exclude pupils as a first resort, without any role for local authorities, Ofsted or children's trusts? Will he step in if things go wrong in what will be a massively centralised education system and how can he reassure us that disadvantaged children will not lose disproportionately from the resources for wider children's services that will be transferred from local authorities to high-performing opt-out schools, as they take the money away with them? Those are the questions to which we will want answers. We will return to these issues in much greater detail in the coming weeks as he tries to rush his Bill on to the statute book.⁹⁸

Responding to the Education Secretary's statement of 21 June 2010 on free schools policy, Mr Balls questioned how free schools would be funded, their effect on other local schools and their impact on education standards:

I am grateful to the Secretary of State for coming to the House, because his free school policy raises important issues of funding, fairness and standards-and it should not have been smuggled out in a Friday morning press statement. I should also say

⁹⁸ HC Deb 2 June 2010 cc 476-78

that Lord Hill has written to my colleagues in the other place confirming that the Academies Bill will, in fact, be enabling legislation for free schools. The Secretary of State should have the courtesy to inform this House, and those on the Opposition Front Bench, of his plans in that regard.

On funding, will the right hon. Gentleman confirm not only that his free school policy will establish a free market in school places, in which parents will be encouraged to set up taxpayer-funded new schools at will, but that he has secured no new money at all from the Treasury to pay for it? Will he confirm that he is using savings from cutting free school lunches for poorer children to fund his announced £50 million of start-up support, and that that is a drop in the ocean compared with the billions involved in the actual cost of his new policy?

Will the right hon. Gentleman confirm Professor David Woods's finding that the proposal for a new parent-promoted school in Kirklees would

"have a negative impact on other schools in the area in the form of surplus places and an adverse effect on revenue and capital budgets"?

The question is whether existing schools will see their budgets cut and lose teachers to pay for the new schools, and whether the Building Schools for the Future programme is now on hold to fund his new free schools policy. On fairness, does the right hon. Gentleman agree with the Swedish Schools Minister that

"free schools are generally attended by children of better educated and wealthy families making things even more difficult for children attending ordinary schools in poor areas"?

How will he ensure that the losers from the budget cuts will not be the children of middle and lower-income families?

It is important that the right hon. Gentleman should answer this question. Has he put in place clear safeguards to stop existing private schools from simply reopening as free schools, with taxpayers taking over the payment of school fees? On standards, can he confirm that since the Swedish free schools policy was introduced, England has risen to the top of the TIMMS-Trends in Mathematics and Science Study-league table in maths and science, but Sweden has plummeted to the bottom?

Will the Secretary of State amend the Academies Bill to prevent parents from delegating the entire management of free schools to profit-making companies? Alternatively, can we look forward, as in Sweden, to the grotesque chaos of private companies scuttling around the country touting to parents, saying that they will set up a new school for them, and make a profit, at the expense of the taxpayer and other children's education?⁹⁹

Replying, the Education Secretary confirmed that the *Academies Bill* provides for the creation of free schools, adding that he had confirmed that in the debate on the Queen's Speech. He rejected Mr Balls' claim that the free schools would be funded through cuts in school meals, pointing out that he had already announced that the money for setting up free schools would come from low-priority IT projects. On the question of the effect of Swedish free schools on education standards, he said that the words of the Swedish Schools Minister had been quoted out of context, and he referred to academic evidence from Sweden which, he said, shows that more free schools mean higher standards.¹⁰⁰

⁹⁹ HC Deb 21 June 2010 cc 25-28

¹⁰⁰ HC Deb 21 June 2010 cc 25-28

5.2 Introduction to debates in the House of Lords

The *Academies Bill* [HL Bill 1] received a second reading in the Lords on 7 June 2010. Many Peers expressed general support for academies, but also raised concern about the wider effects of the proposals and about a number of specific issues. The specific themes covered during the Second Reading debate included: the effect of the proposals on the rest of the school system, special educational needs provision, admissions, governance, consultation with parents and others about a change to academy status, the remaining role of the local authority, charitable status, funding issues, and the pace of change.

Lord Hill, Parliamentary Under-Secretary of State for Schools, emphasised that the Bill was a permissive rather than a coercive Bill, and responded to the specific points raised. Following the Second Reading debate he wrote to Peers ([letter dated 15 June 2010](#)) responding in more detail, and setting out the broad principles on which the Government had approached the Bill. These broad principles were:

No change to, or weakening of, the requirement that all state funded schools including Academies must comply with the School Admissions Code;

No change to, or weakening of, the requirements governing SEN provision;

Academies will continue to be required to offer a broad and balanced curriculum and to teach English, maths and science as part of that curriculum;

No change to selection in the state system; no non-selective school would be able to become selective, existing selective maintained schools would be able to retain selection;

A selective independent school converting to Academy status would have to become non-selective;

No change to the religious status of converting schools; and

No faith school could convert without the express consent of the trustees of the schools (and any others who may appoint foundation governors), unless it were eligible for intervention, in which case special arrangements would need to be negotiated.¹⁰¹

The Committee Stage debates were held on 21, 23 and 28 June 2010. The Report Stage was on 6 and 7 July 2010. The Bill was given a Third Reading in the Lords on 13 July 2010.

Four minor and technical Government amendments were made to the Bill in Lords' Committee.¹⁰² However, on Report substantial Government amendments were made on SEN provision, consultation during the conversion process, and applying Freedom of Information legislation to academies. There were also technical amendments relating to the transfer of land including a change to protect public investments.¹⁰³ At Third Reading Government amendments were made to require the Secretary of State to consider whether establishing an additional school (i.e. a free school) would have an impact on maintained schools and existing academies, and to require those who wish to set up an additional school to consult with persons thought to be appropriate.¹⁰⁴

¹⁰¹ <http://www.parliament.uk/deposits/depositedpapers/2010/DEP2010-1294.pdf>

¹⁰² HL Deb 28 June 2010 cc 1566, 1643, 1645, and 1649 – the changes were outlined in a DFE letter from Lord Hill to Baroness Morgan of Drefelin and Baroness Royall, dated 14 June 2010

¹⁰³ HL Deb 7 July 2010 cc 326-7 ; DFE Letter from Lord Hill to chairs of governors, dated 2 July 2010: <http://www.education.gov.uk/~media/Files/lacuna/academies/LetterfromLordHill.ashx>

¹⁰⁴ HL Deb 13 July 2010 cc 630-38

Many non-Government amendments were proposed, of which two were successful. One, requiring the Secretary of State to publish an annual report on academies, which the Government accepted¹⁰⁵; and the other, relating to services for children with low incidence SEN, which the Government opposed.¹⁰⁶

The main changes are noted in more detail in the sections below, which outlines key issues debated and changes made to the Bill.

5.3 Key issues debated in the Lords

The following summary of debates in the Lords is intended to cover the main issues raised to give a flavour of the debate but not to provide a comprehensive account of every speech made, amendment proposed or point debated. Many non-Government amendments were proposed, and Peers commented on the size and complexity of some of the groupings.¹⁰⁷ The issues outlined below are not necessarily in the order in which they were debated and, in practice, many of the issues were inter-related.

Lord Hill, Parliamentary Under-Secretary of State for Schools, and Lord Wallace of Saltaire spoke for the Government, and Baroness Morgan of Drefelin and Baroness Royall led for the Opposition.

Unless otherwise specified, Government amendments were successful and non-Government ones were not.

The Bill's provisions compared with Labour's academies programme

During the Second Reading debate, Baroness Morgan of Drefelin for the Opposition said that the Bill represented a new approach that did not compare with Labour's academies programme which, she said, was focused on schools with the most disadvantaged children. She was concerned that the Bill would produce a 'two-tier system':

The Bill represents a new approach. It simply does not compare with the Labour academies programme and does not provide all the support that we used to give to deprived schools. We are very proud of what the programme has achieved. The programme at which we are looking does not represent a continuation of Labour's programme. Labour is proud of the achievements of the pioneering academies. As the Minister rightly pointed out, when we were in government we committed to doubling the number of academies to 400. In so doing, we committed to create real benefits for the most disadvantaged children. However, I note that in the impact assessment for this Bill, the Government have struggled to demonstrate real benefit resulting from their policy of rolling out a scheme which was designed to transform failing schools to the highest performing schools in this country. There is a real issue there.

I believe very strongly that there is a good argument, as the Minister stressed-and we should make no mistake about this-for successful schools to be given more autonomy and flexibility, provided that it is clearly on the basis of fair admissions and funding, and a recognition of, and commitment to, their wider social improvement responsibilities. When in government, we understood that to excel schools need to be interconnected with their communities and supported by their local authorities. It seems to me that unless robust safeguards are in place, there will be serious implications for local communities, local children's services and, indeed, for the schools which are left

¹⁰⁵ HL Deb 13 July 2010 cc 638-44

¹⁰⁶ HL Deb 13 July 2010 cc 610-20

¹⁰⁷ e.g. HL Deb 23 June 2010 c1325

behind. There are real issues about which the Minister needs to think carefully, as I know he will.

The Minister must answer the question: will creating so many academies in already successful schools create a two-tier system? He tells us that it will not, but we need to know what the safeguards are to ensure that that is not the case.¹⁰⁸

Concern about the Bill's effect on the rest of the education system was echoed by several Peers including the former Education Secretary, Baroness Morris of Yardley. She questioned whether the Bill would produce a systemic improvement and not just improvement for some individual schools. Moreover, she felt that the freedoms were 'illusory', and that academies under Labour were successful because they were carefully monitored and supported:

Academies under the Labour Government were successful not because they were free to develop their own curriculum or because they were free from their local authorities, but because they were a small group of disadvantaged schools in disadvantaged areas that were given a lot of high quality attention and clear focus.

...

Quite frankly, far from being free, independent schools, the academies were the most monitored, watched, weighed and measured we have ever seen in this country. And the result was that they improved in the way that the Minister described. But unless we understand why they improved, we will get it wrong again. They did not improve because they were given extra freedoms; they improved because they were supported and given the best quality leadership and teaching. I see nothing in the Bill that can possibly make those advantages available for every school that applies to become a city academy. Indeed, by the very nature of what my Government did, they cannot be replicated until you have more good teachers and school leaders being given lots more support and a bit more in the way of resources.

If this Bill is passed, there will be consequences for the education system.¹⁰⁹

Lord Sutherland, a former HM Chief Inspector of Schools, supported the Bill's 'direction of travel', pointing out that there was already a multi-tiered education system, and that it was not a question of whether the Bill creates a further one but whether it will erode some of the differences.¹¹⁰ Lord Baker, a former Education Secretary, spoke in favour of the Bill referring to his proposals for technical academies. He noted that when he introduced the first CTCs under the *Education Reform Act 1988* the big argument was whether CTCs would 'hit' other schools. However, he stressed that they did not, and that they became the beacons that other schools copied. He felt that fears about the Bill's effect on other schools were groundless.¹¹¹ Baroness Sharp of Guildford said that many people were worried that academies would 'fragment the local community of schools', and she emphasised the difference between Labour's academies policy and the Bill.¹¹²

¹⁰⁸ HL Deb 7 June 2010 c510

¹⁰⁹ [HL Deb 7 June 2010 c544](#)

¹¹⁰ [HL Deb 7 June 2010 c449](#)

¹¹¹ [HL Deb 7 June 2010 c518](#)

¹¹² HL Deb 7 June 2010 c567

Lord Hill, Parliamentary Under-Secretary of State for Schools, said that the Bill would not create a two-tier system but would close the gap in the education system; he noted that the proposed pupil premium (not included in the Bill) would target resources on the poorest.¹¹³

In Committee, Baroness Morgan of Drefelin moved an amendment to change the name of academies established under the Bill to 'Direct Maintained Schools.'¹¹⁴ She highlighted what she regarded as the difference between Labour-designed academies, and what she saw as a new class of school under the Bill. The latter, she said, should be called what they will be: direct maintained schools. She emphasised that the Bill was highly contentious, and that the new academies will be something entirely different from Labour's academies, which, she said, are all-ability, state-funded, with sponsors from a wide range of backgrounds. The aim of Labour was to support failing schools quickly and effectively whereas, she said, the Government's reform is aimed at improvements for schools that are already rated as outstanding. She pointed to other key differences, and expressed concern about the potential impact of the changes on other local schools. However, the former Labour Schools Minister, Lord Adonis, disagreed with the proposed amendment pointing out that the schools under the Bill are academies in all their essential legal characteristics.¹¹⁵

Responding to the debate, Lord Hill quoted Labour's 2005 schools white paper which, he said, clearly called for the extension of academy freedoms; he believed that the Bill was a logical next step of an expansion of what went before. He added that under the Coalition Government's policy the focus on failing schools remains "and, if anything, is strengthened because the Secretary of State will be able to act more decisively without local authority consent, should that be necessary". He stressed that outstanding schools were simply a sub-set of all schools, and although they would not need sponsors, all other converting schools would. He concluded, in agreement with Lord Adonis, that the new wave of academies under the Bill should be called academies because they are to be set up on the same legal basis as existing academies. He reiterated that the new wave will not dilute the focus on failing schools, especially as outstanding schools converting to academies will have to partner weaker schools.¹¹⁶

Later in the Committee debates, Lord Greave sought to ensure that academies were not described as independent schools as, he pointed out, academies will be directly funded by the state, and therefore, he said, they are a sector of their own and should be referred to as state schools.¹¹⁷

Effect of the Bill on local provision

As noted above, there was discussion about whether the Bill would create a two-tier system, particularly where large numbers of schools in an area converts to academies.

In Committee, there were a number of probing amendments related to this issue.¹¹⁸ Lord Phillips, for example, was concerned about the need to safeguard against unintended consequences. He moved an amendment to require the Secretary of State to be satisfied, before entering into an academy arrangement, that any new academy met public need in an area and would not cause undue detriment to any neighbouring school. Other amendments in the group included: provision for academy conversions to go through the existing statutory proposal route for school closure or a similar process in relation to conversion; restrictions on the proportion of schools that could convert to academy status within any single authority

¹¹³ HL Deb 7 June 2010 c509

¹¹⁴ HL Deb 21 June 2010 cc 1170-1184

¹¹⁵ HL Deb 21 June 2010 cc 1176

¹¹⁶ HL Deb 21 June 2010 cc 1181-83

¹¹⁷ HL Deb 23 June 2010 cc 1360-61

¹¹⁸ HL Deb 21 June 2010 cc 1251-72

area; requirements for the local authority to be consulted about the conversion process; proposals for an assessment of the educational impact of each academy conversion before it could proceed; requirements for academies to promote community cohesion; and amendments related to post-16 arrangements in academies.

Responding, Lord Hill said that that the whole point of the free schools policy would be in some cases to cause 'detriment' to a school if that school had been failing and had let children down repeatedly over a long period. However, he stressed that it was in no one's interests to come up with proposals that would damage education overall in an area, and he said that that was not the intention or purpose. He noted that the decision about whether to go ahead with a free school would not be taken in isolation. The Secretary of State would have the discretion to take all relevant considerations into account as part of the approval process. He was not convinced the proposals in the wide range of amendments discussed were necessary.¹¹⁹ There was also extensive debate on the effect of the changes on local authority central services especially in relation to special educational needs provision (see below).

The potential impact of the Bill on other local schools was returned to again during the Report Stage when Lord Phillips and Baroness Williams proposed an amendment to require the Secretary of State, when considering an application by any person to enter into an academy funding arrangement, to take into account, amongst other things, the potential impact on schools which may be affected.¹²⁰ Baroness Williams raised the issue of existing surplus places in the school system, and said that it becomes more important in creating a new school or converting an existing school to an academy to ensure careful consideration of the impact on the number of places already being supplied.¹²¹ Responding, Lord Hill reiterated comments he had made on amendments with a similar purpose discussed in Committee, namely that the implications for other schools would be considered by the Secretary of State, and he believed that would give sufficient protection. However, he acknowledged that Peers wanted further reassurances, and said that he accepted the purpose of the amendment in principle, and would return to the issue on Third Reading.¹²² Accordingly, the Government amended the Bill at Third Reading to provide two new clauses relating to free schools, defined as 'additional schools' in these new clauses. One of the new clauses (clause 9 in the Bill 57, as brought from the Lords) will ensure that when the Secretary of State is considering whether to approve proposals for additional academies (free schools), he will take into account the impact of those proposals on other schools and colleges in the local area. The other new clause (clause 10 in the Bill 57, as brought from the Lords) requires any promoter of an additional school (i.e. a free school) to consult those it thinks appropriate.¹²³

Future role of local authorities

During the Second Reading debate several Peers including Baroness Royall, Baroness Massey, Baroness Sharp, Baroness Walmsley, Lord Griffiths, Lord Low, Lord Baker, Lord Sutherland, and the Bishop of Lincoln raised concerns about the role of local authorities as the number of academies increase. Baroness Royall said that as a result of the Bill, local authorities will lose powers, influence and budgetary flexibility.¹²⁴ Lord Low, for example, thought that a great expansion of academies would weaken local authorities, and he wanted to know what the effect would be particularly on the provision of specialist services. He asked for clarification of the Government's view of how the strategic role of local authorities

¹¹⁹ HL Deb 21 June 2010 cc 1269-72

¹²⁰ HL Deb 6 July 2010 cc 103-9

¹²¹ HL Deb 6 July 2010 cc 105

¹²² HL Deb 6 July 2010 cc 108-9

¹²³ HL Deb 13 July 2010 cc 630-638

¹²⁴ HL Deb 7 June 2010 c584

would be maintained.¹²⁵ Baroness Massey pointed out that primary schools and special schools are very dependent on local authorities for a whole range of core services, and she noted that they are concerned that the removal of the link to local authorities and shared budgets will have an impact on the availability of specialist support for children.¹²⁶

On the Bill's effect on the role of local authorities, Lord Hill said:

The role of local authorities is clearly of great importance. I repeat a point that I made in the debate on the gracious Speech and earlier: there is, I hope, nothing in the Bill that noble Lords will interpret as an attack on the role of local authorities. We do not seek to send that message. Strong local authorities will remain central to the Government's plans to improve education. We want to work with local authorities on what these changes will mean. We certainly envisage that local authorities will have a strategic overview of services in the local area and that they should help to support parents and pupils to choose a good school as part of a mixed economy of schools provision. They will retain a key strategic role in supporting the delivery of educational excellence. The law already allows local authorities to supply goods and services to schools, including academies. Many academies buy these services from the local authority. We expect this to continue. Nothing in the Bill will prevent an academy from buying a service from a local education authority and, if the academy considers the local authority to be the best supplier of that service at the best value, I am sure that it will continue to do so. As I have said, the local education authority will retain responsibility for ensuring that pupils' SEN needs continue to be met.¹²⁷

In Committee, Lord Greaves sought to introduce a new clause into the Bill to give powers and duties to local authorities for the oversight and monitoring of academies. Responding, Lord Hill said that the amendment went to the heart of the question about the future role of local authorities. He acknowledged that the Government had not yet come up with a complete answer as to what this should be, other than saying that local authorities should have a strong strategic role. The Opposition questioned whether, in the circumstances, it might not be better to take the legislation at a more reflective pace. Lord Hill said that schools were keen to convert and take advantage of the academy freedoms.¹²⁸

The future role of local authorities was returned to on Report. Lord Greaves again sought to introduce a new clause to provide for local authorities to carry out the oversight and monitoring of academies. For the Government, Lord Wallace of Saltaire said that the Government want a smooth transition to the new school system, and are pursuing a 'genuine dialogue with local government.' He invited Peers who had expressed an interest to help shape the thinking in this area.¹²⁹

Powers of the Secretary of State and parliamentary scrutiny

A number of Peers expressed reservations about the Secretary of State's powers and the lack of local involvement. During the Second Reading debate Baroness Sharp, for example, spoke of a 'democratic deficit'.¹³⁰ Lord Blackwell noted that local authorities no longer run schools; he felt there had been too much 'centralisation' in education policy during the past decade.¹³¹

¹²⁵ HL Deb 7 June 2010 c515

¹²⁶ HL Deb 7 June 2010 c522

¹²⁷ HL Deb 7 June 2010 c590

¹²⁸ HL Deb 28 June 2010 cc 1623-28

¹²⁹ HL Deb 7 July 2010 cc 315-19

¹³⁰ HL Deb 7 June 2010 c567

¹³¹ HL Deb 7 June 2010 c572

During the Committee debates, several Peers raised the issue of the Secretary of State's powers under the Bill, particularly in relation to academy funding arrangements, and called for parliamentary scrutiny of the making of academy orders. Lord Hunt of Kings Heath, for example, proposed that academy orders should be made by statutory instrument, and, if that were not practicable because of the number of academies being created, he proposed that the first two orders in each local authority area be subject to the affirmative procedure. He argued that would allow each local authority area to be examined, and for the impact of academies and free schools on the school system to be assessed by Parliament. He noted that there could be other approaches but stressed that the crucial matter was that there should be appropriate parliamentary scrutiny:

In essence, Ministers are aggrandising huge powers to themselves and, in the case of free schools, on the basis of rather ambiguous evidence provided today by the Institute of Education. We therefore believe that it is vital that Parliament must be able to scrutinise properly the process of approving the academies and free schools.¹³²

Baroness Williams of Crosby said that under the proposals there are virtually no restraints being placed on the Secretary of State, and that he will be accountable to no one but himself. She felt that within a democratic structure that was 'not an acceptable way to go', and asked about accountability.¹³³

Responding, Lord Hill said that the Government are keen to maintain as much flexibility as possible, and that revised model funding agreements would be made available. (On 6 July 2010 a Model Funding Agreement was deposited in the Library. This sets out detailed requirements for new academies established under the *Academies Bill*, assuming the passage into law of the Bill in its current terms.¹³⁴)

Lord Hill went on to stress that the making of an academy order would be an administrative process and that there would not necessarily be a wider public interest in an individual school's decision that would make it necessary or appropriate to bring each and every one before Parliament. He cited the findings of the report of Delegated Powers and Regulatory Reform Committee, which had made it clear that it did not consider it necessary or appropriate for academy orders to be made by Statutory Instrument.¹³⁵

Other matters raised in the debate on this group of wide-ranging probing amendments included: insurance cover, circumstances in which school charges may be made; fair funding for post-16 provision; school partnerships and the position of academies and school reorganisation.¹³⁶

The Secretary of State's powers and the issue of the accountability of academies were returned to on Report.¹³⁷ Lord Greaves, for example, sought to require parliamentary approval for the criteria by which the Secretary of State will decide which academy arrangements will be created. Other Peers also proposed amendments designed to secure greater parliamentary scrutiny, and there seemed to be broad agreement across the House on the need for that. Responding, Lord Hill emphasised that the Government will apply a rigorous fit-and-proper-person test in approving any sponsor of an academy or free school. He said that the Government will publish the criteria for deciding applications from schools not Ofsted-rated as outstanding. He again referred to what will be specified in the funding

¹³² HL Deb 23 June 2010 c1322

¹³³ HL Deb 23 June 2010 c1327

¹³⁴ Model Funding Agreement, Library deposited paper: DEP2010-1419

¹³⁵ HL Deb 23 June 2010 c1332

¹³⁶ HL Deb 23 June 2010 cc1320-1334

¹³⁷ HL Deb 7 July 2010 cc 278-83

agreement, and the Delegated Powers and Regulatory Reform Committee's conclusion on the level of parliamentary scrutiny. However, he said that there was a case for the Government to go further in trying to make sure Parliament has the opportunity to see how the policy is working and would consider how to take that further at Third Reading.¹³⁸

Baroness Williams of Crosby moved an amendment (amendment 9) at Third Reading to insert a new clause into the Bill requiring the Secretary of State to publish an annual report on academies, and for it to be laid before Parliament. Lord Hill said that he was very happy to accept the amendment, which would increase transparency and accountability to Parliament.¹³⁹

Specific funding issues

Peers raised various funding issues. The following notes some of them, not necessarily in the order they were discussed.

The Government has stressed that becoming an academy should not bring about a financial advantage or disadvantage to a school, but that academies will have greater freedom on how they use their budgets, and have other freedoms.

Baroness Sharp of Guildford spoke about managing converting schools' expectations for additional funding in relation to services previously provided by the local authority:

Talking of managing expectations, it is also important not to raise expectations among these schools about how much extra money they will get from being free from local authorities. I have spoken to a number of local government colleagues, and it is clear that the proportion of the budget going to the local authority is not 10 per cent. It is more likely to be 2 per cent to 3 per cent. Again, schools are talking quite loudly about how much they may get. It is important that that is realistic.

I have two further questions for the Minister. In relation to the impact assessment, all the costings are of course related to the guesstimates of 200 academies a year being processed. The one-off costs are put at £66,000 per school or £17 million a year for the 200. The annual costs are £275,000 per school rising from £33 million for the coming year to £198 million in four years' time, when it is estimated that 800 academies will have been established. Clearly, if more schools convert, those costs rise. If 1,000 schools were to convert this year and a similar number next year, the bills would be very different and much larger—much closer to £1 billion than £200 million.¹⁴⁰

As noted above, there was considerable debate about the Secretary of State's powers under the Bill. This was raised particularly in relation to the rationale for the two approaches to academy funding under the Bill, namely, by contractual agreement under the funding agreement (as is the position now) or, for the first time, through grants. Lord Hill explained that the Government expects that the vast majority of academies will continue to be funded by the contractual funding agreement, which runs for seven years. The proposal for the grant route, he said, is to give a greater degree of flexibility, probably in a small number of cases where having that might make more sense, particularly in the case of a new school being set up under the academy model.¹⁴¹

On several occasions during the Committee debates Peers spoke about the need for transparency in relation to funding. Baroness Garden of Frognal said:

¹³⁸ HL Deb 7 July 2010 c282

¹³⁹ HL Deb 13 July 2010 cc 638-644

¹⁴⁰ [HL Deb 7 June 2010 cc 506-592](#)

¹⁴¹ HL Deb 23 June 2010 c1331

...The Government have committed themselves to ensuring that schools that become academies will get roughly the same level of funding as they would have got had they remained with their local authority, and in addition, because they are taking on additional levels of responsibility, they will receive their share of the money no longer required by local authorities to fulfil those responsibilities -but how much more, and is the additional amount of money reasonable and commensurate with the additional level of responsibility?

When the grant-maintained schools were set up, little was known about school funding nationally; there was no experience of local management of schools to assess the amount of funding that grant-maintained schools should reasonably have. The then Department of Education veered on the side of generosity to grant-maintained schools which later, when more was known about the local managements of schools, seemed unreasonably generous. In addition, there are fears that when "outstanding" schools convert to academies, local authority moneys, a good part of which goes to fund SEN obligations, will be divided up on a per pupil basis. Because many of these schools have a relatively low proportion of SEN pupils, such an allocation would give them a disproportionate share of that money and leave a lesser amount in the local authority kitty to fund SEN needs.

As the noble Lord said, we all share the Government's wish that schools will not be excessively advantaged or disadvantaged if they choose the academy option. And in a time of limited resources, an advantage for academies will be a disadvantage for maintained schools, and vice versa. Requiring the Secretary of State through legislation to ensure equality of funding between maintained schools and academies is difficult.

The purpose of these amendments, particularly through Amendment 15, is to make sure that the Secretary of State is advised publicly by a trusted independent body-the National Audit Office-on what is a reasonable level of funding for academies, taking account of what they do in comparison with local authority maintained schools. Amendment 16 requires that the NAO in turn consults the local schools forum, which is the mechanism by which currently such moneys are allocated. The Secretary of State is not handcuffed to follow NAO advice, nor is the NAO obliged to take the advice of the schools forum. Almost like an educational equivalent of the Office for Budget Responsibility, there will be advice from a respected body on what is a reasonable level of funding in comparison with other schools and that advice will take account of local circumstances.¹⁴²

Responding, Lord Hill said:

At the beginning of my remarks, I touched on the need for funding arrangements to be fair and to be seen to be fair. That issue was raised by my noble friend in talking about Amendments 15 and 16, on the National Audit Office. Our view, which the noble Lord, Lord Adonis, would share, is that the NAO would not necessarily be the right body. However, as I have said, I will certainly reflect on the underlying principle of making sure that there is transparency and trust in these arrangements.¹⁴³

Later in the Committee debates, Baroness Morgan of Drefelin questioned why a funding agreement needed to be for seven years. Lord Hill said that there was a long history for this, and that reducing the period could lead to uncertainty. However, he said that there may well be a case, where a new school is created, for providing a shorter period for the school to prove itself, and therefore that is the reason behind the proposed new grant arrangements.

¹⁴² HL Deb 23 June 2010, cc 1324-5

¹⁴³ HL Deb 23 June 2010 c1333

In such a case there would be greater flexibility to allow for more regular reviews of performance; however, once a free school had established itself, it would be possible, if both parties agreed, to move to the more conventional contractual funding agreement.¹⁴⁴ There was also discussion during this part of the debate about the process of academies reverting to maintained schools.¹⁴⁵

The issue of the grant-funding route, clarity about funding, and equity between schools were returned to on Report.¹⁴⁶ Baroness Sharp proposed amendments designed to ensure that all those responsible for the school would be fully aware of the terms under which grant assistance would be given. She said that under this route, the Secretary of State would have considerable powers to decide unilaterally how much finance to give, and to set the terms. She also referred to other amendments in the group that related to the distribution of funds for certain central services including, she said, a key amendment which stipulated that funding should follow needs, not pupil numbers. Concerns expressed by several Peers included the need for clarity about funding, equity between schools, whether there will be sufficient funds for special services, and the role of the YPLA in monitoring academies.

Responding, Lord Hill sought to reassure Peers about the rationale for the grant-funding route - it was to provide flexibility, particularly in relation to free schools where there is no track-record. He said that a more flexible approach is better than a commitment to a seven year funding agreement. He explained that any academy funded via a grant would be subject to exactly the same requirements as those which apply under funding arrangements - there will be the same safeguards on admissions, exclusions and special needs. These matters will be set out in the grant letter. On the issue of funding based on pupils' needs, Lord Hill said that 'the primary driver' of academy funding will be numbers on the roll; however, he noted that the local authority funding formula, which will be used to determine funding, will also contain factors that measure special educational need and the level of deprivation among pupils. He said that a simple funding model will be developed for free schools based mainly on a per pupil amount. He added that the pupil premium will also be in operation.¹⁴⁷

Peers also raised the wider funding implications of schools converting to academy status that have surpluses or deficits, and what this could mean for local school funding. During the Committee debates a number of amendments was proposed to require academies to make good any financial deficits in existence at the time of conversion and prevent consequential financial loss to the other schools. There were also proposals for dealing with any surpluses held by a school converting to academy status. Replying, Lord Hill explained how the arrangements would work, and why he considered the proposed amendments to be unnecessary:

....perhaps I may draw noble Lords' attention to the published policy statement setting out our intention regarding deficits. In a nutshell, it makes clear that no school with a substantial deficit, which is defined at around £100,000, will be able to convert. However, I will go on to explain what we will do about deficits, because the purpose of the policy is absolutely to prevent any school evading its financial responsibility by converting to academy status and thereby writing off any kind of deficit.

Basically, it would work as follows. If a school had a deficit of less than £100,000 and the Secretary of State therefore decided it was able to convert, the Department for Education would compensate the local authority for the sum of the deficit. The

¹⁴⁴ HL Deb 28 June 2010 c1612

¹⁴⁵ HL Deb 28 June 2010 cc 1612-13

¹⁴⁶ HL Deb 6 July 2010 cc 109-15

¹⁴⁷ HL Deb 6 July 2010 c113-14

academy would not get a financial advantage out of it as it would have to pay the amount of the deficit back through reduced levels of grant. That is how we would deal with the deficit problem.

Overall, the aim of all these arrangements is to try to ensure that they are fair and reasonable to both the converting school and the local authority. Amendment 11A would mean that the Secretary of State would not be able to enter into academy arrangements with a person with an excessive surplus or deficit. We do not believe that that is necessary because we would put in place arrangements for dealing with surpluses and deficits.

As regards schools applying to convert to academy status-particularly the first wave of outstanding schools, which tend to be pretty good at running their financial affairs, as the noble Lord, Lord Adonis, said-they are retaining their same leadership and management. It is not like the original model for academy conversion whereby one is starting a new school. Therefore, we think it only fair that what is essentially the same school keeps the same money it has put aside as part of its long-term financial planning, the point made by the noble Lord, Lord Adonis, and the noble Baroness, Lady Morgan. However, to underline the point, we think it also right that if a school converts when it has a deficit, it should deal with that deficit.

Amendments 140 and 141 would require the local authority to determine whether a school had a deficit, as well as whether it had a surplus. In our view, those amendments are not necessary because if the local authority is making a calculation to determine whether a school has a surplus, by definition it will have determined whether it has a deficit.

Amendment 142 seeks to maintain the current position when a school closes and becomes an academy. That approach had considerable logic when original academies replaced predecessor schools and gained new management and governance. In effect, in that case an institution was closing and a new one was opening. But in this case, the school is continuing, and if it has put money aside as part of its long-term financial planning it should be able to keep it.

Amendment 143 would prevent the academy from retaining a surplus, and the same argument applies. The local authority will not be losing out from the approach as the money is already accounted for in current surpluses. Therefore, it is not an additional charge on local authorities from which other schools will suffer.

Amendments 144 to 149 would treat a converting school's surplus as a loan from the local authority which the academy would have to pay back over time. Again, we do not want schools to be disadvantaged financially. Maintained schools can carry forward their surpluses from year to year; we think that the same principle should apply to academies. To pay back a loan over a long period would set up a whole new bureaucratic process, which we do not think would help.

Amendments 150, 158 and 159 are all to do with deficits. I explained, and hope that I made clear, our approach to deficits. Amendments 151 to 153 would prevent regulations being used to define the arrangements for payments of surpluses to academies or to outline the process for determining and paying a surplus to a school converting to an academy. We think it appropriate to set out in regulations additional administrative detail about the process for the determination of payment of surpluses, and we have provided draft regulations to show how we intend to do that. They also set out how the academy will be informed by the local authority of the determination, the process by which any appeal can be made and the time limits for payments.

Amendments 154 to 156 would change the process whereby an academy can ask the Secretary of State for a review of the local authority's determination, so that the academy can appeal to the local government ombudsman rather than to the Secretary of State. As I said, we have set up the draft regulations to demonstrate the Government's intentions. We think that those decisions should rest with the Secretary of State and that it would not make sense for there to be a new extension of the role of the local government ombudsman.

Amendment 157 would limit the surplus which transfers to the level set out in the guidance on clawback of excess surplus balances issued to local authorities. Again, we are not convinced that that is necessary, because local authorities will still have power to claw back excess surplus balances until the date of conversion, in accordance with locally agreed arrangements.

I hope that that provides greater clarity about the government's intentions, particularly on the important matter of deficits, in the light of which I urge the noble Baroness to withdraw her amendment.¹⁴⁸

Special educational needs

Many Peers sought assurances about academies addressing the needs of children with special educational needs (SEN). During the Second Reading debate, Lord Low, Lord Turnbull, Lord James, Lord Lucas, Lord Rix, the Earl of Listowel and Baroness Massey, Baroness Garden and Baroness Royall raised various SEN issues. Lord Low, for example, wanted the Bill to be 'disability-proofed' to make it 'fit for purpose' to meet the needs of pupils with special educational needs. He said that, as drafted, the Bill did not go far enough or into sufficient detail as to how academies would ensure provision would be made for children with SEN. He thought that the most obvious remedy would be to require Part VI of the *Education Act 1996*¹⁴⁹ to apply to academies in the same way as it does to maintained schools. He went on to note some of the concerns of bodies representing those with SEN, including a lack of accountability in the arrangements of existing academies, the need for parents to be given a strong voice in the new system, and the need to import into the Bill the same protection for the parents of children with SEN contained in existing legislation applying to maintained schools.¹⁵⁰ Lord Rix raised similar concerns, and asked how academies, particularly as they become more widespread, will be accountable and transparent to parents of children with SEN and disabilities.¹⁵¹ Another issue raised by Baroness Garden was who would be responsible for co-ordinating the needs of those with SEN.¹⁵²

Responding, Lord Hill stressed that:

...academy funding agreements will require academies to have regard to the SEN code of practice in the same way as maintained schools. Local authorities will retain responsibility for pupil SEN assessments, statementing, funding of statemented pupils, ensuring that arrangements are in place for statemented pupils, and the monitoring of statemented pupils. Academies will have to ensure fair access and deliver provision. This is such an important area-I want to get it right-that I am keen to organise a special briefing on the subject before Committee for Peers who are interested.¹⁵³

¹⁴⁸ HL Deb 23 June 2010 cc 1338-40

¹⁴⁹ Part VI of the *Education Act 1996* contains the SEN framework.

¹⁵⁰ HL Deb 7 June 2010 cc 514-5

¹⁵¹ HL Deb 7 Jun 2010 c578

¹⁵² HL Deb 7 June 2010 c524

¹⁵³ HL Deb 7 June 2010 cc 509 and 588

During the Second Reading debate, Lord Baker referred to the Government's plans to review the definition of special educational needs. He said that he felt that SEN should be the one role left specifically for LEAs. However Lord Lucas disagreed, and thought that schools could create for themselves SEN services.¹⁵⁴

Following the Second Reading debate Lord Hill sent a letter to Peers ([letter dated 15 June 2010](#)) which sought to give further reassurances, and included in an Annex further details about SEN provision in academy funding agreements. It also noted SEN issues raised at a meeting between Lord Hill and Peers on 10 June 2010; responses given to questions raised by the SEN Consortium, and other questions raised including questions about SEN funding.¹⁵⁵

Many Peers reiterated their concerns during the Committee debates and sought further assurances that SEN provision would not be adversely affected by the changes.¹⁵⁶ Baroness Royall proposed that special schools should be removed from the proposals. Lord Low again argued for the SEN framework in Part VI of the *Education Act 1996* to apply to academies as it does to maintained schools. Lord Hill reiterated an earlier comment that he would consider the matter and come back with proposals on Report.¹⁵⁷ On 7 July 2010, during the Report Stage (second day), the Bill was amended by the Government to require academy arrangements (either the funding agreement or the grant arrangement) to impose obligations equivalent to those imposed on maintained schools in Part VI of the *Education Act 1996*.¹⁵⁸

Other probing amendments discussed in Committee related to children with emotional and behavioural difficulties, and to children from chaotic family backgrounds. Concern was expressed about the need to ensure that there should be no 'fragmentation' of the SEN services. Lord Rix spoke of the need to ensure that outstanding schools converting to academies should provide outstanding educational quality for all children including those with SEN. Responding to the various aspects of the debate, Lord Wallace stressed that academies will be expected to partner weaker schools, that there will be parity with maintained schools in relation to admissions and exclusions, and that the Government will be introducing the pupil premium. He stressed that the best way of tailoring provision to a child's SEN needs is through the SEN statement.¹⁵⁹

Specialist support for children with 'low incidence' SEN needs or disability was raised by Baroness Wilkins in Committee, and Lord Hill subsequently wrote to Baroness Wilkins on the matter.¹⁶⁰ The issue was returned to on Report, and Lord Hill accepted that that the matter needed to be looked at further.¹⁶¹

At Third Reading Baroness Wilkins moved an amendment (amendment 2), also in the name of Baroness Howe of Idlicote, to amend the school finance regulations so that expenditure on services for academy pupils with low incidence SEN would become a class of expenditure for the purposes of the non-schools education budget. In addition, the amendment provided for the Secretary of State to make alternative arrangements where a local authority failed to secure satisfactory provision for such children. Baroness Wilkins was concerned that a large increase in academies would have the unintended consequence of dispersing funding for

¹⁵⁴ HC Deb 7 June 2010 c563

¹⁵⁵ <http://www.parliament.uk/deposits/depositedpapers/2010/DEP2010-1294.pdf>

¹⁵⁶ e.g. 21 June 2010 cc 1208-14

¹⁵⁷ HL Deb 23 June 2010 c1404

¹⁵⁸ HL Deb 7 July 2010 cc 247-53

¹⁵⁹ HL Deb 23 June 2010 cc 1404-10

¹⁶⁰ [Letter dated 02/07/2010 from Lord Hill of Oareford to Baroness Wilkins regarding Special Educational Needs and the Academies Bill](#). Library deposited paper: DEP2010-1399

¹⁶¹ HL Deb 7 July 2010 cc 283-89

children with low incidence complex special educational needs. As a result, she said, vital support services for these children would become untenable, and there could be large numbers of deaf and blind children and others with multi-sensory impairment that do not get the support they need. Baroness Wilkins noted that these concerns were shared by all sides of the House, and by the Special Educational Needs Consortium and other SEN organisations. Resisting the amendment, Lord Hill said that the Government would monitor the impact of increasing the number of academies on local authority sensory impairment services. However, Baroness Wilkins said that the Minister's reassurances would not meet the needs of those children who will be at school in September. She therefore pressed her amendment to a vote, and it was agreed.¹⁶²

On Report, Baroness Froggal said that the Government deserved credit for the way that it had responded to the various SEN issues that had been raised. However, she wanted Ministers to go further, and to make provision for an annual report be made to Parliament on the quality of SEN provision in academies. Lord Hill referred to accountability through Ofsted's judgements of a school, the publication of attainment data, and school census returns.¹⁶³

Admissions

Baroness Morgan of Drefelin, Baroness Massey, Lord Low, the Earl of Listowel, and the Bishop of Lincoln were among the Peers who raised concerns about academy admission arrangements during the Second Reading debate. Baroness Morgan of Drefelin said that greatly increasing the number of academies will have implications for admissions planning. She sought reassurances about children in care (who currently have priority), and the admission of children with SEN.¹⁶⁴ The Bishop of Lincoln noted that the original purpose of academies was for them to be schools for the local neighbourhood, and for admissions to reflect that. He encouraged the Government to look again at how admissions to academies, including Church of England academies, can be essentially inclusive, and he called for inclusion to be part of the 'DNA of academies of all kinds.'¹⁶⁵ Baroness Murphy, while expressing her general support for the Bill, expressed concern about the admission policies of faith groups and the effect that may have on community cohesion.¹⁶⁶

Lord Hill emphasised that there would be no 'back door to selection.' He said that academy funding agreements will require academies to comply with the school admissions code and law, as with all maintained schools. He noted that the code and related legislation outlaw additional selection and require the highest priority to be given to looked-after children.¹⁶⁷ Responding to questions put by several Peers about admissions and grammar schools, Lord Hill, in his [letter dated 15 June 2010](#), emphasised that while grammar schools that became academies would be able to retain their selective admission arrangements, this would not increase selective admission arrangements in the state-funded sector, and that any school without existing selective status would not be able to adopt selective admission arrangements when converting to academy status. However, on a point raised by Baroness Morris about how such schools could fulfil the Bill's requirement for academies to draw pupils wholly or mainly from the local area, the Minister acknowledged that 'local area' for some types of school, including grammar schools and special schools, would be likely to be larger than for other schools.¹⁶⁸

¹⁶² HL Deb 13 July 2010 cc 610-620

¹⁶³ HL Deb 7 July 2010 cc 289-98

¹⁶⁴ HC Deb 7 June 2010 c511

¹⁶⁵ HC Deb 7 June 2010 c517

¹⁶⁶ HC Deb 7 June 2010 c526

¹⁶⁷ HL Deb 7 June 2010 c588

¹⁶⁸ <http://www.parliament.uk/deposits/depositedpapers/2010/DEP2010-1294.pdf>

A group of amendments debated in Committee was designed to ensure that academies comply with the School Admissions Codes of Practice. While noting that currently academies comply with the codes under the terms of their funding agreements, several Peers wanted the requirement to be written into the Bill since there will be so many more academies expected in the future.¹⁶⁹ Baroness Walmsley spoke to an amendment to enable parents and local authorities to appeal to the schools adjudicator (rather than the Secretary of State) about academy admission arrangements, and called for a single admission system.¹⁷⁰ The Earl of Listowel raised the question of priority for looked-after children.¹⁷¹ Lord Low spoke to probing amendments to find out how far the Government sees the admissions and exclusions frameworks applying to academies in the same way as to local authority maintained schools.¹⁷²

Responding, Lord Hill said that the existing admissions requirements that apply to maintained schools will apply in the same way to academies. He noted that local authorities will have to collect information on academy admission arrangements and report on them to the schools adjudicator, and that the Bill will not change that. He confirmed that looked-after children will continue to be given the highest possible priority in admissions. He again stressed that academies will have to comply with the codes under their funding arrangements.¹⁷³ Following the debate, in a letter to the Earl of Listowel, Lord Hill explained in detail how the academy arrangements provided for in the Bill would enable the Secretary of State to ensure compliance with the Code. He also set out how objections on academy admission arrangements and complaints on appeals will be handled, and noted the role of the YPLA, on behalf of the Secretary of State.¹⁷⁴

The issue of selection was raised on several occasions.¹⁷⁵ Baroness Royall said that a selective academy was a ‘perversion’ of Labour’s policy. Responding to a wide-ranging debate on the issue of selection and academies, Lord Hill referred to Labour’s 2005 schools white paper which, he argued, had envisaged the academies programme being ‘rolled-out’ further to a time when all schools would be outside local authority control. However, he stressed that the Bill did not allow any increase in selection by ability, and that it would be unreasonable to require existing selective schools to remove their selective arrangements if they converted to academy status. He emphasised that an academy would not be able to be selective unless it already had pre-existing selective admission arrangements, and that any independent school joining the academy sector would not be able to select by academic ability.¹⁷⁶

Following the Committee debate, in a letter to Baroness Morgan of Drefelin, Lord Hill expanded on his comments, and noted that, just as the previous Government had allowed selective maintained schools to expand by up to 25% without publishing statutory proposals, the Government intends to allow selective academies to expand where there is a strong case and there has been local consultation. However, he said that the Government would not agree to the percentage of selective places increasing within partially selective schools.¹⁷⁷

¹⁶⁹ HL Deb 23 June 2010 cc 1410-16

¹⁷⁰ HL Deb 23 June 2010 cc 1412-13

¹⁷¹ HL Deb 23 June 2010 cc 1411

¹⁷² HL Deb 23 June 2010 cc 1413

¹⁷³ HL Deb 23 June 2010 cc 1414-16

¹⁷⁴ [Letter dated 01/07/2010 from Lord Hill of Oareford to the Earl of Listowel regarding the school admissions code and the Academies Bill](#), Library deposited paper: DEP2010-1396

¹⁷⁵ e.g. HL Deb 23 June 2010 cc 1413; HL Deb 28 June 2010 cc 1561-65

¹⁷⁶ HL Deb 28 June 2010 cc 1563-65

¹⁷⁷ [Letter dated 02/07/2010 from Lord Hill of Oareford to Baroness Morgan of Drefelin regarding selective schools conversion into academies](#). Library deposited paper: DEP2010-1402

On Report (second day) the issue of admissions was discussed again when Baroness Royall sought to put in the Bill a requirement for academies to comply with the School Admissions Code. Lord Hill again confirmed that academies will have to comply through their funding agreements, and stressed that this agreement would be a contract, enforceable by the Secretary of State. Various other admission-related matters that had been raised in Committee, including boarding schools, and admissions to faith schools, were the subject of further amendments grouped for this Report stage debate.¹⁷⁸

Religious schools and admissions

There was a wide-ranging debate about religious schools, religious education and collective worship.¹⁷⁹ During the Committee debate, Lord Hill stressed that the Government was not seeking to change the nature of religious schools or to create a new wave of faith schools. He confirmed that the existing protections relating to school admission and the curriculum in religious schools would be the same for academies with a religious character as they are for maintained schools with a religious character. However, in relation to the new academy free schools he said that there should be a requirement of limiting the number of faith admissions to 50% so that at least half the admissions will have no reference to faith:

On Amendment 35 tabled by my noble friend Lord Lucas, I shall reiterate my opening remark. We are not seeking to use the academies programme as a back-door way of deliberately increasing or changing the balance that we currently have in our education system. We do not think it appropriate to limit the number of faith admissions to 50 per cent when an academy is replacing an existing faith school; we think that the school should be able to carry across its current arrangements. That would not add or change the current situation. I hope that this provides some reassurance to noble Lords that we think it right that for the new academies-the new free schools-the requirement of limiting the number of faith admissions to 50 per cent should be in place. New academies would not be able to go beyond 50 per cent, as that would reduce choice. We think that it is important to have that balance and I am happy to make that clear tonight.¹⁸⁰

Exclusions

During the Committee debate Baroness Morgan of Drefelin referred to academies in the past excluding a greater proportion of pupils than local authority maintained schools, and Baroness Morris of Yardley spoke of the need for academies to operate in partnership with other schools in relation to exclusions. Lord Hill stressed that academies will be required through their funding arrangements to take their share of challenging pupils through their involvement 'in-year fair access protocols'.¹⁸¹

On Report (second day), Baroness Walmsley spoke to probing amendments on the extent to which academies will have to comply with the law and guidance relating to exclusions.¹⁸² Lord Hill said that the funding agreements for academies will require them to act in accordance with the law on exclusions as if they were local authority maintained schools. They will have to have regard to the Secretary of State's guidance on exclusions as set out in paragraph 1 of annex D of the (model) funding agreement. He put on the record that 'this annex will be included in all future academy arrangements, both contractual funding agreements and grant arrangements'.¹⁸³ Referring to challenging pupils, he again noted that the in-year fair access protocols, which ensure that all schools in a local area take their fair

¹⁷⁸ HL Deb 7 July 2010 cc 224-27

¹⁷⁹ HL Deb 23 June 2010 cc 1340-1359

¹⁸⁰ HL Deb 23 June 2010 c1358

¹⁸¹ HL Deb 28 June 2010 cc 1573-85

¹⁸² HL Deb 7 July 2010 cc 213-18

¹⁸³ HL Deb 7 July 2010 c216

share of hard-to-place pupils, including those who have been previously excluded from school. He said that academies are equal partners in those arrangements. As independent schools, academies must follow the independent school standards, which state that an academy must have in place, and must implement, a policy on promoting good behaviour and that will include what sanctions will be taken in event of any misbehaviour.¹⁸⁴

Governance

Several Peers raised the issue of governance and parental representation, pointing out that the details on this were not contained in the Bill. During the Second Reading debate, the Bishop of Lincoln asked who would make such decisions, and whether the role, rights and influence of the Christian foundation of the school would be protected. Baroness Massey noted that currently there is a framework that ensures all those with a stake in a maintained school are represented on the governing body. She said it was unclear whether such arrangements would be compulsory for academies. She noted that the British Humanist Association had stated that currently one-third of academies have religious sponsors.¹⁸⁵ Lord Lucas urged caution about the approach to governance. He noted, that while there are relatively few academies now, in future a high proportion of our schools could be academies, and it was important to understand how their governance would work. In particular, he wanted to know how the interest of the local community could be preserved, and how quality control would be approached.¹⁸⁶ Lord Griffiths also raised governance issues.

Responding, Lord Hill said that the governance arrangements need not be in the Bill as they will be set out in an academy's articles of association. The Government expect that an existing foundation or trust would continue to appoint the majority of governors. The Government do not anticipate that the existing trustees would consent to the conversion unless they were satisfied with the proposed governance arrangements. He noted that academies are required to have at least one parent-representative on the governing body, and that many choose to have more.¹⁸⁷

During the Committee debate Baroness Howe of Iddicote, who is also President of the National Governors' Association, moved an amendment to require at least 25% of members of an academy's governing body to be elected from parents of pupils at the school. There followed a more general debate about the importance of parent governors.¹⁸⁸ Responding to the proposed amendment, Lord Hill said that while it was extremely important to have broad representation on the governing bodies of academies, he did not think it right to prescribe a 25% minimum, and that he wanted academies to be able to choose what was right in their particular circumstances. Referring to other amendments designed to prescribe the numbers of parent, staff or local authority governors, Lord Hill said that the academy governance model would propose a maximum of two staff governors, but that the Government's view was that academies should be free to choose whether to have such representation. He again acknowledged the important role of parent governors but did not want to go down the prescriptive route.¹⁸⁹

On Report, Baroness Howe returned to the issue of parental representation on the governing body of academies schools; again Lord Hill explained that he could not accept the degree of prescription in her amendment.¹⁹⁰ The matter was discussed again at Third Reading when Lord Hunt of Kings Heath moved an amendment to require parent governors of an academy

¹⁸⁴ HL Deb 7 July 2010 c217

¹⁸⁵ HL Deb 7 June 2010 c521

¹⁸⁶ HL Deb 7 June 2010 c561

¹⁸⁷ HL Deb 7 June 2010 c589

¹⁸⁸ HL Deb 28 June 2010 cc 1601-7

¹⁸⁹ HL Deb 28 June 2010 cc 1605-6

¹⁹⁰ HL Deb 7 July 2010 cc 253-61

to be elected by the parents of children at the school. Lord Hill said that it was not necessary to put this in the Bill, and that the model articles attached to the funding agreement would make clear that the election of (parent) governors should be by parents of pupils attending the academy, and that parent governors must be parents of pupils at the school. He noted that these were the arrangements in existing academies, and he believed that they were effective.¹⁹¹

Concerns about various governance issues in relation to religious schools converting to academies were addressed in detail in a letter Lord Hill sent to the Bishop of Lincoln and Bishop McMahon, chairman of CESEW. He stressed that the governance model should guarantee the continuing relationship between the churches and their schools. The letter explained that where there is currently an existing foundation or trust associated with the predecessor school, the Government will expect those bodies or their representatives, where they wish to do so, to become the signatories to the memorandum and articles of association. They would therefore become members of the new academy trust, which would appoint the majority of the academy governors. The trustees of the foundation, and those who appoint the foundation governors, would also be able to make any application for academy status subject to their approval of the proposed arrangements. The governance arrangements will be agreed between the Secretary of State and the academy trust and set out in the memorandum and articles of association. The articles cannot be changed unilaterally by either party.¹⁹²

Consultation

Another recurring theme was consultation. During the Second Reading debate, Baroness Massey pointed out that there had been no formal consultation through a green or white paper before the Bill. She noted that the Bill, as presented, made provision for a governing body to apply to become an academy without any consultation with the local authority, teachers, parents, children or the wider community. She noted that the Children's Rights Alliance had pointed out that Article 12 of the UN convention on the Rights of the Child gives children the right to express views on all matters affecting them. Baroness Massey said that failing to consult students on matters that may substantially alter the ethos and curriculum of the school was a step backwards.¹⁹³ Baroness Williams of Crosby and Baroness Garden raised the issue of parental involvement in academies. Lord Turnbull thought that there was a 'serious hole' in the Bill because there is no obligation to consult parents and the wider community. He also said that there was not sufficient time being allowed to consult 'TUPE-ed staff', which he thought may prove to be 'dangerous judicial review territory'.¹⁹⁴ Baroness Morgan of Huyton thought that while current procedures may be overcomplicated, she believed it would be wrong not to have wider consultation.¹⁹⁵ Lord Greaves also raised the issue of consultation saying that 'it is almost inconceivable that there should not be a system of formal consultation and discussion with parents'. The issue, he said, goes wider than parents, adding that the wider community is just as important as the parents of children who are at the school when the decision taken.¹⁹⁶ Responding, Lord Hill said:

...Current legislation does not require consultation with parents or the local community on the acquisition of academy status. The Bill does not change that. However, we anticipate that schools will want to consult parents about this, as they do at present.

¹⁹¹ HL Deb 13 July 2010 cc 608-10

¹⁹² [Letter dated 21 June 2010 from Lord Hill of Oareford to Lord Bishop of Lincoln and Bishop McMahon, chairman of CESEW, Library deposited paper: DEP 2010-1333](#)

¹⁹³ HL Deb 7 June 2010 c521

¹⁹⁴ HL Deb 7 June 2010 c537

¹⁹⁵ HL Deb 7 June 2010 c531

¹⁹⁶ HL Deb 7 June 2010 c547

In addition, maintained schools have parent governors who will be able to take part in the governing body and the decision-making process on whether to convert to academy status. Consultation with staff is another important point. Schools are required by the TUPE regulations to undertake appropriate consultation. We are advising schools on how best to carry out that process. That is linked to the point made by the noble Lord, Lord Turnbull, about speed, which I will return to in a moment.¹⁹⁷

The issue was again debated at length in Committee. Baroness Royall said that consultation should be central to the Bill. Speaking to an amendment to ensure that the requirement to consult various interested groups should be in the Bill, she stressed the important role of local authorities in planning and delivering education for the local community. She believed that power was being taken away from the community and given to the Secretary of State. Consultation, she said, was not only the right course of action, but it would enable reflection about governance and accountability, and about how schools can best use freedoms to their advantage without disadvantaging the rest of the community.¹⁹⁸ Baroness Walmsley also stressed the need for consultation, and said that becoming an academy was an enormous change.¹⁹⁹ Lord Hill said that he recognised the points that had been made about the spirit of consultation, and was willing to take that thought back to the department and consider how best to ensure that the conversion process carries the confidence of all interested parties.²⁰⁰

On Report (second day), the Government introduced a new clause to require the governing bodies of converting schools to consult those persons whom they think appropriate before entering into funding arrangements with the Secretary of State. Lord Hill explained the change in a letter to chairs of school governing bodies, and said that converting schools that have not yet consulted on their proposals will need to do so before funding agreements can be signed.²⁰¹

Lord Whitty and Baroness Royall felt that the Government had not gone far enough. Lord Whitty moved an amendment to require the school governing body to consult, over a six week period during term-time, pupils, parents, staff, trade unions representing staff and the governing bodies of schools within its area. Other amendments on consultation included an amendment moved by Baroness Royall to require the Secretary of State to satisfy himself, before entering into an academy arrangement, that relevant interested parties had been consulted. She pressed the amendment (26) to a vote, which was defeated.²⁰²

Consultation was again debated at Third Reading. Lord Whitty moved an amendment (amendment 3) to require the school governing body to consult 'relevant parties' before applying for an academy order, and for the Secretary of State to issue guidance on how consultation should be carried out. Another Opposition amendment sought to require consultation with the local authority. Lord Hill did not accept the proposals, and reiterated the Government's view that the governing body and the head teacher would be best placed to make decisions about consultation. Lord Whitty pressed amendment 3 to a vote, and it was defeated.²⁰³

¹⁹⁷ HL Deb 7 June 2010 cc 589-90

¹⁹⁸ HL Deb 21 June 2010 cc 1225-6

¹⁹⁹ HL Deb 21 June 2010 cc 1226-7

²⁰⁰ HI Deb 21 June 2010 c1236

²⁰¹ HL Deb 7 July 2010, c 313 ; DFE Letter to chairs of governors, dated 2 July 2010 explaining the amendments the Government had tabled for House of Lords' Report Stage:
<http://www.education.gov.uk/~media/Files/lacuna/academies/LetterfromLordHill.ashx>

²⁰² HL Deb 7 July 2010 cc 298-313

²⁰³ HL Deb 13 July 2010 cc 620-629

Land and other transfers

There was also discussion about the transfer of land where a school converts to an academy. In Committee, Baroness Sharp of Guildford sought to place a requirement on the Secretary of State, before making a property transfer scheme, to consult the local authority, the current owner (if not the local authority) and any other person considered appropriate. Responding, Lord Hill said that he would reflect on the matter further.²⁰⁴

During the Committee debate, the Bishop of Exeter raised concerns about the operation of the *Reverter of Sites Act 1987* when a school ceases to be maintained and becomes an academy. He also raised questions about what would happen where an academy with a religious character sought to revert to maintained status. Lord Hill wrote to the Bishop of Exeter clarifying the position and deposited a copy of the letter in the Library.²⁰⁵

At Report Stage (second day), the Government made several technical amendments to the Bill to reflect the fact that powers relating to the transfer of land etc. are intended to be used only when the school is close to finalising funding arrangements with the Secretary of State. The Bill was also amended to provide for the protection of public money invested into land by schools and local authorities in the case of all possible transactions of land. Lord Hill explained that current protections only apply where a freehold or leasehold interest in the land was transferred to the academy upon its conversion. However, if a foundation owning the land did not transfer it, or any interest in it, to the academy, but granted only a licence to occupy, for example, then no relevant transfer would occur, and the public interest in the land would not be protected if the school were to close thereafter. He said that the amendment would resolve the issue by protecting public investment in the case of all possible land transactions.²⁰⁶

Community use of facilities

Several Peers raised the use of community facilities owned by schools or local authorities, and asked whether academies will be required to make them available to the wider community.²⁰⁷ The issue was returned to during the Committee debates. Lord Greaves spoke to a probing amendment on the relationship between the new academies and the local community. He moved a new clause to ensure that academies were committed to providing at least some of their facilities to the wider community. Lord Wallace of Saltaire, for the Government, said that this is currently covered by the model funding agreement for academies, and that the requirement would be retained. He agreed entirely that schools should be at the heart of their communities, and wanted, as far as possible, to encourage the community to make use of school facilities in the evenings and weekends.²⁰⁸

Charitable status

During the Second Reading debate Lord Phillips, Baroness Massey and Baroness Garden raised points about charitable status, and the proposal to make academies exempt charities. Lord Phillips thought that the provisions were inadequate; he said that the regulation of academy schools should be on a statutory basis.²⁰⁹ Baroness Massey thought that the Bill would make academies less accountable, and she noted that when the previous Labour Government had tried to make academies exempt charities the Charities Commission had

²⁰⁴ HL Deb 28 June 2010 cc 1621-23

²⁰⁵ [Letter dated 02/07/2010 from Lord Hill of Oareford to Lord Bishop of Exeter regarding academies](#). DEP2010-1401

²⁰⁶ HL Deb 7 July 2010, cc 313-15 and cc326-7 ; DFE Letter to chairs of governors, dated 2 July 2010 explaining the amendments the Government had tabled for House of Lords' Report Stage: <http://www.education.gov.uk/~media/Files/lacuna/academies/LetterfromLordHill.ashx>

²⁰⁷ e.g. HL Deb 7 June 2010 c457

²⁰⁸ HL Deb 28 June 2010 cc1619-21

²⁰⁹ HL Deb 7 June 2010 cc 555-6

said that it was a retrograde step.²¹⁰ Baroness Garden asked for clarification of the proposed change. Responding, Lord Hill explained the thinking behind the provisions:

...deeming academies to have automatic charitable status should make the process of establishing an academy easier by removing the need for each one to apply for charitable status individually. Given the number of potential academies, we think that will reduce a burden on those schools. It will make academies consistent with voluntary and foundation schools, which are already deemed charities in law and will shortly be exempt charities. It will be important for academies' compliance with charity law to continue to be regulated and, in response to questions raised about that, I will discuss further with the Minister for the Cabinet Office who would take on the role of principal regulator for academies. I will report back to the House as soon as I am able to inform it of those discussions.²¹¹

Subsequently it was announced that the YPLA will be the principal regulator for academies.

During the Committee debate, Lord Phillips and other Peers returned to the issue. Lord Hill pointed out that under existing arrangements academies have to be individually regulated by the Charities Commission, and that he believed the proposed change was necessary because as hundreds of schools convert to academies over the next few years this would be a considerable burden. He referred to other education bodies that are already exempt charities, and said that making academies exempt would be a consistent approach.²¹²

Lord Hodgson of Astley Abbots introduced a probing amendment to permit academies to become community interest companies (CICs) rather than charities. Lord Hill explained why this would not be an attractive option as CICs have to pay corporation tax and other taxes and would lose gift aid on direct donations.²¹³

On Report, Lord Hodgson and Lord Phillips again expressed concerns about the proposed changes. Lord Hodgson stressed the importance of having a 'level playing field', and felt that the proposed change would set a 'dangerous precedent of government and ministerial interference in the charitable sector.' Lord Phillips said that the law of charity was best regulated by the Charity Commission. He was concerned about the proposed regulatory role for the YPLA which, he thought, could produce a conflict of interests. Responding, Lord Hill said the purpose of the Bill's provision is to put beyond doubt that academies are charities. He outlined the amendments proposed by Lord Hodgson and Lord Phillips, and explained why he hoped they would not press them. Amongst other things, he noted that the YPLA and the Charity Commission would agree a memorandum of understanding about the principal regulator's role to ensure that academy trusts remain fully compliant with charity law.²¹⁴

Freedom of Information

During the Second Reading debate, Lord Lucas argued that academies should be subject to Freedom of Information (FOI) legislation.²¹⁵ Lord Hill said that the Government was considering this, and would welcome views.²¹⁶

²¹⁰ HL Deb 7 June 2010 c522

²¹¹ HL Deb 7 June 2010 c589

²¹² HL Deb 28 June 2010 cc 1628-35

²¹³ HL Deb 28 June 2010 cc 1635-37

²¹⁴ HL Deb 7 July 2010 cc 319-26

²¹⁵ HL Deb 7 June 2010 c563

²¹⁶ DFE Letter from Lord Hill to Peers dated 15 June 2010, p9:
<http://www.parliament.uk/deposits/depositedpapers/2010/DEP2010-1294.pdf>

The matter was returned to during the Committee debates. Lord Lucas sought to introduce a new clause to add academies to the FOI Act 2000. Lord Hill said that the Government accepted that academies are public bodies for the purposes of the Act, and that he would come back to the issue on Report.²¹⁷

The Government introduced an amendment at Report Stage to add academies to the list of public bodies, persons or office holders covered by the FOI Act so that academies must comply with the requirements of FOI. Lord Hill explained that the Government propose to start this duty in relation to all converting successful schools from the autumn.²¹⁸ Lord Hunt of Kings Heath asked what support would be available to help academies deal with the FOI system. Lord Hill agreed that that was a sensible and fair point. At the moment, maintained schools are helped by the local authority. He said that he would reflect on the matter.²¹⁹

Pace of change

The speed of the process was another recurring theme. During the Second Reading debate Lord Turnbull, Baronesses Massey, Baroness Sharp and Baroness Royall expressed concerns about this. Responding, Lord Hill said:

I underline the fact that schools can carry out this process at their own pace. I understand the point, which has been raised before, about expectations. There has, perhaps, been a sense that the Government expect all outstanding schools to be ready to go in September—that they are rushing and that schools are being encouraged or pressured to convert by September. That is not the case. The aim of the Bill is to be enabling and permissive rather than coercive. Our wish is for schools to do this at their own pace. We believe that some schools will be ready to convert at an early stage. Others will certainly choose to convert at a later date. We are currently telling schools that we expect the fast-track process for outstanding academies to take three months, although a longer process may well be needed in exceptional circumstances. It should be noted that not all the outstanding schools that have so far expressed an interest in converting want to convert as soon as September 2010 or will be able to do so. Although we want to give the schools an opportunity, I am conscious of this point, and we will not force any school to do it any quicker than it wants to.²²⁰

During the Committee debate several Peers suggested that the proposed changes should be introduced as a pilot, particularly for primary schools.²²¹

Primary schools

As noted above, the position of primary schools was raised during the Committee debates. Baroness Royall referred to their comparatively small size, and whether they would have the capacity and expertise to take on the responsibilities of academies.²²²

Concern about the potential rapid conversion of primary schools was raised again on Report.²²³ Lord Hunt of Kings Heath spoke to several amendments on the issue, including one that sought to restrict the Bill to secondary school conversions (Amendment 3). He stressed the practical difficulties of community primary schools managing an enormous

²¹⁷ HL Deb 28 June 2010 cc 1637-8

²¹⁸ HL Deb 7 July 2010, cc 327-28; DFE Letter to chairs of governors, dated 2 July 2010 explaining the amendments the Government had tabled for House of Lords' Report Stage:
<http://www.education.gov.uk/~media/Files/lacuna/academies/LetterfromLordHill.ashx>

²¹⁹ HL Deb 7 July 2010 cc 328

²²⁰ HL Deb 7 June 2010 c590

²²¹ e.g. HL Deb 23 June 2010 cc 1361-63 and c1374

²²² e.g. HL Deb 23 June 2010 cc 1361-63 and c1374

²²³ HL Deb 6 July 2010 cc 115-132

range of responsibilities that would come with academy status. He also referred to other amendments in the group that sought to delay the introduction of primary academies until a later date to give the sector and the DFE time to work through a number of issues. Baroness Walmsley said that while she did not favour a complete ban on primary school conversions, she did have concerns and felt that the issue of primary schools should be approached with caution. Baroness Williams echoed the concerns expressed, and proposed amendments to limit academy conversion to schools with at least 500 pupils, and to provide for a two-year delay before an application could be accepted. The Bishop of Lincoln pointed out that over a third of primary schools are Church of England schools; while he did not oppose the principle of primary schools becoming academies, he was concerned about the pace of change. Baroness Perry referred to exiting safeguards, and said that she did not think the amendments were necessary. Other Peers raised concerns about the timing and pace of change, and specific issues relating to primary schools including the position of all-through schools, the possibility of applications for academy status from federations of primary schools, and the implications of the changes for shared or co-located services.

Responding, Lord Hill stressed that in the first instance only Ofsted-rated outstanding schools would be able to convert quickly, and that other primary schools would have to meet criteria that the Government will publish. He said that this would include the question of capacity and leadership issues, and again stressed that the Bill is permissive not coercive. The Government anticipates that the number of primary schools converting to academies in the first wave is likely to be 'very modest.' Lord Hunt reiterated that he was concerned about the pace of the change particularly in relation to primary schools and pressed amendment 3, which was defeated.²²⁴ Before the division Lord Hill had noted that in Committee Baroness Williams and Lord Greaves had called for an annual reporting process to Parliament on the progress of academies policy, and he thought that that was 'the direction in which we should be moving.'

Personal, Social and Health Education

Personal, Social and Health Education (PSHE) was debated at length during the Committee and Report Stages. Baroness Massey sought to make PSHE a curriculum requirement under the Bill.²²⁵ On Report she pressed her amendment (amendment 9), which was defeated. Before the vote, Lord Hill explained why he was against the amendment, and referred to the forthcoming national curriculum review:

What is clear to me, who comes relatively new to this debate, is that there is broad agreement in this House on the importance of PSHE. Nothing has been said today by anyone from any part of the House that would disagree with that. There are differences of opinion about the best way forward. This evening the question is relatively simple and straightforward, so I think I can be brief. This is an important and broad subject. Should we, as this amendment argues, make PSHE a compulsory requirement for academies alone as one distinct set of schools and should we act now? Those are the two main questions that have been debated this evening. I would argue not. First, as others have said, I am not convinced that singling out PSHE in primary legislation is the right way to go. Secondly, I would argue, as a number of noble Lords have argued—it was argued very persuasively by the right reverend Prelate the Bishop of Lincoln—that the best place to consider these issues is in the round, when we get the chance to look at the whole question of the national curriculum later in the year. Noble Lords have already mentioned that we are carrying out a complete review.²²⁶

²²⁴ HL Deb 6 July 2010 cc 129-31

²²⁵ HL Deb 28 June 2010 cc 1535-1552; HL Deb 7 July 2010 cc228-44

²²⁶ HL Deb 7 July 2010 cc 239-40

School workforce issues

In Committee, Baroness Sharp moved an amendment to ensure that support staff employed in academies would not be excluded from the School Support Staff Negotiating Body.²²⁷ Lord Hill said that giving academies' freedom over staff pay and conditions was one of the reasons why schools have wanted academy status. The Government's view was that 'if it is good enough for teachers, it is good enough for support staff.'²²⁸ The issue was also discussed on Report.²²⁹

Lord Listowel moved an amendment in Committee to require the Secretary of State to produce an annual report on the impact of academies on the school workforce. Lord Hill said that he was not convinced that this needed to be in the legislation, and noted the information that will be made available and referred to FOI. A formal report to Parliament was not considered necessary, he said, given that there are other forms of scrutiny including those by the National Audit Office and the Education Select Committee.²³⁰

Other issues

Peers used the debates on the Bill to air a number of other issues that were not included in the Bill; the following lists some of these and gives references to the debates for further information:

Inspection of academies. Lord Lucan argued the case for annual inspections of academies, and for free schools to be very closely scrutinised.²³¹

Academies and compliance with the Equality Act 2010. Ministers made clear that academies will be required to comply with the duties in the Act, and that schedule 19 of the Act will be updated before the duties come into force.²³²

*Early years education and care.*²³³

Pupil/Parent Guarantees. The previous Labour Government had unsuccessfully attempted to introduced these under the Children, Schools and Families Bill but the provisions were removed from that Bill before the General Election.²³⁴

*School food standards.*²³⁵

The importance of good school design. Responding to issues raised by Lord Howarth of Newport, Lord Hill referred to the Secretary of State's announcement that there would be a review of capital investment in schools to ensure good value for money. Lord Hill stressed that while the Government believe that good quality buildings, classrooms and equipment are necessary, the Government also want to ensure that for providers of free schools unnecessarily prescriptive building and design requirements are not a barrier and that they are not deterred by 'over-specification or bureaucratic detail.'²³⁶

²²⁷ HL Deb 28 June 2010 cc 1643-45

²²⁸ HL Deb 28 June 2010 cc 1643-45

²²⁹ HL Deb 7 July 2010 cc 328-31

²³⁰ HL Deb 28 June 2010 cc 1645-49

²³¹ HL Deb 28 June 2010 cc 1552-60

²³² HL Deb 28 June 2010 cc 1607-9; HL Deb 7 July 2010 cc 277-8; [Letter dated July 2010 from Lord Hill of Oareford to Baroness Williams of Crosby regarding Academies Bill and the Equality Act 2010](#), Library deposited paper: DEP2010-1403

²³³ HL Deb 28 June 2010 cc 1566-70; HL Deb 7 July 2010 cc 244-47

²³⁴ HL Deb 28 June 2010 cc 1571

²³⁵ HL Deb 28 June 2010 cc 1597-1600

²³⁶ HL Deb 28 June 2010 cc 1638-42

5.4 Reaction from external bodies

A *selection* of responses from external bodies (available at the time of writing) is noted below.²³⁷ It is not however intended to be a comprehensive collection of responses, and if any Member wishes to see the view of a particular organisation not covered here or wants to find out if additional briefings have been published, please contact the Library and we will try to obtain further information.

The [DFE Press Notice](#) announcing the Bill gives a selection of comment from head teachers, academy sponsors and national education bodies *welcoming* the Government's proposals.²³⁸

The following gives examples of comments made by bodies that have expressed *concerns* or outright *opposition* to the proposals. A recurring theme is whether the reforms would lead to a two-tier school system. Other issues raised include: the speed with which the proposals will be implemented, consultation with parents and the wider community, accountability of academies, the extent to which academy status will provide greater autonomy, funding issues and the implications of any change in school status for pupils with special educational needs. Another issue that was raised was Freedom of Information and academies, particularly relating to the curriculum and qualifications taken in academies, and how these compare with other schools.²³⁹

Comment from the Local Government Association:

Commenting on the invitation being extended to all schools that they apply for academy status, Dame Margaret Eaton, Chairman of the Local Government Association which represents councils in England, said:

"Councils have long been working to give families and children more say over how and where they are educated, and school choice is something councils support. Schools already have considerable independence from local authorities and what academy status offers is more freedom from central government rules, on the curriculum, discipline procedures and the pay and reward of school staff.

"Safeguards will be needed to ensure a two-tier education system is not allowed to develop in a local area, and someone must have responsibility for that. Councils' key priority is that the same quality of education can be offered to all students, whether they are being taught in a community school or in an academy, and that will mean making sure funding is fairly distributed.

"A share of education money is currently invested in providing services for pupils with special educational needs, and those who are excluded from mainstream education. Councils will be seeking urgent reassurances that disadvantaged children will not lose out but will benefit from the same opportunities as other pupils, and I will be raising these points when I meet the Secretary of State to discuss his proposals in the coming weeks."²⁴⁰

And on local accountability, the key messages in a LGA briefing for the Third Reading debate in the House of Lords were:

As those with local knowledge of education within their local areas, the LGA would like to see a commissioning role for local councils within the selection process.

²³⁷ The selection is based on responses available to the Library at the time this paper was prepared

²³⁸ [Gove: 'Teachers not politicians know how best to run schools'](#), DFE Press Notice, 26 May 2010

²³⁹ Anastasia de Waal, [The secrets of Academies' success](#), Civitas, 2009; [Call for Fol to be extended to academies as research reveals wide use of 'pseudo courses'](#), *TES*, 21 May 2010, p12

We are pleased that the Government has accepted the need to make explicit on the face of the Bill the requirement that schools should consult, and introduced a statutory requirement for a maintained school to consult on its proposal to convert to academy status.

However, we would like to see this go further with local councils named as a body which the school's governing body must consult with, to ensure a genuine local accountability.²⁴¹

The Association of Directors of Children's Services (ADCS) wrote to Secretary of State on 26 June 2010 proposing "radical" change in the role of the local authority in education:

Children's Services Directors have written to Michael Gove, Secretary of State for Education outlining proposals for local authorities to assist secondary schools in becoming academies, while retaining strategic oversight of school places and admissions. The letter, published today to mark the beginning of the ADCS annual conference, calls for "more radical evolution" of the role of local authorities than previously envisaged including:

- academy freedoms from central government extended to all schools;
- transfer of all secondary schools to academy status, with the transition supported by their local authority;
- a strong commissioning and quality assurance role for local authorities.

Marion Davis, President of ADCS wrote that involving local authorities in a "more managed" transfer of all secondary schools to academy status would avoid creating a "two tier" system with some schools given academy freedoms over the curriculum, length of the school day and pay and conditions, while others remained restricted. The letter also calls for organisational and curricula freedoms from central government to be extended to all schools, whether they become academies or not.

The proposal would leave local authorities with a "purer commissioning role", responsible for managing the number of school places, admissions, assuring the quality of educational provision in the area and advocating for the most vulnerable learners.²⁴²

Comment from the National Association of Head Teachers:

Legislate in haste, repent at leisure

NAHT today urged the new Government to take time to think before rushing into new initiatives for schools.

Responding to the new Bills announced in the Queen's speech, NAHT General Secretary Mick Brookes said:

'We know that the new coalition government is keen to make its mark and that they have identified Education as a key policy area for the next parliament. However, we also know that schools and school leaders have been suffering with initiative fatigue as measure after measure has been rushed through and pushed out. We hope that the proposed Bills will be given sufficient parliamentary time to be scrutinized in detail

²⁴⁰ [LGA responds to schools being invited to apply for academy status](#), LGA Press Release, 26 May 2010

²⁴¹ [Academies Bill, LGA Third Reading, 13 July 2010](#)

²⁴² Extract from [ADCS write to Secretary of State proposing "radical" change in the role of the local authority in education](#), ADCS Press Release, 10 July 2010

giving ministers and others sufficient opportunity to listen to the profession, think about the implications and make compromises where necessary to ensure the best for our schools and most importantly our children.²⁴³

A detailed NAHT briefing on the Bill was published on 29 June 2010.²⁴⁴

Comment from the National Union of Teachers (NUT):

Where Academies have been proposed the NUT has campaigned against their establishment whilst working hard to best support our members working in them. This work will continue.

However, the threat is now even greater. The coalition government is rushing legislation through Parliament which removes the need for governing bodies to consult with anyone before applying to becoming an academy.

....

The Union is campaigning alongside the ATL, NASUWT and UNISON in schools to urge union representatives to do everything they can to encourage their head teacher and governing body not to go down the Academy route.²⁴⁵

And:

The Government is by-passing constitutional and democratic processes to make the Academies Bill an Act by the summer. There is no justification for fast-tracking this Bill through parliament. The issues involved are not matters of national security or economic melt down.

Rushed legislative processes make for bad law. The NUT continues to advise schools not to make the move to academy status.

Concessions don't go far enough

Successful lobbying by NUT members and others has forced welcome concessions on SEN and Freedom of Information. The Government has also conceded that schools should carry out some consultation before becoming an academy. The Union will continue to lobby for a full and meaningful consultation process.²⁴⁶

Comment from the Association of Teachers and Lecturers (ATL):

Dr Mary Bousted, general secretary of the Association of Teachers and Lecturers (ATL), said: "These proposals to turn more schools into academies are just irresponsible. They have not been properly thought through and could end up making a mess of education provision through their unintended consequences.

"Cutting local authorities out of the equation will end any meaningful local planning to target funding to the children who need more help such as those with special needs.

"Schools are less likely to work collaboratively if they are doing their own thing and competing for resources and pupils.

²⁴³ [NAHT responds to Queen's Speech](#), 25 May 2010

²⁴⁴ [NAHT, Academy Bill Briefing](#), June 2010

²⁴⁵ [Together Against Academies](#), NUT

²⁴⁶ [NUT News - Academies Bill – an undemocratic outrage! - Special Edition July 2010](#). Further information and briefings for the debates on the Bill are available on the NUT website at: <http://www.teachers.org.uk/academies>

"Local democracy will be damaged if parents, staff and local authorities are given no say in whether their schools are turned into academies.

"If academies are allowed to determine their own pay and conditions, this will create uncertainty for staff and could make it even harder for the most deprived schools in the toughest areas to recruit staff.

"When there is no proof that academies improve children's education, certainly no more than any other school with extra funding, and with several academies in special measures, it is particularly irresponsible to push more schools down this route."²⁴⁷

Comment from the NASUWT:

Commenting on the proposed Academies Bill in the Queen's Speech, Chris Keates, General Secretary of the NASUWT, the largest teachers' union, said:

"The Academies Bill confirms that the Government is obsessed with structural reform at any price.

"The Government should accept that the system isn't broken and doesn't need fixing.

"There is simply no evidence that academy schools perform better than traditional community schools.

"A recent Ipsos MORI poll of parents in England confirms that the overwhelming majority believe that state schools are of a good quality.

"Ninety six per cent of the public have said they don't want state funded schools to be run by private sector companies, charities and other unelected bodies.

"There is simply no evidence of a public clamour for the creation of new academy schools. What the vast majority of parents and the public want are good local schools serving all communities.

"It is staggering that a Government that is committed to community empowerment is now seeking to disenfranchise democratically elected local councils who represent local people and deny them any say when proposals come forward to open new academy schools.

"The Government's proposal for new academy schools to become exempt charities is a naked attempt to provide a further tax loophole for private sponsors.

"Questions must be asked as to why the Government is refusing to heed the wealth of warnings and international evidence that confirm that academies and free schools are a recipe for educational inequality and social segregation.

"Given the imperative to tackle the budget deficit, the Academies Bill represents a costly and unnecessary solution to a problem that simply does not exist."²⁴⁸

A joint NUT, ATL and NASUWT briefing on the Bill put a case against schools applying to become academies. The joint briefing was sent to school governing bodies in May 2010:

²⁴⁷ [ATL says Academies Bill is irresponsible](#), 25 May 2010

²⁴⁸ [NASUWT comments on Government's Academies Bill](#). Further information is available on the NASUWT website at:
<http://www.nasuw.org.uk/InformationandAdvice/NASUWTPolicyStatements/PolicyStatement1/index.htm>

Some headteachers and schools may believe that becoming an academy would provide them with greater freedom, less bureaucracy and more financial advantages. However, the reality is very different.

For individual schools, whilst initially there may be an increase in the school's budgetary allocation, the reality is that any additional money would need to be offset against the additional cost to schools of paying for services no longer provided by local authorities because of the reallocation of funding to the school. As an academy school, the local authority would be under no obligation to provide you with the support services currently available to you, including governor information and support, financial services, audit, school improvement, advice on health and safety regulations, legal advice, representation and employment support. Your school would need to consider how it would access such support in future and contend with having to access such services at a much higher cost.

The Government claims that becoming an academy school will lead to reduced bureaucratic burdens on headteachers and teachers. This is a fallacy. Moreover, the reality for already hard pressed governing bodies is that becoming an academy school will drastically increase the bureaucratic burdens on volunteer school governors as they undertake a raft of statutory functions that previously were discharged on behalf of the school by the local authority or other relevant body. Independence for academy schools, therefore, comes at a price and could add to and compound the existing difficulties faced by schools in finding people to serve on the governing body.

There is also no evidence of a public clamour for the creation of new academy schools. Schools that choose to become an academy could find they come into conflict with parents and the local community, the vast majority of whom do not support the creation of academy schools. Indeed, a recent public opinion survey conducted by Ipsos MORI found that 96% of parents did not want state-funded schools to be run as academies.

A decision to become an academy school would also mean:

- no certainty that your governing body in its current form would continue. Previous experience from the existing 200 academies has shown that the majority of members of the governing body before the school became an academy (particularly parent governors) have been replaced by unelected corporate and business sponsors;
- your school having to raise additional money in order to enable future investment in developing or expanding your school site and for any other capital projects. You should be aware that the Government has not given any assurances about how recurrent capital costs of any new academy schools would be paid for;
- no guarantee on future revenue funding. No guarantee has been given to any school beyond March 2011. In a harsher public spending context, a new academy school would need to ensure that it could remain financially solvent and self-sufficient. Your school, if it became an academy, would not be able to rely on support from the local authority if circumstances beyond your control were to change (e.g. changing demographic trends);
- there would be no protection for the governing body if your school encountered a future financial overspend or budget deficit. Currently, all local authorities have statutory powers that enable them to provide financial support to schools in financial difficulty. Such support would no longer be available and, moreover, individual governors might not be fully indemnified against any financial liability or loss arising from a failure of the school's provision.

We believe that these are major risks that no governing body should take lightly. We also believe that schools work best when they work together, collaboratively, rather than in competition with each other. Indeed, thousands of schools judged by Ofsted as 'good' and 'outstanding' have achieved this high status without the need to become an academy.²⁴⁹

The TUC has also prepared briefings setting out its concerns about the Bill.²⁵⁰

Comment from the Anti Academies Alliance:

The Government's Academies Bill is being rushed through Parliament.

It proposes that all 'Outstanding' Schools are given the automatic right to become Academies, following a vote of the Governors. They will not be required to consult parents, teachers, school support staff or the local community.

All other schools are also invited to apply to become Academies.

At a stroke this could take hundreds of the most successful schools out of local authority control. This would leave local authorities managing the schools with the most difficulties, with diminishing budgets.²⁵¹

The Church of England has said it would not object to its schools seeking academy status. The Catholic Education Service raised concern about the proposals.²⁵²

In a statement regarding Catholic schools expressing an interest in becoming academies, the Catholic Education Service said:

As CESEW negotiates on the Government's proposals for academies we are working to find the best possible outcome whilst holding hard to three principles: safeguarding the legal protections that enable the distinctive religious ethos and consequent success of our schools; remaining loyal to our preferential option for the poor; and building on our strengths to explore and be open to appropriate innovation.²⁵³

The British Humanist Association has also published briefings on the Bill.²⁵⁴

The National Grammar School Association warned governors and head teachers to be extremely cautious about applying to convert to academy status.²⁵⁵

²⁴⁹ *ATL, NASUWT and NUT, Briefing for school governors on Academies Bill*, 28 May 2010

²⁵⁰ *Academies bill TUC briefing July 2010*

²⁵¹ *No more Academies, No 'Free' Schools, Defend State Education*. Further information is available on the Anti Academies Alliance website: <http://www.antiacademies.org.uk/Home>

²⁵² *Catholic Church warns schools against academy status*, BBC News Education 17 June 2010

²⁵³ *CESEW Statement regarding Catholic schools expressing an interest in becoming academies*, 29 June 2010

²⁵⁴ *Humanist peers voice BHA concerns over Academies Bill*, 25 June 2010

²⁵⁵ *Grammars are advised against becoming academies*, BBC News education 23 June 2010

Appendix: Papers on the Bill deposited in the Library

During the passage of the Bill through the House of Lords, Lord Hill wrote to Peers about many issues relating to the Bill. The following lists the letters deposited in the Library at the time of writing, some of which have already been referred to earlier in this paper. (N.B. additional letters and other documents have been posted on the DFE website.)

Letter dated 12/07/2010 from Lord Hill of Oareford to Lord Knight of Weymouth regarding the Academies Bill and the expansion of selective academies. Library deposited paper: 2010-1453

Letter dated 12/07/2010 from Lord Hill of Oareford to Lord Lucas regarding the Academies Bill and enforcement of the school admissions code. Library deposited paper: 2010-1452

Letter dated 09/07/2010 from Lord Hill of Oareford to Baroness Morgan of Drefelyn regarding the Academies Bill and tabled amendments for the Lords Third Reading. Library deposited paper: 2010-1441

Letter dated 07/07/2010 from Lord Hill of Oareford to Lord Howarth of Newport regarding selective the Academies Bill and design standards. Library deposited paper: 2010-1434

Letter dated 02/07/2010 from Lord Hill of Oareford to Baroness Morgan of Drefelin regarding selective schools conversion into academies. Library deposited paper: 2010-1402

Letter dated 02/07/2010 from Lord Hill of Oareford to Lord Bishop of Exeter regarding academies. Library deposited paper: 2010-1401

Letter dated 02/07/2010 from Lord Hill of Oareford to Lord Adonis regarding faith admissions in new academies. Library deposited paper: 2010-1400

Letter dated 02/07/2010 from Lord Hill of Oareford to Baroness Wilkins regarding Special Educational Needs and the Academies Bill. Library deposited paper: 2010-1399

Letter dated July 2010 from Lord Hill of Oareford to Baroness Williams of Crosby regarding Academies Bill and the Equality Act 2010. Library deposited paper: 2010-1403

Letter dated 01/07/2010 from Lord Hill of Oareford to the Earl of Listowel regarding the school admissions code and the Academies Bill. Library deposited paper: 2010-1396

Letter dated 01/07/2010 from Lord Hill of Oareford to Baroness Morgan of Drefelin regarding the Academies Bill and government amendments for report. Library deposited paper: 2010-1398

Letter dated 01/07/2010 from Lord Hill of Oareford to Baroness Morris of Yardley regarding the impact assessment for the Academies Bill. Library deposited paper: 2010-1394

Letter dated 29/06/2010 from Lord Hill of Oareford to Baroness Morgan of Drefelin regarding the provisions for financial assistance and the Academies Bill. Library deposited paper: 2010-1395

Letter dated 27/06/2010 from Lord Hill of Oareford to Lord Greaves regarding the Secretary of State's powers to fund free schools. Library deposited paper: 2010-1397

Arrangements for pupils with Special Educational Needs (SEN) and disabilities at [insert] Academy. [Annex C]. Library deposited paper: 2010-1404

The admission of pupils to the [insert] Academy. [Annex A]. Library deposited paper: 2010-1406

Serious incidents of misbehaviour leading to fixed period or permanent exclusion: general duties. [Annex D]. Library deposited paper: 2010-1405

Single academy model insert 2010: model funding agreement [draft]. Incl. annexes. Library deposited paper: 2010-1419 (N.B. At the time of writing the annex entitled 'Memorandum and Articles of an Academy Trust' had not yet been received by the Library; however, it will be added to the deposited paper as soon as it becomes available.)

Letter dated 21/06/2010 from Lord Hill of Oareford to Lord Bishop of Lincoln and Bishop McMahon regarding academies. Library deposited paper: 2010-1333

Letter dated 15/06/2010 from Lord Hill of Oareford regarding the second reading of the Academies Bill. Library deposited paper: 2010-1294

Letter dated 14/06/2010 from Lord Hill of Oareford to Baroness Royall of Blaisdon and Baroness Morgan of Drefelin regarding proposed Government amendments to the Academies Bill. Library deposited paper: 2010-1293

Letter dated 26/05/2010 from Michael Gove MP to Local Authority Leaders regarding the Academies Bill. Library deposited paper: 2010-1337