

The Charity First Series

ACADEMY SCHOOLS

*From Conversion
to Successful Operation*

Stephen Claus and Graeme Hughes

Brabners Chaffe Street, Liverpool

Tracey Johnson

Moore & Smalley, Preston, Lancashire

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The Charity First series aims to provide practical and straightforward guidance on the challenges confronting charity operations today, with fundraising in the spotlight. Its individual subjects range from those concentrating on the UK and Ireland to non-profit issues in the EU and other jurisdictions, from traditional to digital fundraising and from basic help for those just entering the third sector to specialist areas for the more experienced.

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This sample consists of brief extracts from one title in the series.

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The publication from which this material is taken was first published electronically in 2012 by Social Partnership Marketing LLP
38 Leconfield Road, London N5 2SN

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Full version ISBN: 978-1-908595-28-7

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CONTENTS

1

Introduction: What is an Academy? . 6

2

The Conversion Process . 8

An outline of the steps involved in converting, who does what and when and the Academy Order

3

The Transfer . 13

An Explanation of the Commercial Transfer Agreement, land arrangements and practical steps involved in the actual transfer (including a further introduction to the academy trust and the Funding Agreement)

4

The Funding Agreement . 18

A more detailed look at the Funding Agreement

5

Governance . 22

A more detailed look at the constitution of an academy trust and its practical operation

6

Admissions . 28

A description of the framework within which an academy trust must operate in respect of admissions

7

Exclusions . 33

A description of the framework within which an academy trust must operate in respect of exclusions

8

Accounts . 40

A review of the statutory accounting framework

9

Financial Management . 47

Roles and responsibilities of an academy trust in respect of financial management

10

Impact of being a Public Authority . 54

A review of some of the effects of becoming a public authority

11

Useful Information . 60

A list of sources where further information can be found

1

WHAT IS AN ACADEMY?

Introduction

The Coalition Government, on its formation, signalled its intention to ‘break open the state monopoly’ of schools and ‘*tackle educational inequality*’ by the introduction of a new system of academies. Michael Gove, the Secretary of State for Education, in his letter to schools of 26 May 2010, explained that the Government’s reforms were designed to reduce bureaucracy, allow teachers greater control over the curriculum and behaviour and provide schools with the opportunity to seek academy status and enjoy the associated freedoms.

On 16 May 2010, the Academies Bill had its first reading in the House of Lords. On 27 July 2010 the Bill was approved in the House of Commons and the following day it received Royal Assent to become the Academies Act 2010 (‘the 2010 Act’).

Academies, under the 2010 Act, are publicly funded schools which operate outside local authority control. They are described by the Coalition Government as ‘independent state-funded schools’. Academies will have more freedom than other state schools over matters such as the curriculum, its teachers’ terms of employment and its finances.

Michael Gove has identified autonomy as being the key point of success for the new academies programme, stating that it is ‘*absolutely clear that academies...succeed because of their autonomy. Heads are given the freedom to shape their own curriculum; they are at liberty to insist on tougher discipline, pay staff more, extend school hours, and develop a personal approach to every pupil.*’

Since its formation, the Coalition Government has encouraged as many schools as possible to convert to academy status. In the programme’s early stages, only schools with an ‘*outstanding*’ or ‘*good with outstanding features*’ Ofsted report could apply to convert; however, the programme has since been extended so that any school can apply.

At the time of writing, in excess of 1,500 schools in England are academies with many more engaged in the conversion process.

Old Academies

The Labour Government that preceded the Coalition Government launched its own academy programme in March 2000. These old style academies were established under the Education Act 1996.

Whilst the legal structure of old style academies was similar to that of academies established under the 2010 Act, the intention behind old style academies was to replace existing underperforming schools and to create new schools where there was demand for school places. Many old style academies were established with state of the art buildings and operated on the basis that children would be more engaged in a transformed environment.

Old style academies, whilst established and operated by a not for profit charitable trust, were initially required to have a sponsor willing to contribute financially to its establishment and development. The sponsor contributed 10 per cent of capital funding (up to £2 million) and, as a result, was permitted to appoint a new management team, i.e. a new head teacher, senior

staff and governing body. It was intended that, under a sponsor, formerly failing schools would be turned around through a combination of autonomy and robust governance.

The Coalition Government has continued with this policy of having sponsors support failing schools in conjunction with its new academies programme.

Key Features of Academies

As explained further later in this book, an academy is operated by an academy trust. The academy trust is established as a company limited by guarantee with charitable purposes (although it is exempt from the requirement to register with the Charity Commission).

The key feature of an academy trust is its autonomy. This autonomy extends to an academy's finances, day to day operation (for example its freedom to buy in services) and its teaching. Indeed, autonomy and its associated freedoms are cited as being the main reason for schools converting to become academies.

As noted, this autonomy extends to a number of areas, including:

- *Curriculum:* The Academies Act 2010 permits academies to deviate from the National Curriculum provided that their curriculum remains 'balanced and broadly based'.
- *Funding:* Perhaps the main reason why schools choose to convert to an academy is a belief that they will receive additional funding. An academy enjoys full financial responsibility and furthermore it will receive the Local Authority Central Spend Equivalent Grant that would otherwise be retained by the local authority to cover the central services it provides to maintained schools (known as 'top slicing').
- *Pay and conditions:* The TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) implications of altering the pay and conditions of staff are discussed later in this book; however, the conversion to academy status does allow academies the freedom to incentivise / reward staff for improved performance. Whilst figures show that over half of the schools that have converted have not altered pay and conditions, this additional freedom is seen as a means by which standards can be improved.
- *Admissions:* Whilst an academy is still required to follow the Schools Admissions Code, it can determine its own admissions criteria. This was formerly the role of the local authority.
- *School day and year:* An academy can alter the length of its school day and term times. The extent to which this actually happens remains to be seen.

Whilst the Coalition's new academies programme is, at the time of writing, still in its infancy, figures show that an overwhelming majority of school leaders in academies would recommend academy status to other school leaders. Less than two per cent would not recommend becoming an academy.

Text of full version continues / ...

About the Authors

Stephen Claus is the partner responsible for Charity Law at [Brabners Chaffe Street](#) based in their Liverpool Office. Brabners Charity Law department is recognised by Chambers and the Legal 500 and has a first ranking.

Stephen worked for the Charity Commission for 14 years, and was one of the first five judges appointed to the Charity Tribunal, a post he held for two years. He left the Charity Commission and has since headed up the Charity Law department at Martineau in Birmingham before moving to Liverpool in 2008.

Stephen is experienced in all aspects of charity law, and advises on academy conversions regularly. He is also experienced in charity litigation, and whilst at the Commission specialised in investigation work for many years. He acts for many charities locally, nationally and internationally. He has frequently written on charity issues, and speaks regularly on topics related to charity law.

Graeme Hughes is an assistant solicitor specialising in Charity Law with the firm of Brabners Chaffe Street, the firm in which he qualified. Graeme has been a full time charity lawyer since qualification in 2010. He advises on academy conversions and related matters, as well as charity mergers, registration and other matters of concern to charities. He has written and spoken about charity law issues.

Tracey Johnson is a partner in the charities and not for profit team at [Moore and Smalley LLP](#) in Preston, specialising in academies. She has presented at seminars for schools, both pre and post conversion, and advises academies on a wide range of issues relating to financial reporting, audit and financial systems and procedures.

Debra Morris is Reader in Charity Law & Policy at the University of Liverpool, UK, where she is also the Director of the [Charity Law & Policy Unit](#) leading research on various projects concerned with aspects of charity law. She has written widely in the area and has presented at conferences and seminars around the world. Debra is also Editor of the Charity Law & Practice Review, the only UK journal specialising in charity law.

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