

CHILDREN'S SERVICES SCRUTINY COMMITTEE
WEDNESDAY 16 FEBRUARY 2011

Members' briefing: Free Schools

Current Legislative Position/Role of the Local Authority (LA)

1. Sections 13 and 14 of the Education Act 1996 gives LAs duties to provide sufficient pupil places and sufficient schools to meet demand. It also has a duty to respond to parental representation.
2. LAs have the power to promote changes to maintained schools and hold competitions to determine who will run new schools. The LA will act as decision maker for any of these proposals except in particular circumstances when the role transfers to the independent Schools Adjudicator.

What will the role of the LA be in a 'mixed economy' of schools?

3. On 24 November 2010 the Government published its White paper 'The Importance of Teaching'. In the section on future role of LAs it is suggested that LAs will be expected to encourage good schools to expand and encourage Academies or Free Schools to meet demand, focusing on supplying enough good places rather than removing surplus places. Where a new school is needed the preference will be an Academy or Free School; the competition process for new schools will be simplified, and if LAs are unable to identify a suitable sponsor the Secretary of State will work with them to find one.

What are Free Schools?

4. Free Schools will be new schools set up by bodies other than LAs to provide state-funded independent education. They may be primary, secondary or special schools, but not nurseries. They represent the government's version of the Swedish Free Schools or the United States Charter Schools. DfE website states that 'Free Schools are all-ability schools set up in response to parental demand.'
5. The aim of Free Schools is to provide further diversity in school provision which will drive up standards and increase choice. They will be established under Academies legislation and as such will have the same freedoms and flexibilities:
 - Ability to set their own pay and conditions for staff
 - Freedom from following the National Curriculum **BUT** must be broad and balanced, include English and mathematics and science and National Curriculum assessments.
 - Greater control of their budget. **NOTE** Funding at the same levels as maintained schools and accounting procedures subject to Charity and Company law.
 - Freedom to change the length of terms and school days
 - Freedom from LA control
6. Given the complexity of setting up a new school it is not expected that there will be any Free Schools before September 2011 (*establishing a new school requires a*

longer run-in time and hence the start date is different from existing schools converting to academies).

7. Sixteen proposals were announced by DfE on 6 September 2010 and a further nine Free School applications were announced on 5 November 2010 which will go forward to business case and plan stage. It is unlikely that all these proposed schools will open by September 2011 largely due to issues associated with the identification of sites and buildings. Over 100 proposals have been submitted to DfE as at 8 October 2010. For information at 8 October 2010 there were 322 open academies. 140 outstanding schools have been approved to convert to Academies of which 55 are now open. 64 traditional academies replacing 'low attaining/performing' schools opened in September with a further 10 expected to open by April 2011.
8. An independent school can apply to become a Free School and become a state-funded independent school.
9. Maintained schools cannot become Free Schools. They can apply for Academy status, and thus gain the same freedoms.

Who can set them up?

10. Free Schools will be set up by a wide range of proposers – including charities, universities, businesses, educational groups, teachers and groups of parents – in response to parental demand, to improve choice and drive up standards for all young people, regardless of their background. Free Schools will provide an inclusive education to young people of all abilities, from all backgrounds, and will be clearly accountable for the outcomes they deliver. (DfE website article 4 August 2010).
11. Free Schools would be run as Academy Trusts, or where the proposer does not wish to have the responsibility for running them they would be governed by another approved provider (e.g. charities, education providers).

What are the criteria for establishing a Free School?

12. The key criterion is the need to demonstrate that there is parental demand for a new school of the character being proposed. There is a need for 'evidence of robust demand', *but this is not quantified*.
13. The process for establishing a Free School has four stages.
14. Stage 1 – Prospective proposers are encouraged to find out about setting up a Free School, contacting the New Schools Network for information and guidance if necessary.
15. Stage 2 – Submit a proposal to outline key details of the proposed school. This is referred to as the initial business case. DfE officers have undertaken to inform authorities when an initial proposal is received. It will need to include the following information.
 - Name of organisation proposing school
 - Educational aims and objectives
 - reasons for establishing a Free School

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- proposed ethos and teaching methods
 - Capacity and capability
 - Key individuals and proposed trustees
 - Any plans to work with third parties
 - Evidence of demand
 - Proposed capacity, age range, start date
 - Proposed premises (or options being considered)
16. Stage 3 – SoS invites proposer to put forward a full Business Case and LA and other interested/affected schools will be asked to comment on the likely impact of the proposed school. The Academies Act 2010 now requires the SoS to consider any possible negative impact on local schools. The Business Case and plan will need to contain the following:
- Suitability to establish/run a school (comply with vetting, due diligence, CRB and not advocating any ideologies that run counter to the UK's democratic values)
 - Clear educational aims and objectives and sufficient capacity to implement these (*proposers do not have to be existing educational providers but can draw on third-party expertise*)
 - Evidence of demand (robust demand, plus viable business plan)
 - Financial viability (business case and plan to demonstrate projected long-term viability for a minimum of 5 years)
 - Suitable premises (evidence that the proposer 'is actively seeking' a site for the new school, and high level costings for any planned changes)
 - Leadership and management (plans for putting in place strong and effective leadership)
 - Ability and willingness to meet the Independent School Standards
 - Ability to meet the funding agreement (about governance, grants, accounting, admissions, government test requirements)
17. Free Schools are expected to abide by the Admissions code: a fair and transparent policy and providing places for pupils of different abilities wholly or mainly drawn from the area in which the school is situated. 'New schools who wish to prioritise by faith criteria may want to consider taking the established route to voluntary aided status' (DfE guidance).
18. The financial viability of the business case will be assessed by Partnership for Schools (PFS).
19. Capital funding for refurbishment of old buildings will be made available from the former Harnessing Technology Fund (£50m in 2010-11 school year) and the restarted Standards and Diversity Fund, although there is no indication of the sums available for an individual school beyond a statement about 'value for money'.
20. Space standards for schools are being revisited by a Capital Review group and are expected to reduce space standards for schools in the current DfE Building Bulletins by in the region of 15%. These standards are expected to be applied to maintained schools in future.
21. Stage 4 – Sign contract with the SoS to release start up funding. Complete registration processes necessary to become an academy.

What are the implications for the local authority?

22. LA approval to establish a Free School is not required, but clearly there would be an impact on the LA's statutory responsibilities for planning school places. Where the LA currently can impose increases or decreases in school capacity in response to demand this would not apply to academies of any hue. Likewise they cannot intervene in relation to standards. The SoS has powers to intervene with regard to standards but so far the legislation is not specific on powers to change the agreed capacity and numbers of Academies. Clarification on this point will be essential.
23. LAs, as champions of parents in their area and champions of educational excellence, are encouraged to facilitate groups wanting to set up Free Schools.
24. Pupils excluded from Free Schools because of Special Education Needs would become the responsibility of the LA.
25. The role of the LA in challenging performance in schools is being debated. This role for academies is retained by the SoS under the standard funding agreement. At present the Young Peoples Learning Agency (YPLA) challenges non-performing academies on his or her behalf.
26. Planning requirements will be relaxed regarding change of use for sites for Free Schools: 'we will remove all 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'. *There is a presumption that existing, unoccupied schools, would be kept available for use by new schools (in Oxfordshire this would in theory mean Dashwood School, Banbury and the Moorland Centre, Witney although terms for the disposal of the former are agreed and ultimately unlikely to be affected by this proposal).*
27. Funding for Free Schools has yet to be determined. Free Schools will be funded on a comparable basis to other state-funded schools, and the guidance indicates that 'we intend the funding to be as simple as possible, based mainly on a per-pupil funding level, and a pupil premium for disadvantaged pupils' (DfE guidance). *This implies a single funding formula, unlike the existing formula for Academies which are funded using the individual LA's funding formula.*
28. The transport implications of Free Schools are still under discussion but as the law stands at present the LA will be responsible for providing free school transport to Free Schools for eligible pupils.
29. Free Schools would be subject to Ofsted inspections.
30. At a seminar on 8 October the Head of the Free Schools Group at the DfE summed up the role of the LA as market maker and provider of last resort.

Free Schools in Oxfordshire?

31. Currently one bid has been put to the DfE at Heyford Park for a 3-16 school with 2 form entry primary and 4 form entry secondary provision. Further work on that bid has been requested before it is put to ministers for a decision on whether it will proceed to the Business Case stage. The LA has had a number of approaches from organisations and individuals who have expressed an interest in the provision of Free Schools. They will be invited to a meeting where the LA will outline the challenges and opportunities it faces against the backdrop of a rising school population in the county.

Capital Funding Implications

32. If the proposal at Heyford Park were to be successful it would mark a precedent that a developer could bring forward plans for Free Schools using an approved provider to govern and manage the school. This could have implications for the successful/appropriate negotiation of S.106 contributions towards new schools. A positive outcome could be that the full cost of the school falls on the Free School provider and a potential shortfall in funding for a school procured by the LA could thus be resolved. Alternatively, if the proposal is of insufficient size or quality this could leave the LA with an educational gap to fill with no resources to fund this.

33. Free Schools which are not associated with new developments are expected to be funded from DfE allocations and their own resources.

Chris Scrivener 31.08.10

Updated by Allyson Milward, Service Manager School Organisation January 2011.