

Title of Report:	Scrutiny review into the effect of schools becoming academies on the capacity of the Local Education Authority
Report to be considered by:	Overview and Scrutiny Management Commission
Date of Meeting:	2 August 2011

Purpose of Report: To outline to the Overview and Scrutiny Management Commission the draft recommendations arising from the review into the effect of schools becoming academies on the capacity of the Local Education Authority.

Recommended Action: To agree the recommendations arising from the review.

Key background documentation: Part II notes from the meetings held on 17 March 2011 and 7 April 2011.

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Executive Report

1. Introduction

- 1.1 At its meeting on 18 January 2011 the Overview and Scrutiny Management Commission (OSMC) agreed draft Terms of Reference to conduct a review into the effect of schools becoming academies on the capacity of the Local Education Authority. The review was assigned to the Stronger Communities Select Committee and the Select Committee refined and approved the Terms of Reference at its meeting on 7 February 2011. At the agreement of the OSMC a Task Group, made up of Members from the Select Committee, was formed to conclude the review following the abolition of the Select Committees.
- 1.2 This report provides the Terms of Reference for the review, sets out how it was conducted and the rationale for undertaking the work. It then outlines the review's findings and the resultant recommendations.

2. Terms of Reference

- 2.1 The Terms of Reference agreed by the Select Committee were to conduct a review into the effect of schools becoming academies on the capacity of the Local Education Authority, and specifically to:
- (1) understand the scope and range of the powers allowed to schools under the Academies Act 2010;
 - (2) assess the immediate and likely take up within West Berkshire;
 - (3) evaluate the effect of schools becoming academies on the capacity and capability of the Local Education Authority and wider Council services;
 - (4) evaluate the effect of schools becoming academies on land and building assets, with a specific focus on community use of schools buildings; and
 - (5) report to the OSMC with draft recommendations for onward submission to the Executive.

3. Review methodology

- 3.1 The review was conducted by Members of the Select Committee, working with Officers from the Education, Legal and Cultural Service Areas.
- 3.2 The Select Committee held the meetings outlined in the table below.

Srl	Meeting date	Meeting focus
01	Thursday 17 March 2011	<ul style="list-style-type: none">• Receipt of supporting information for the entire review from the Education Service and discussion of potential implications.
02	Thursday 7 April 2011	<ul style="list-style-type: none">• Gain an understanding of a school's perspective of taking academy status.• Community use of school buildings.

		<ul style="list-style-type: none"> Continued discussions regarding the potential implications for the Council including financial implications. Identification of next steps.
03	28 June 2011	<ul style="list-style-type: none"> Identification of findings. Initial formulation of recommendations.

3.3 An extract from the confidential minutes of the meetings of 17 March and 7 April are listed under key background documentation.

4. Acknowledgements and thanks

4.1 The Chairman and Members of the Select Committee would like to acknowledge and thank all those who supported and gave evidence to the review.

5. Background

5.1 The Academies Act 2010 aims to make it possible for all publicly-funded schools in England to become academies, still publicly-funded but with a vastly increased degree of autonomy in matters such as the setting of teachers' wages and diverging from the National Curriculum.

5.2 Academies are classed as "independent" state schools – charitable companies limited by guarantee. Rather than being directly funded and accountable to the Local Authority (LA), they are funded and accountable to the Secretary of State via the Young Peoples' Learning Agency (YPLA). The YPLA organises funding agreements and Academy Orders. A seven year funding agreement will be established for all new academies. At the end of the seven year funding agreement it is mostly likely that an extension will be agreed.

5.3 There are two types of academy:

- (1) The original sponsored academies, created from failing secondary schools, often serving deprived areas. These were created as city academies under the Learning and Skills Act 2000 and amended to academies in the Education Act 2002. This category will continue to capture secondary schools who do not achieve a certain percentage of pupils achieving five or more GCSE's A* - C.
- (2) New academies, those created under the Academies Act 2010. This status has been available since September 2010. These can be any category of school but must be classed by Ofsted as being either "outstanding" or "good" with at least one outstanding feature. Although this requirement has been relaxed during the timeframe of the review to give consideration to schools that are seen to be performing well. The scope for Pupil Referral Units (PRUs) to become academies is being considered by the Secretary of State.

6. Findings of the review

6.1 The Select Committee's findings are outlined below.

- (1) Becoming an academy is optional, but the Secretary of State is encouraging schools to do so and has written to schools detailing the benefits of becoming an academy. The Schools White Paper and the Education Bill include assumptions from the Secretary of State that many schools will convert to academy status over time.
- (2) If a LA maintained school is failing then it is the responsibility of the LA to step in and offer assistance. However, as an academy is classed as an independent school then it is their responsibility to manage any failures in performance and only the Secretary of State has the power to intervene should performance become a concern. It is not clear what action can be taken, if any, by the LA for a failing academy.
- (3) The local infrastructure that supports LA maintained schools will not automatically be available to an academy, although it is possible for an academy to buy back some services from the LA. A 'Services for Academies' document lists those services that can be purchased on a fixed term contract or on a pay as used basis. Some of the services listed already have buy back arrangements with LA maintained schools. The document does not include detail on cost as this can differ significantly based on the number of services/the package to be purchased. The LA has decided that some services cannot be offered to academies.
- (4) Some of the powers allowed to academies are already existing freedoms of Voluntary Aided and Foundation Schools but will be new responsibilities for a Community or Controlled School. In addition, a number of responsibilities will be new for all schools converting to an academy. Overall, freedoms and responsibilities include:
 - Becoming employers of staff, with the ability to set pay and conditions.
 - Ownership of the land and buildings with a 125 year lease. A standard lease and clauses have been provided by the Department for Education (DfE) for the transfer of school buildings, with the LA having little scope to make alterations. The only requirement for academies in terms of buildings is to maintain/repair them in line with their condition at the time of transfer. The LA is obliged to fulfil basic need and it is unclear at what stage the LA will need to intervene should the school buildings be allowed to deteriorate over time.
 - The ability to vary lengths of terms and school days. The total number of school days will still need to be adhered to.
 - Freedom from following the National Curriculum.
 - Greater control over budget and spending decisions.
 - Total responsibility for matters of health and safety. This is a service that can be purchased from the LA.
- (5) The LA retains some statutory responsibilities. In Education this includes the assurance that school places are provided for all children

of statutory school age in West Berkshire, but the allocation of places in an academy is for the academy to determine as part of its own admission arrangements. Any dispute over the admission arrangements of an academy can be referred to the Office of the Schools Adjudicator. An academy can also propose changes to its catchment area, however this will require consultation before any decision is made. Other statutory responsibilities to be retained by the LA include Home to School Transport (which could be affected by a change to a catchment area), Special Educational Need (SEN) support for non-statemented pupils, assessment and provision for statemented pupils, and the need to ensure attendance.

- (6) The Secretary of State has made it clear that academies should be funded at the same level as other maintained schools in an area, which suggests that there is no financial incentive for converting to an academy. However, an academy will be able to access a proportion of central costs retained by the LA to deliver services to schools and pupils which is separate to the LA's funding formula. Following analysis of the DfE formula by the Education Service, it has been identified that it does not take into account the LA's funding arrangements which give consideration to levels of need. The Secretary of State has accepted that this is inequitable and it will be rectified for the second year and beyond. However, those applying at an early stage will potentially receive more funding than they are entitled to creating disadvantages elsewhere.
- (7) In terms of take up across West Berkshire, Kennet School converted to academy status on 1 April 2011 and Park House School converted on 1 May 2011. The minimal amount of consultation that appears to be required with parents is a concern.
- (8) A number of the remaining West Berkshire secondary schools have expressed an interest in becoming an academy or joining an academy chain (i.e. a group of schools working together). A school that does not meet the criteria to become an academy can do so as part of an academy chain as long as at least one other school involved meets the criteria. This creates a concern with regard to those schools becoming academies who are not considered outstanding and the fact that some have budget deficits.
- (9) A significant amount of Officer time is required for the transfer of a school to an academy which can be, based on experience, required in a very short timeframe. The timeframes are completely outside of the LA's control and any issues not covered could lead to complications over a considerable period of time. No financial assistance is available to the LA, whereas schools are entitled to £25k to help meet legal costs. The level of legal work required by the LA and the tight timescales has meant that external solicitors have needed to be employed. It is estimated that the LA's legal costs could well match the £25k which has been made available to schools.
- (10) Attractions reported from a school's perspective of becoming an academy included a financial benefit, the ability to move gradually

away from the National Curriculum, the independence it would bring in deciding how to manage the additional responsibilities referred to earlier in the report and the opportunity it gave in negotiating more cost effective and efficient contracts and services.

- (11) The Government has indicated a wish that academies support other, less successful, schools, but there has been a lack of clarity as to the extent to which this will operate. No detail has been requested from the Government, using the example of Kennet School and its partner school Trinity, on how this is to be delivered.
- (12) Those academies, and indeed schools, which are classed as being outstanding will not receive routine inspections unless they are requested by parents. However, Ofsted will still conduct a paper based annual performance assessment and some subject based inspections. The LA's opportunity to provide some challenge to academies could come from the Council services being purchased.
- (13) A number of secondary schools have leisure centres based on their sites. At the Kennet Leisure Centre, which is based on the Kennet School site, all parties have worked towards continuing arrangements for school and community use as before, but dual use arrangements need to be maintained in order to ensure the community can continue to access facilities. However, achieving this has added a very complex legal process to Kennet School becoming an academy. Academies will be required to contribute to the operating costs of leisure centres on their sites, this differs from the arrangement for maintained schools where no contribution is required.
- (14) A community's use of formal facilities in place at a school is felt to be better protected than more informal arrangements. The LA will need to negotiate the community's continued use of facilities in this circumstance.
- (15) The Department for Education has reported that they have no plans to alter the arrangements for schools converting to academy status.

7. Conclusion

- 7.1 It is possible that other West Berkshire secondary schools will follow the lead taken by Kennet School and Park House School in converting to academy status. The impact this will have on the LA will need to continue to be monitored, but the LA will remain focused in working towards the best interests of all the children of West Berkshire. This will involve continued efforts to ensure that the transfer of a school to an academy is as smooth as possible, where this decision is made, for the benefit of West Berkshire's pupils.

8. Suggested actions for the Executive

- 8.1 The suggested actions (recommendations) for the Executive are outlined below.
 - (1) The Head of Education Service, in conjunction with other appropriate Heads of Service, should actively seek to sell services to academies at full cost, where this makes sense for service delivery and is also to the

benefit of other schools. Efforts should be made to ensure that contracts are established for a minimum period of three years.

- (2) The Head of Education Service, in conjunction with other appropriate Heads of Service, should monitor service reductions to ensure continued viability of delivery and identify corrective action if necessary.
- (3) The Head of Education Service should encourage the Schools' Forum to ensure that any financial transfers to academies are in line with real costs and not to the detriment of other schools.
- (4) The Head of Education Service should monitor the extent to which the Local Authority remains responsible for certain academy capital costs to ensure that this does not have a detrimental impact on Local Authority budgets.
- (5) The Head of Education Service should monitor the conversion of schools to academy status and the setting up of Free Schools within West Berkshire, including those outside the District boundary which might have an impact on West Berkshire schools, in order to continually evaluate the impact to the Local Authority.
- (6) The Head of Education Service should request that the government looks at meeting the Council incurred costs of academy conversions in line with the financial support given to governing bodies who wish to convert.
- (7) The Head of Education Service should ensure that academies are meeting the requirements of their Funding Agreement with the Secretary of State to support 'weaker' schools.
- (8) The Head of Education Service and the Head of Cultural Services should encourage academies to make sites and facilities available for community use at a reasonable cost.
- (9) The Portfolio Holder for Children and Young People and the Youth Service should distribute the approved report to West Berkshire's Members of Parliament to seek their help with pursuing the concerns raised and potentially arranging a meeting with a representative of the Department for Education.

9. Recommendation for the Overview and Scrutiny Management Commission

- 9.1 It is recommended that the Members of the Commission agree the suggestions outlined in section 8 for the consideration of the Executive.

Appendices

There are no Appendices to this report.