

Christian Concern for our Nation & the Christian Legal Centre

Briefing on the Academies Bill 2010-11

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*Changing Society to put the
Hope of Christ at its Centre*



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About Us

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters. <http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

Introduction

We welcome the intentions of the Government and the exciting opportunities they offer to tackle some of the great challenges that our communities face in the field of education. As Christians, we want to engage with the Government's plans, but we must be careful that the details of the Academies Bill do not inadvertently exclude that possibility.

We recognise the Government's desire to act quickly, however, we would like to see the following important issues addressed:

The Bill does not make adequate provision for the differences in the types of schools that may seek to gain Academy status. Of particular concern are faith schools. The particular mechanism of conversion and its implications need to be laid out in the Bill, for example, what happens to the principles of trust deeds¹, the composition of schools' governing bodies, admissions policies, the content of the curriculum, the preservation of the school's ethos and so on. It is not satisfactory to have a single "one-size-fits-all approach" that focuses only on the similarity of the one type of establishment to which schools convert without recognising the diversity of situations and types of schools from which they convert. There may be all sorts of unintended consequences down the line if the provisions in the Bill are not properly thought through now.

The Bill appears to rely too heavily on non-statutory mechanisms for the implementation of important provisions of education law. Many matters will be dealt with in contractual negotiations between the Secretary of State and Academy Trusts that ought to appear on the face of the Bill. It may be unintended, but this approach gives too much power to Central Government and the Secretary of State for Education—ironically contrary to the "big society, small state" agenda. The approach raises the spectre of wide variation in the foundation of Academies despite their sharing a single name, since the Bill puts great emphasis on the Academy Agreement. Leaving the Secretary of State so much discretion

¹ See the Explanatory Notes to the Bill dated 26th May 2010 at the following link: <http://www.publications.parliament.uk/pa/ld201011/ldbills/001/en/2011001ex.htm> The Explanatory Notes for Clause 10 make it clear that paragraphs 3 and 9 of Schedule 2 of the Academies Bill allow trust deeds to be modified to permit the school's conversion to Academy status. However, this leaves open the question of how the principles of the trust deed to be preserved in the conversion documentation and in the day-to-day running of the Academy. Faith schools' negotiators may inadvertently fail to ask for clauses to be included in the funding agreement, memorandum or articles of association that preserve the essence of that particular school's foundation/trust deed in this specialised area of education/trust/company/land law.

does not fit with the previous approach to education legislation and must be carefully considered. In particular, we are concerned about changes to schools' admissions policies, the preservation of their ethos and the contents of the curriculum, especially SRE and RE.

Second Reading of the Bill took place in the House of Lords on 7th June and Committee Stage is due to take place from 21st to 23rd June 2010. The Bill is permissive not coercive.² Governors of schools that are currently maintained by the Local Authority can opt to apply to be an Academy if they wish. Academies are granted funding by the Secretary of State for Education in Whitehall, rather than by the Local Education Authority ("LEA").

Executive Summary

1. The purpose of the Academies Bill ("the Bill") is to enable more schools to achieve academy status, giving teachers greater freedom over the curriculum. The freedom and flexibility is intended to help drive up standards.
2. The "Academy arrangement" is largely based on a funding agreement between the Secretary of State and a body called the "Academy Trust".
3. The previous Government developed model funding agreements for Academies. However, there is uncertainty about how far individual schools will be allowed to depart from a model funding agreement. In order to make the process more certain, it would be preferable to allow more time for interested parties to comment on the model agreement and to develop distinctive model agreements that are tailored to each type of maintained school that may seek to convert to an Academy, rather than providing one stand-alone model (with optional clauses for faith schools) and a federation model funding agreement.
4. The Government expects that a significant number of Academies will open in September and that the number will continue to grow each year. In our submission, that is a further reason why it would be appropriate for the Government to allow more time in order to develop appropriate model agreements for the different types of maintained schools that intend to convert to Academies.
5. An Academy's arrangement consists of its "Academy Agreement" or its arrangements for financial assistance.³ An Academy is a company limited by guarantee with charitable status.⁴ It is an exempt charity and will not need to register with the Charity Commission. The Cabinet Office will appoint a principal regulator for such Academy proprietors,⁵ but there are no provisions in the Bill for a principal regulator, which we believe there ought to be.
6. A potential pitfall for faith schools is that important issues, necessary in order to maintain their religious ethos might be omitted from the funding agreement,

² Unless a school requires intervention—see clause 4(1)(b) of the Academies Bill.

³ See clause 1 of the Academies Bill (as introduced on 26th May 2010), at:

<http://services.parliament.uk/bills/2010-11/academieshl/documents.html>

⁴ See clause 8 of the Academies Bill (as introduced on 26th May 2010), at:

<http://services.parliament.uk/bills/2010-11/academieshl/documents.html>

⁵ See Explanatory Notes to the Academies Bill dated 27th May 2010:

<http://www.publications.parliament.uk/pa/ld201011/ldbills/001/en/2011001ex.htm>

memorandum and articles of association. If such issues are omitted, it would be difficult for the school to maintain its ethos in its day-to-day operations, or in any legal proceedings.

7. Education laws and regulations set out clear rules. Freedom in education is important, but if Academies are to become the norm, the Bill lacks some of the important statutory detail found in existing education laws and regulations for maintained schools.
8. The Bill's loose drafting appears to jeopardise compliance with some of the provisions in existing education laws and regulations, because much of the detail has been left out. The intention is that it will be included in the Academy's funding agreements on a purely contractual basis. However, this means that a great deal is left to the Secretary of State's discretion within the funding agreement. Whilst that allows flexibility, it also creates uncertainty. Such an approach may be reasonable where there are few schools converting to Academies, where greater time may be devoted to each agreement, but if maintained schools are converting into Academies on a larger scale, there is a risk that important clauses will be inadvertently omitted.
9. During the Second Reading of the Bill in the House of Lords, Peers expressed concern that the Bill does not include any provisions regarding Special Educational Needs ("SEN"). We are similarly concerned by the omission to include any provisions regarding religious education or sex education on the face of the Bill.
10. The current stand-alone model funding agreement states that regard must be had to any Guidance issued by the Secretary of State on sex and relationships education, yet it fails to mention the important parental right to withdraw children from sex and relationships education up to the age of 19, which is found in education law for maintained schools. Whilst the current *Sex and Relationship Education Guidance*⁶ contains the parental right of withdrawal, a mere reference to the need to have regard to the SRE Guidance in the funding agreement clearly does not have the same status as a right of withdrawal on the face of the Bill. Therefore the right remains virtually unenforceable for parents, because parents would have to ask the Secretary of State to ensure the Academy has regard to the SRE Guidance. This would not be a simple process for the parents, as they are not party to the agreement between the Academy and the Secretary of State.
11. Likewise, compliance with the School Admissions Code is to be left for inclusion in the funding agreement rather than as a statutory obligation for the Academy in the Bill. This again makes the question of parental rights unclear, as they are not party to the agreement. Parents whose expectations are not met will have to voice their objections to the Secretary of State, who may then consider the matter on the basis of the contractual agreement with the Academy Trust.
12. A more prescriptive approach may therefore be preferable, given the larger number of school conversions that are expected. A contrast could be drawn with the Education

⁶ See the current *Sex and Relationship Education Guidance* (DfEE 0116/2000), page 26 paragraph 5.7, regarding parents who withdraw their children: <http://publications.dcsf.gov.uk/eOrderingDownload/DfES-0116-2000%20SRE.pdf>

Reform Act 1988 (now repealed),⁷ which allowed schools to convert to Grant Maintained Schools and thus obtain funding from Central Government, as will the new Academies, but there a much more detailed and prescriptive approach to school conversion was set out in the legislation.

13. According to the Bill, governors of maintained schools can apply for the schools to become Academies⁸ without any need to ballot or to consult parents. We are concerned that such an approach lacks transparency and accountability. Parents may well feel they have a legitimate expectation to be consulted about their children's school becoming an Academy.
14. The lack of legislative prescription in the Bill also raises concerns about the lack of specification regarding the composition of the governors of Academies, which is specified in education law for different types of maintained schools. It raises questions such as "How many parent governors will there be?" The suggestion in the Minister's response⁹ during the Second Reading of the present Bill, was that there may well be fewer parent governors for Academies than for maintained schools, giving parents less opportunity to have a say in how their Academy is run.
15. A number of questions need to be answered more clearly for faith schools, such as: "How will faith schools' admissions policies be protected?", "How will the role of the diocesan authorities be properly protected?" and "How will the trust deeds of faith schools be protected?"
16. We are concerned about the centralisation of admissions decisions to the Secretary of State, who will have to both set and approve changes in admissions policies. This will result in more decision-making power being given to the Secretary of State in Whitehall and less local accountability.
17. The lack of mechanisms in the Bill to make head teachers of Academies accountable, is an issue of concern in case there is a weak governing body. The key responsibilities of the Governing Body of an Academy include managing finance and property and employing staff. The day-to-day running of the Academy is the responsibility of the Principal.¹⁰ However, in practice the Governing Body may on occasion act as an approval mechanism for the Principal's decision making.

⁷ See the Education Reform Act 1988 at: http://www.opsi.gov.uk/acts/acts1988/ukpga_19880040_en_1

⁸ See clause 4(1)(a) of the Academies Bill.

⁹ See *Hansard*, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools at column 589: "Academies are required to have at least one parent-representative on the governing body, and of course many choose to have more." See also paragraph 46 of the model articles of association for a Single Academy, which refers to 1 Parent Governor "Academies Project Management Standards Site" and "Former DCSF Funding Agreement: Stand-Alone Model" of January 2010. Press link, then press the Folder, then the Word document marked "Model Articles-Single-January 2010"; at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

¹⁰ See: Standards Site: "Academies" from the former DCSF: "Academy Governors Information Sheet", which is to be found as a download from the following link:

http://www.standards.dcsf.gov.uk/academies/what_are_academies/organisation/?version=1#1576183

This is a general comment and we recognise that there are financial and accounting requirements in the Stand-Alone Model Funding Agreement. See "Academies Project Management Standards Site" and "Former DCSF Funding Agreement: Stand-Alone Model" of January 2010. Press link, then see the folder and then press the

18. There do not appear to be any specific stipulations concerning the ceiling of the salary and/or bonuses a Director running a number of Academies can be awarded out of public funds, which in one case was reported to be higher than the Prime Minister's.¹¹
19. It is agreed that schools need more control over their curriculum and funds. However, the same goal could be achieved by amending current education law, so that the benefits of Academy status could be enjoyed by all maintained schools without the need for them to convert to Academies.

Background

Current Model for Academies

1. Academies are currently seen as “independent, all-ability, state schools supported by sponsors.”¹² The funding agreement between the Secretary of State and the Academy Trust covers the characteristics of the academy:¹³ it should have a broad curriculum with an emphasis upon a particular subject area, or particular subject areas specified in the agreement, and it should provide education for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated.¹⁴
2. The stand-alone model funding agreement¹⁵ also includes conditions of the grant, grants to be paid by the Secretary of State, financial and accounting requirements, conditions for termination, general terms and annexes. There is also a model memorandum and articles of association. The annexes include details of SEN provision, exclusion and admissions arrangements.¹⁶

Word document marked “Model Funding Agreement-Single-January 2010”, at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

¹¹ See the following two articles: *The Guardian*, “Teachers to strike over sackings at academy”, 20th April 2010, at: <http://www.guardian.co.uk/education/2010/apr/20/teachers-strike-over-sackings-at-academy> and *The Guardian*, “City Academy Chiefs accused of living ‘high life’ on taxpayers cash”, 7th April 2010, at:

<http://www.guardian.co.uk/education/2010/apr/07/academy-trust-directors-expenses-whistleblowers>

The above press reports state that the Director of a company running a number of Academies received a salary of £260,000 per year. This situation seems to have occurred despite the Federation Model Funding Agreement containing clauses on Financial and Accounting Requirements. See the “Federation Model Funding Agreement” of January 2010 at the following link and then click “Model Funding Agreement: Multi” of January 2010, at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

¹² See the website of the SSA Trust at: <https://www.ssatrust.org.uk/Academies/Pages/default.aspx>

¹³ As set down in section 482(2) of the Education Act 1996 and as substituted by the Education Act 2002.

¹⁴ See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then see the folder and then press the Word document marked “Model Articles-Single-January 2010”, at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

¹⁵ There is a “Federation Model Funding Agreement” of January 2010 at the following link:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

¹⁶ See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then see the folder and then click on the Word document marked “Model Funding Agreement”, “Model Memorandum-Single January 2010” or “Model Articles Single”. The rest of the Word documents in the folder are in the Annexes.

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

3. Academies have hitherto been “targeted on areas with the highest deprivation and lowest educational achievement.”¹⁷ Therefore, they consist of what were “failing” schools.

New Model for Academies

4. The new Academies Bill envisages a different type of school, entirely. Schools that are currently maintained by the LEA and rated “excellent” will be allowed to be fast tracked into becoming Academies, as will grammar schools. Apparently 1,100 schools have expressed an interest in becoming Academies, 620 of which are “outstanding”, including 250 primary schools.¹⁸
5. An “Academy arrangement”, as defined by clause 1 of the Bill, covers either an Academy agreement (a contractual agreement) “or” arrangements for financial assistance (clause 1(2)(b)). The Explanatory Notes to the Bill state that the latter will be channelled through grant funding under section 14 of the Education Act 2002. Section 14 of the Education Act 2002 allows the Secretary of State to provide funding to any person for a wide range of purposes related to education and children. It is assumed that such funding would normally be provided by way of a contractual agreement. It is unclear in what circumstances clause 1(2)(b) would be used.
6. The Bill proposes a stand-alone model agreement plus a federation model agreement, with pro-formas to complete to request changes to the model agreement.¹⁹ It concerns us to note that the current information sheet regarding the procedure for designation of an Academy as a school having a particular “religious character”, only offers the option of using the clauses relevant to religiously-designated schools in the funding agreement, even though their importance is underlined. The former DCSF must have felt it necessary that this information sheet should underline the importance of using that option, presumably because of concern that important clauses might be omitted. This situation demonstrates how easy it is to omit important terms when forming a contract, given that they can be chosen or omitted as part of a stand-alone model funding agreement with optional clauses, rather than forming part of the Bill.²⁰

¹⁷ See the National Society for Promoting Religious Education, Church of England Academies, National Society Guidance for dioceses and other interested parties updated October 2008, at:

<http://www.natsoc.org.uk/downloads>

¹⁸ See *Hansard*, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools at column 509:

In a little more than a week, more than 1,100 schools have expressed an interest in applying for academy freedoms. More than 620 outstanding schools, including more than 250 outstanding primaries and more than half of all outstanding secondary schools, have expressed their interest, along with more than 50 special schools.

Available at: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100607-0002.htm#1006077000378>

¹⁹ See the Funding Agreement-Protocol for submitting variations to the Model Funding Agreement (February 2007), at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

²⁰ See the Procedure for Religious Designation (April 2006), which states that:

APLs should ensure that in the Funding Agreement clauses 23 and 24 use the option of wording relevant to religiously designated schools.

7. Under clause 5 of the Bill, foundation or voluntary schools that have already been designated by order under section 69(3) as “having a particular religious character” will be automatically designated on conversion to an Academy as an “independent school having a religious character”. Previously, schools had to apply for this designation in the process of becoming an Academy.
8. The School Standards and Framework Act 1998 sets out the different types of schools maintained by an LEA. The existing types of maintained school are: community schools, foundation schools, voluntary schools (comprising voluntary-aided and voluntary-controlled schools), community special schools, and foundation special schools.²¹
9. In maintained schools that are not designated as having a religious character, it is important to ensure the improvement and continuation of Christian education, either by way of the funding agreement or preferably in the provisions of the Bill itself.
10. There need to be separate model funding agreements and memoranda and articles of association for faith schools, (which are foundation or voluntary schools) to ensure the preservation of the religious tenets and ethos of the school, including the principles of its foundation or trust documents. An analogy could be drawn with the changes in relation to the registration of Churches as a result of the Charities Act 2006, whereby the Charity Commission spent time consulting with each denomination to work out model Governing Documents.
11. It is essential that the religious character of a church-related Academy is expressed in the objects clause of the memorandum of association of its Academy Trust, during the formation of the new company.²² The role of the diocese or religious authority needs to be properly considered. How would the essence of the foundation or trust deed be protected in the documentation necessary for conversion?
12. Some Peers expressed concern about the pace of change and the target of September 2010 for the creation of the new Academies during the Second Reading of the Bill. The Minister’s response that he expects fast-tracking to take 3 months is still a short time frame.²³

Available at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

²¹ See section 20 of the School Standards and Framework act 1998, at:

http://www.opsi.gov.uk/acts/acts1998/ukpga_19980031_en_4#pt2-ch1-pbl-11g20

²² See under “Church of England Academies” at:

<http://www.natsoc.org.uk/downloads/academiesguidancefordiocesesdec08.doc> updated October 2008.

²³ See Hansard, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools at column 590:

The speed of the process was another recurring theme. The noble Lord, Lord Turnbull, led the charge, but the noble Baronesses, Lady Massey, Lady Sharp and Lady Royall, returned to it. 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

Advantages

13. The prime advantage of Academy status is the freedom for head teachers and teachers to have more control over what is taught and the removal of local authority control. The Minister has stated that “Many head teachers of academies argue persuasively that academy freedoms have helped them improve standards.”²⁴
14. Academy status allows the head teacher to take a leadership role. Funds for the Academy’s capital and running expenses will result from the Academy’s arrangement and agreement with the Secretary of State. The head teacher and governors of the Academy will have control of the budget and the cost of teaching staff.
15. The Academies Bill does contain a basic statutory requirement that an Academy’s curriculum must be broadly-based and balanced, so that it:²⁵
 - (a) *promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and*
 - (b) *prepares pupils at the school for the opportunities, responsibilities and experiences of later life.*
16. Certain other curriculum-related issues are to be dealt with, if at all, in the funding agreement between the Academy Trust and the Secretary of State.

Disadvantages

17. The Minister’s response at Second Reading to questions regarding the lack of provisions on the face of the Bill about SEN was that the “Academy funding agreements will require academies to have regard to the SEN code of practice in the same way as maintained schools.”²⁶
18. There are provisions in education law regarding RE and sex education that we submit should also be on the face of the Bill. Some of those provisions are mentioned in the current stand-alone model funding agreement under “conditions of grant”.²⁷ It is

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.

²⁴ See *Hansard*, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools, at column 588: <http://www.publications.parliament.uk/pa/ld201011/dhansrd/text/100607-0013.htm>

²⁵ See clause 1(6)(a) of the Academies Bill (as introduced on 26th May 2010) and section 78 of the Education Act 2002.

²⁶ See *Hansard*, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools, at column 588: <http://www.publications.parliament.uk/pa/ld201011/dhansrd/text/100607-0013.htm>

²⁷ See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then see the folder and then press the Word document marked “Model Articles-Single-January 2010”, at: <http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

unknown whether this Government will use the same model agreements. However, being included in an agreement gives a clause merely contractual, not statutory force.

19. We are particularly concerned to ensure that existing provisions regarding RE and collective worship, sex education, governance and the recruitment and admissions policies of faith schools are properly protected. We note that the current stand-alone funding agreement includes paragraphs 34 to 42 (of relevance to RE), which we consider to be important (Please see Appendix A for details).²⁸
20. Matters such as allowing religious schools to teach RE according to their ethos and ensuring that schools comply with collective worship requirements should appear on the face of the Bill. Schools not designated as having a religious character use agreed syllabuses in accordance with a provision in education law which states that: “Every agreed syllabus shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.”²⁹ Again, such provisions should be on the face of the Bill.
21. We are particularly concerned that the funding agreement fails to refer specifically to the parental right to withdraw a child from sex education (up to the age of 19), as provided in section 405 of the Education Act 1996. Provisions equivalent to sections 403 to 405 of the Education Act 1996 should be included on the face of the Bill for maintained schools that propose to become Academies.
22. Religious schools are governed by an important provision that states that religious education should be given in accordance with the trust deed.³⁰ No such provisions appear on the face of the Bill, nor are they apparent in the current stand-alone model funding agreement.³¹
23. Section 80(1)(a) of the Education Act 2002 provides that the basic curriculum of every maintained school shall include provision for religious education for all registered pupils. This section provides that religious education in faith schools such as voluntary aided

²⁸ See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then, see the folder and then press the Word document marked “Model Articles-Single-January 2010” at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

²⁹ See section 375(3) of the Education Act 1996 at:

http://www.opsi.gov.uk/acts/acts1996/ukpga_19960056_en_23

³⁰ See section 399 of the Education Act 1996:

399 Determination of question whether religious education in accordance with trust deed

Where any trust deed relating to a voluntary or grant-maintained school makes provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious education given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question shall be determined in accordance with the provisions of the trust deed.

Available at: http://www.opsi.gov.uk/acts/acts1996/ukpga_19960056_en_24

³¹ See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then see “articles of association” and “memorandum” and the “model funding agreement”, at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

schools should be in accordance with their trust deeds or religious tenets by referring to Schedule 19 of the Schools and Standards Framework Act 1998. The collective worship requirements are found in Schedule 20 of the School Standards and Framework Act 1998. Again, these provisions are missing from the face of the Bill.

Religious Education: Concerns regarding the Teaching of Christianity

24. We are very concerned that a recent Ofsted report published on 7th June 2010 found that the teaching of Christian fundamentals is being sidelined in schools.³² A recent survey of more than 500 12-year-olds found that only 54% knew that Christians celebrated the Resurrection at Easter.³³ The Ofsted report warns that the teaching of Christianity in schools is often “superficial”, and that Jesus’ parables are often used to “explore personal feelings or to decide how people should behave” without any reference to their religious significance. Ofsted also warns that the experiences of Christian pupils are being sidelined, while more attention is paid to the experiences of pupils from other faith groups.
25. As regards the Academies Bill, section 375(3) of the Education Act 1996 could be repeated in the Bill, but without the reference to an “agreed” syllabus (which for maintained schools not designated as having a particular religious character is a locally agreed syllabus); the teaching of RE could also be subject to inspection. That way, Academies would be free to follow section 375(3) of the Education Act 1996 in their teaching of Christianity, which may help to drive up standards.
26. “All maintained schools must teach RE according to either the locally agreed syllabus, or in accordance to the school’s designated religion or religious denomination or in certain cases the trust deed relating to the school.”³⁴
27. We are concerned to note that an amendment by Lord Lucas has been tabled to be moved in Committee, which seeks to remove the primacy currently given to the teaching of Christianity, by stating that the curriculum is to include “teaching about the precepts of all major religions in the United Kingdom”.³⁵

³² See the Ofsted report, *Transforming Religious Education*, at: <http://www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/Transforming-religious-education> See also the CCFON report: “Schools sidelining teaching on Christian fundamentals”, at: <http://www.ccfon.org/view.php?id=1099> See also the press reports: *The Daily Telegraph*: “Schools failing to teach children the core beliefs of Christianity says Ofsted”, 6th June 2010, at: <http://www.telegraph.co.uk/education/educationnews/7805772/Schools-failing-to-teach-children-the-core-beliefs-of-Christianity-says-Ofsted.html> and *The Daily Mail*, “Teaching of other faiths is sidelining Christianity” 7th June 2010, at: <http://www.dailymail.co.uk/news/article-1284385/Schools-sideline-Christianity-teaching-pupils-religion-finds-Ofsted.html>

³³ See *The Daily Telegraph*: “Schools failing to teach children the core beliefs of Christianity says Ofsted”, 6th June 2010, at: <http://www.telegraph.co.uk/education/educationnews/7805772/Schools-failing-to-teach-children-the-core-beliefs-of-Christianity-says-Ofsted.html>

³⁴ See pages 14 and 15 in “Religious Education in English Schools: Non-Statutory Guidance 2010” for an explanation of the arrangements for the teaching of RE in faith schools: http://www.teachernet.gov.uk/_doc/14671/Religious%20education%20guidance%20in%20English%20schools%202010.pdf

³⁵ See Lord Lucas’s amendments to be moved in Committee, dated 11th June 2010, at: <http://www.publications.parliament.uk/pa/ld2010/11/ldbills/001/amend/am001-b.htm>

28. The previous Government's Guidance, which still applies, is called the "Religious Education Guidance in Schools: Non-Statutory Guidance 2010".³⁶ Upon reading the Guidance, it becomes apparent that the implementation of the basic statutory obligation in section 375(3) of the Education Act 1996 that "Every agreed syllabus shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain" has become diluted and confused. It is not surprising that Ofsted found that the teaching of Christianity in schools is unsystematic and confused. The simple principle of teaching Christianity whilst taking account of the other principal religions appears to have been forgotten. In our submission, there needs to be more time devoted to the teaching of Christianity; the time devoted to RE should be on a par with other subjects, but its non-prescriptive basis should be retained to allow schools freedom. The current Guidance should be replaced with improved Guidance that adheres to section 375(3) of the Education Act 1996 and provides references to appropriate sources to aid the teaching of Christian education.

Governance/Consultation Concerns

29. The Education Reform Act 1988 (now repealed) went into great procedural detail regarding schools that wanted to obtain grant maintained status ("GMS"), which also entailed central Government funding. It included provisions requiring the governing body to ballot parents before applying for GMS.³⁷

30. The National Governors' Association believes that parents should be consulted on whether their children's school should become an Academy. Its press release states that the: "NGA is dismayed that the Academies Bill...allows such a fundamental change in the designation of the school to be carried out without any requirement to consult local stakeholders. It appears to fly in the face of the Coalition Government's intention to give parents a greater say in education. In its first piece of education legislation the Government has effectively disenfranchised local communities."³⁸

31. The Bill states that LEAs will not be consulted either, presumably to speed up the process. In terms of existing legislation, section 482 of the Education Act 1996, as amended by section 65 of the Education Act 2002, provides for the establishment of Academies and specifies the core characteristics of Academies. Under that section, there is provision for consultation with the Local Education Authority before an agreement is entered into.

32. There are a number of education laws and regulations that determine the number and type of governors within different types of maintained schools.³⁹ A table in chapter two

³⁶ See "Religious Education Guidance in Schools: Non-Statutory Guidance 2010", at: <http://www.teachernet.gov.uk/teachingandlearning/subjects/re/guidance>

³⁷ See sections 60 and 61 of the Education Reform Act 1988, since repealed, at: http://www.opsi.gov.uk/acts/acts1988/ukpga_19880040_en_6#pt1-ch4-pb3-l1g60

³⁸ See the National Governors' Association press release of 28th May 2010 at: <http://www.nga.org.uk/pressrel.aspx?cardid=133>

³⁹ See the "Guide to the Law for School Governors", published in January 2010, at: <http://www.governornet.co.uk/publishArticle.cfm?topicAreald=26&contentId=1347&pageStart=1&sortOrder=c.publishDate> the Education Act 2002, sections 19 and 20 at:

of the “Guide to the Law for School Governors” sets out the composition of school governors for each different type of school.⁴⁰ For example, in faith schools such as voluntary aided schools, the number of foundation governors must outnumber the other governors by a total of two. An examination of the table shows that parent governors may compose up to one third of the number of governors, depending on the type of school.

33. For existing sponsored Academies, the DCSF website states that “The Academy will be governed by a governing body which consists of the directors of the company constituted under the Mem & Arts. A typical governing body might consist of the following: 5/6 sponsor governors; 1 governor appointed by the LA; 1 or more Parent (elected); 1 teacher; 1 staff; the Principal as ex-officio. The Sec of State has the right to appoint additional governors in certain limited circumstances (standards unacceptably low or safety of student and or staff is threatened).” (sic)⁴¹ Whilst there may be no sponsor governors if there is no external funding, the Bill still raises unanswered questions over the composition and mode of selection of the governors of non-sponsored Academies.
34. The governing body manages the Academy on behalf of the Academy Trust. The composition of the governing body is agreed in the articles of association at the time that the funding agreement is signed. Its key responsibilities include managing finance and property and employing staff.⁴²
35. The Minister commented at the Bill’s Second Reading in the House of Lords that: “Governance structures are set out in an academy’s articles of association. We expect that an existing foundation or trust will continue to appoint the majority of governors. We do not anticipate that the existing trustees would consent to the conversion unless they were satisfied with the proposed governance arrangements. Academies are required to have at least one parent-representative on the governing body, and of course many choose to have more.”⁴³ Such arrangements lead to a reduction in the current number of parent governors. If the idea of the “Big Society” is to be implemented, more power should be given to parents as governors, not less.
36. In addition, governors are said to be concerned by “fears they will be left isolated from vital education support networks and miss out on valuable collaboration as institutions

http://www.opsi.gov.uk/ACTS/acts2002/ukpga_20020032_en_4#pt3-ch1-11g19 and the School Governance (Constitution) (England) Regulations 2007, SI 2007/957, at: <http://www3.hants.gov.uk/constitutionregs2007-2.pdf> The Education Act 1996, section 576(1), (3) and (4) (at: http://www.opsi.gov.uk/acts/acts1996/ukpga_19960056_en_35#pt10-ch6-pb6-11g576), read together with the Education Act 2002, section 212(2) (at: http://www.opsi.gov.uk/ACTS/acts2002/ukpga_20020032_en_17#pt11-pb12-11g212), gives a definition of “parent”. See also the definition of “parent” in The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations, SI 2007/1289, available at: http://www.opsi.gov.uk/si/si2007/uksi_20071289_en_2

⁴⁰ See the “Guide to the Law for School Governors”, published in January 2010, at: <http://www.governornet.co.uk/publishArticle.cfm?topicAreald=26&contentId=1347&pageStart=1&sortOrder=c.publishDate>

⁴¹ See:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/implementation/academygovernance/#Top>

⁴² See the “Governors’ Information Sheet”, which is available from the Academy section of the DCSF’s website: http://www.standards.dcsf.gov.uk/academies/software/Information_Sheet_governors.doc?version=1

⁴³ See Hansard, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools, at column 589: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100607-0013.htm>

become increasingly competitive”.⁴⁴

Selection of Pupils by Academies, including Faith Schools

37. The Minister stated at Second Reading that “the academy funding agreements will require academies to comply with the school admissions code and law, as with all maintained schools. The code and related legislation outlaw additional selection and require the highest priority to be given to looked-after children.”⁴⁵ Again, such compliance will be a matter of contractual commitment as opposed to statutory obligation.
38. There is a whole raft of laws and regulations applying to school admissions for maintained schools, as described in the Schools Admissions Code 2010.⁴⁶ For maintained schools, failure by a relevant authority or body to comply with the mandatory requirements in this Code is a breach of that authority’s or body’s statutory duty. In the case of an Academy, a failure to comply with the mandatory requirements in the Code is merely a breach of its funding agreement⁴⁷ and is therefore simply a breach of its contractual obligations with the Secretary of State, because parents are not a party to such contracts.
39. In our submission, a significant problem that arises when a school becomes an Academy is that the Secretary of State gains control over admissions arrangements and has to approve any changes to them as part of an Academy’s funding agreement. Contrary to expectations, this represents a centralisation of control to Whitehall rather than a decentralisation of control. “For community or voluntary controlled schools, the local authority is the admission authority; and for foundation or voluntary aided schools, the governing body of the school is the admission authority. For Academies the Funding Agreement states who is responsible for applying admissions arrangements (in most cases the Academy itself) but Academies can only set or alter their admission arrangements with the prior agreement of the Secretary of State.”⁴⁸
40. Whilst consultation on admissions may be similar in Academies as it is for other schools, because “An Academy is required to consult in the same way as other admission authorities do, but cannot alter its admission arrangements without the approval of the Secretary of State,” it is of concern that there is central control of objections to Academy admissions: “Any objections to an Academy’s admission arrangements will be considered by the Secretary of State.”⁴⁹

⁴⁴ See *The Guardian*, “Governors could block academy plans”, at:

<http://www.guardian.co.uk/education/2010/jun/04/governors-academy-decisions>

⁴⁵ See Hansard, 7th Jun 2010, Lord Hill of Oareford, Parliamentary Under-Secretary of State for Schools, at column 588: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100607-0013.htm>

⁴⁶ See page 8 of the School Admissions Code 2010, available at the following link:

<http://www.dcsf.gov.uk/sacode/downloads/3986-admissions-code-feb10.doc>

⁴⁷ See the School Admissions Code 2010, available at the following link:

<http://www.dcsf.gov.uk/sacode/downloads/3986-admissions-code-feb10.doc>

⁴⁸ See chapter 1, para. 1.15 of the School Admissions Code 2010, available at the following link:

<http://www.dcsf.gov.uk/sacode/downloads/3986-admissions-code-feb10.doc>

⁴⁹ See chapter 1, para. 1.29 of the School Admissions Code 2010, available at the following link:

<http://www.dcsf.gov.uk/sacode/downloads/3986-admissions-code-feb10.doc> For an explanation of the role of the school adjudicator in receiving objections on admission arrangements to maintained schools and how it

41. Faith schools can only use faith-based criteria in order to give higher priority in admissions to children who are members of, or who practise, their faith or denomination when a school is oversubscribed.⁵⁰ It is therefore a myth that faith schools have great freedom over admission of pupils of the same faith. This contrasts with grammar schools, where selection is entirely based on aptitude.
42. School transport must be an issue of concern for faith schools and it can influence parental choice, yet it does not appear to be mentioned in the stand-alone funding agreement,⁵¹ even though school meals are listed in the index.⁵² All schools have to take local children who apply if they have places and children in care have priority.
43. It would be helpful if, in addition to allowing for automatic designation as an “independent school having a religious character” on conversion to an Academy, the Bill also allowed for a school to be automatically listed in the register of independent schools for England as a “school with a religious ethos”. The reason for this suggestion is that the exceptions that allow for selection on the grounds of religion or belief apply only to foundation or voluntary schools, not to Academies. There are other exceptions listed in the Equality Act 2010, including an exception for schools listed in the register of independent schools for England or for Wales as having a religious ethos.⁵³ Therefore, the change we suggest to the Bill would help to clarify religious discrimination exceptions on pupil admissions for faith schools converting to Academies.
44. In summary, there are some real areas of concern that need to be considered as the Academies Bill proceeds through Parliament.

corresponds to the position in Academies, please see Chapter 4, paragraphs 4.1 to 4.4 of the “School Admissions Code 2010”.

⁵⁰ See chapter 2, para. 2.46 of the School Admissions Code 2010, available at the following link:

<http://www.dcsf.gov.uk/sacode/downloads/3986-admissions-code-feb10.doc>

⁵¹ See Annex 1 of the *Academy Principals' Handbook*, which suggests that home-to-school transport remains with the LA for Academy pupils. The handbook can be downloaded from the following link:

<http://www.standards.dfes.gov.uk/academies/publications>

⁵² See “Academies Project Management Standards Site” and “Former DCSF Funding Agreement: Stand-Alone Model” of January 2010. Press link, then see “articles of association” and “memorandum” and the “model funding agreement”, at:

<http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

⁵³ See Schedule 11, Part 2, paragraph 5(a) and (b) of the Equality Act 2010, at:

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_30#sch11 These exceptions are designed to replicate the effect of provisions in Part 2 of the Equality Act 2006 under section 50, see:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_5 and

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_30#sch11

Appendix A

Details from the Single Funding Agreement, Stand-Alone Model (January 2010), which are of Relevance to the Delivery of Religious Education⁵⁴

Curriculum, curriculum development and delivery and RE and collective worship

- 34) *The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on [insert specialism(s)].*
- 35) *The Academy Trust shall ensure that the National Curriculum programmes of study for English, Mathematics and Science for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to the Academy in Years 1-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.*
- 36) *The Academy Trust shall ensure that if the Academy admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy's specialism.*
- 37) *Despite clauses 35-36, the Academy Trust is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.*
- 38) *The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.*
- 39) *Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:*
 - a) *subject to clause 41, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;*
 - b) *subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;*
 - c) *the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.*
- 40) *Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:*

⁵⁴ Academies Project Management Site: Single Funding Agreement, Stand-Alone Model (January 2010): <http://www.standards.dcsf.gov.uk/academiesprojectmanagement/generalpolicies/fundingagreementplusannexes>

- a) *subject to clause 41, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the QCDA's national framework for religious education in schools;*
 - b) *subject to clause 41, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.*
- 41) *Section 71(1)-(4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 39 or 40 as appropriate.*
- 42) *The Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.*