5. Governance

Each academy will be governed by an Academy Trust, constituted as a company limited by guarantee and a charity and required to comply with company and charity law (alongside legal obligations in other areas such as education law).

Until 1 January 2011 an Academy Trust will be a registered charity. However, the Charity Commission has indicated that, to require a new Academy Trust to be registered with the Commission, would be of limited regulatory benefit and create unnecessary costs. As such, the indication at the date of printing is that the Commission will not insist on a new Academy Trust completing an application to be included on the Charity Commission register. However, those forming a new Academy Trust should seek specific confirmation from the Charity Commission. An Academy Trust already registered with the Commission will continue to be regulated by the Commission until 1 January 2011.

From 1 January 2011, an Academy Trust will be an exempt charity and not required to be registered with and/or regulated by the Charity Commission. Instead, it will be regulated by the Financial Services Authority. However, the Chancellor, George Osborne, announced in his Mansion House speech on 16 June 2010 that the Financial Services Authority is to be abolished and replaced by an alternative structure by 2012. What is unclear is who will become the regulator of exempt charities (including whether the YPLA will assume this role). Watch this space!

As regards further details of the governance arrangements, an Academy trust will be owned by its members ("Members") who each "guarantee" to contribute up to ten pounds towards the liabilities of the Academy Trust on its winding up. An Academy Trust will also be governed by its governors ("Governors") who wear two hats as directors of the company incorporated at Companies House and trustees of the charity. The governors will form the governing body of the Academy Trust ("Governing Body").

The DfE requires an Academy Trust to be constituted using the DfE’s template Memorandum of Association (under which the first Members (or subscribers) agree to form the Academy Trust) and the DfE’s template Articles of Association (which essentially form the rule book for the Academy Trust).

The DfE template Memorandum and Articles of Association have been prepared on fairly standard terms for a charitable company limited by guarantee. However, it is worth making brief mention of specific provisions in the Articles of Association ("Articles").

Members and Governors

• The Articles do not specify how many governors from a school’s governing body shall become Members and/or Governors. This is for each school to decide.

Members

• A footnote to the Articles requires the Academy Trust to be incorporated with at least three Members.

• The Secretary of State may appoint a Member (although doesn’t normally does so unless there are problems at the academy).

• The Chair of the Governing Body is also a Member.

Governors

• The Members may appoint a number of Governors (to be specified in the Articles)

• The Governors may appoint academy employees as Governors but academy employees may not exceed more than one third of the total number of Governors.

• There must be at least two parent Governors.

• The local authority may appoint a Governor.

• The Principal/Head Teacher of the academy will be an ex-officio Governor

• The Secretary of State may step-in and appoint any number of additional Governors where there are problems at the academy on a similar basis to its rights of step-in in relation to a maintained school.

An extract from A Plain Guide to the Academies Act 2010


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