



Lord Marks of Henley-on-Thames
House of Lords
London
SW1A 0PW

MoJ ref: SUB92504

26 November 2021

Dear Lord Marks,

LOCAL AUTHORITY INVOLVEMENT IN SECURE SCHOOLS

Thank you for your question during the debate on Clause 139 of the Police, Crime, Sentencing and Courts Bill, regarding the possibility that secure 16 to 19 academies be operated by local authorities. I am writing to provide further information on the legislation and our position against the relevant amendment (223A).

During the debate, you helpfully referred me to section 6 of the Academies Act 2010 ("Academies Act"), which states:

- (1) This section applies if an Academy order has effect in respect of a school.*
(2) The local authority must cease to maintain the school on the date ("the conversion date") on which the school, or [an educational institution] that replaces it, opens as an Academy ("the Academy").

This section applies in circumstances when the Secretary of State makes an academy order, either on application of a maintained school's governing body or by direction when a school requires special measures or significant improvement. Under the same section:

- (3) A maintained school is "converted into" an Academy if Academy arrangements are entered into in relation to the school or [an educational institution] that replaces it.*

"Academy arrangements" are defined under section 1 of the Academies Act, which provides that:

- (1) The Secretary of State may enter into Academy arrangements with any person ("the other party").*

This allows the Secretary of State to enter into academy arrangements, through a funding agreement or financial assistance with any legal person. When this happens, funding for the school comes directly from the Secretary of State under a funding agreement, rather than through the Local Authority, and the academy school is managed by its proprietors. As such, it is no longer a local authority-maintained school. However, our view is that it would be legally possible for a local authority to set up an entity capable of entering into academy arrangements directly with the Secretary of State. It should be noted that there would be administrative burdens for a local authority in doing so, due to the provisions of the Local Government and Housing Act 1989.

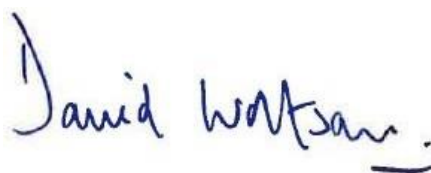
Moreover, it is the policy of the Government that academy trusts are not local authority-influenced companies, and as a result, no academy in England is operated by a local authority. In secure schools, the Ministry of Justice is committed to mirroring academies policy and procedures to the greatest extent possible. We take this position for consistency, but also on the basis of the aforementioned practical complications (rather than legal barriers) associated with local authorities operating academies. By contrast, our view is that the Secure Children's Home (SCH) legal framework is a more straightforward route to the expansion of local authority involvement of the youth custodial estate, rather than the 16-19 academies framework. Indeed, local authorities have a long-established role in children's social care and youth justice provision, including running SCHs. *We will though want to keep this issue under review.*

It is also important to note that local authorities have a statutory duty to safeguard and promote the welfare of children in their local area, and we expect secure school providers to work very closely with local authorities in relation to the wellbeing of children in their care.

The Government seeks to engage the highest-quality child-focused providers in the delivery of secure schools. While the majority of organisations which meet the criteria for running secure schools are charities, I am very cognisant of the important role local authorities play and will continue to play in the children's social care and youth justice landscape.

I hope that this answers the question that you raised, and I am happy to meet to discuss this matter further. I will be placing a copy of this letter in the House of Lords library.

Yours sincerely,

A handwritten signature in blue ink that reads "David Wolfson". The signature is written in a cursive, flowing style with a small horizontal line at the end.

**LORD (DAVID) WOLFSON
OF TREDEGAR, QC**