



# Academies Act 2010

## 2010 CHAPTER 32

### *Academy arrangements*

#### **1 Academy arrangements**

- (1) The Secretary of State may enter into Academy arrangements with any person (“the other party”).
- (2) “Academy arrangements” are arrangements that take the form of—
  - (a) an Academy agreement, or
  - (b) arrangements for Academy financial assistance.
- (3) An Academy agreement is an agreement between the Secretary of State and the other party under which—
  - (a) the other party gives the undertakings in subsection (5), and
  - (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.
- (4) Academy financial assistance is financial assistance given by the Secretary of State under section 14 of EA 2002 on terms that require the other party to give the undertakings in subsection (5).
- (5) The undertakings are—
  - (a) to establish and maintain an independent school in England which—
    - (i) has characteristics that include those in subsection (6), or
    - (ii) is specially organised to make special educational provision for pupils with special educational needs;
  - (b) to carry on, or provide for the carrying on of, the school.
- (6) The characteristics are that—
  - (a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum);
  - (b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the arrangements;

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- (c) the school provides education for pupils of different abilities;
  - (d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.
- (7) Academy arrangements in relation to a school within subsection (5)(a)(i) must include provision imposing obligations on the proprietor of the school that are equivalent to the SEN obligations.
- (8) “The SEN obligations” are the obligations imposed on governing bodies of maintained schools by—
- (a) Chapter 1 of Part 4 of EA 1996 (children with special educational needs), and
  - (b) regulations made under any provision of that Chapter.
- (9) Academy arrangements must include terms imposed for the purpose of securing that no charge is made in respect of—
- (a) admission to, or attendance at, the school, or
  - (b) (subject to any exceptions specified in the terms) education provided at the school.
- (10) A school to which Academy arrangements relate is to be known as an Academy.

## **2 Payments under Academy agreements**

- (1) Payments under an Academy agreement may be in respect of capital or current expenditure.
- (2) So far as payments under an Academy agreement relate to current expenditure, the agreement must provide for them to continue (subject to other requirements of the agreement being fulfilled)—
- (a) for at least 7 years, or
  - (b) indefinitely, but terminable by the Secretary of State giving at least 7 years’ written notice.
- (3) If an Academy agreement makes provision for payments in respect of capital expenditure, the agreement may provide for the repayment to the Secretary of State, in circumstances specified in the agreement, of sums determined in accordance with the agreement.
- (4) An Academy agreement may provide for indemnifying a person, in the event of the Secretary of State terminating the agreement, for expenditure—
- (a) incurred by the person in carrying out the undertakings under the agreement, or
  - (b) incurred by the person (otherwise than by virtue of subsection (3)) in consequence of the termination of the agreement.
- (5) In Schedule 1 to the School Finance (England) Regulations 2008, after paragraph 8 insert—
- “8A Where a child is a registered pupil at an Academy, expenditure in respect of services for making provision for pupils with low incidence special educational needs or disabilities.”

- (6) Where a local authority fails to secure satisfactory provision for pupils with low incidence special educational needs or disabilities, the Secretary of State may make alternative arrangements.

### *Conversion of schools into Academies*

## **3 Application for Academy order**

- (1) The governing body of a maintained school in England may apply to the Secretary of State for an Academy order to be made in respect of the school.
- (2) In the case of a foundation or voluntary school that has a foundation, this is subject to subsections (3) and (4).
- (3) The governing body of a foundation or voluntary school that has a foundation must consult the foundation before making an application under this section.
- (4) The governing body of a foundation or voluntary school that has a foundation may make an application under this section only with the consent of—
- (a) the trustees of the school, and
  - (b) the person or persons by whom the foundation governors are appointed.
- (5) Expressions used in subsections (2) to (4) and SSFA 1998 have the same meaning as in that Act.

## **4 Academy orders**

- (1) The Secretary of State may make an Academy order in respect of a maintained school in England if—
- (a) the governing body of the school make an application under section 3, or
  - (b) the school is eligible for intervention (within the meaning of Part 4 of EIA 2006).
- (2) An Academy order in respect of a school is an order for the purpose of enabling the school to be converted into an Academy.
- (3) A maintained school is “converted into” an Academy if Academy arrangements are entered into in relation to the school or a school that replaces it.
- (4) If an Academy order is made in respect of a school, the Secretary of State must give a copy of the order to—
- (a) the governing body and head teacher of the school, and
  - (b) the local authority.
- (5) If, after an application has been made under section 3, the Secretary of State decides not to make an Academy order in respect of a school, the Secretary of State must inform the following of the decision and the reasons for it—
- (a) the governing body and head teacher of the school, and
  - (b) the local authority.
- (6) Despite section 568(1) of EA 1996 (orders to be made by statutory instrument) (as applied by section 17(4) of this Act) the power of the Secretary of State to make an Academy order is not required to be exercised by statutory instrument.

- (7) An Academy order may include incidental, consequential, supplemental and transitional provision.

## **5 Consultation on conversion**

- (1) Before a maintained school in England is converted into an Academy, the school's governing body must consult such persons as they think appropriate.
- (2) The consultation must be on the question of whether the school should be converted into an Academy.
- (3) The consultation may take place before or after an Academy order, or an application for an Academy order, has been made in respect of the school.

## **6 Effect of Academy order**

- (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 a school that replaces it, opens as an Academy ("the Academy").
- (3) If the school is a selective school, section 1(6)(c) (requirement to provide education for pupils of different abilities) does not apply in relation to any Academy arrangements to be entered into in relation to the school or a school that replaces it.
- (4) For this purpose a school is a "selective school" if its admission arrangements make provision for selection of pupils by ability, and—
- (a) its admission arrangements are permitted to do so by section 100 of SSFA 1998 (permitted selection: pre-existing arrangements), or
  - (b) the school is designated under section 104 of SSFA 1998 (designation of grammar schools).

Section 99(5) of SSFA 1998 applies for the purposes of this subsection as it applies for the purposes of Chapter 2 of Part 3 of SSFA 1998.

- (5) The relevant independent school standards are to be treated as met in relation to the Academy on the conversion date.
- (6) "The relevant independent school standards" are the independent school standards (as defined in section 157(2) of EA 2002) that are applicable to the Academy on the conversion date.
- (7) Subsection (8) applies if the school is a foundation or voluntary school which is designated by order under section 69(3) of SSFA 1998 as a school having a particular religious character.
- (8) The Academy is to be treated, on the conversion date, as designated by order under section 69(3) of SSFA 1998 as an independent school having that religious character.
- (9) Nothing in any of the following provisions applies in a case where a local authority cease to maintain a school as a result of an Academy order—
- section 30 of SSFA 1998 (notice to discontinue school);
  - sections 15 to 17 of EIA 2006 (procedure for discontinuance of schools).

## **7 Transfer of school surpluses**

- (1) This section applies if—
  - (a) an Academy order has effect in respect of a school,
  - (b) the order was made following an application under section 3, and
  - (c) the school is to be converted into an Academy.
- (2) The local authority must determine—
  - (a) whether, immediately before the conversion date, the school has a surplus, and
  - (b) if so, the amount of the surplus.
- (3) The local authority must pay any amount determined under subsection (2)(b) to the proprietor of the Academy, subject to the provisions of regulations under subsection (4).
- (4) Regulations may make provision in connection with the determination and payment of the amount of a surplus under this section.
- (5) Regulations under subsection (4) may in particular include provision—
  - (a) requiring the local authority to inform the proprietor of the determinations under subsection (2);
  - (b) authorising the proprietor to apply to the Secretary of State for a review of those determinations;
  - (c) about the procedure for, and the Secretary of State's powers on, any such review;
  - (d) about the effect of any such review on the amount required to be paid by the local authority to the proprietor (including provision requiring repayment of sums by the proprietor or the payment of additional sums by the local authority);
  - (e) about the time limits for doing anything required or permitted to be done under this section or the regulations.
- (6) For the purposes of this section—
  - (a) a school has a surplus immediately before the conversion date if, at that time, there is an amount made available by a local authority to the school's governing body (under section 50 of SSFA 1998 or otherwise) that has not been spent by the governing body or the head teacher;
  - (b) the amount of the surplus is that amount.
- (7) For the purposes of subsection (6), the amount which, immediately before the conversion date, has been made available to a school's governing body must be calculated taking into account any relevant redetermination for the funding period in which the conversion date falls.
- (8) In subsection (7)—
  - “funding period” has the meaning given by section 45(1B) of SSFA 1998;
  - “relevant redetermination” means a redetermination of the school's budget share which is required in accordance with regulations under section 47 of that Act.

## **8 Transfer of other property**

- (1) This section applies if—

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- (a) an Academy order has effect in respect of a school, and
  - (b) the school is to be converted into an Academy.
- (2) The Secretary of State may make a scheme (a “property transfer scheme”) in relation to property, rights or liabilities which are—
- (a) held for the purposes of the school by a local authority or the school’s governing body, and
  - (b) specified in, or determined in accordance with, the scheme.
- (3) A property transfer scheme may not make provision in relation to—
- (a) land, or rights or liabilities in respect of land (see Schedule 1), or
  - (b) property or rights to which section 7 applies.
- (4) A property transfer scheme may provide for the transfer of property, rights and liabilities to the proprietor of the Academy.
- (5) A property transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property, rights or liabilities transferred by virtue of the scheme;
  - (b) provide for anything done by or in relation to the current owner in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (c) apportion property, rights and liabilities;
  - (d) make provision about the continuation of legal proceedings.
- (6) The things that may be transferred by a property transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (7) A transfer by virtue of a property transfer scheme does not affect the validity of anything done by or in relation to the current owner before the transfer takes effect.
- (8) A property transfer scheme may include incidental, consequential, supplemental and transitional provision.
- (9) In this section “the current owner” means the person by whom the property is held, or in whom the rights or liabilities are vested, immediately before the transfer to be effected by a property transfer scheme takes effect.
- (10) A transfer made by virtue of a property transfer scheme is binding on all persons even if, apart from this subsection, it would have required the consent or concurrence of any person.

*Academies: other provisions*

**9 Impact: additional schools**

- (1) This section applies when the Secretary of State is deciding whether to enter into Academy arrangements in relation to an additional school.
- (2) The Secretary of State must take into account what the impact of establishing the additional school would be likely to be on maintained schools, Academies and

institutions within the further education sector in the area in which the additional school is (or is proposed to be) situated.

- (3) A school is an “additional school” for the purposes of this section if—
  - (a) it does not replace a maintained school that has been or is to be discontinued, and
  - (b) it is not a school in respect of which an Academy order has effect.
- (4) For the purposes of subsection (3)(a) a school does not replace a maintained school if it provides education for pupils of a wider range of ages than the maintained school.

## **10 Consultation: additional schools**

- (1) Before entering into Academy arrangements with the Secretary of State in relation to an additional school, a person must consult such persons as the person thinks appropriate.
- (2) The consultation must be on the question of whether the arrangements should be entered into.
- (3) “Additional school” has the same meaning as in section 9.

## **11 Annual reports**

- (1) For each academic year the Secretary of State must prepare and publish a report containing information on—
  - (a) Academy arrangements entered into during the year, and
  - (b) the performance of Academies during the year (see subsection (2)).
- (2) The report must include information relating to the performance of Academies which has been provided to the Secretary of State pursuant to—
  - (a) regulations made under section 537 of EA 1996 (power of Secretary of State to require information);
  - (b) Academy arrangements.
- (3) The first report under this section must relate to the academic year beginning 1 August 2010.
- (4) The Secretary of State must lay before Parliament a copy of each report under this section.
- (5) In this section “academic year” means a period of 12 months beginning on 1 August.

## **12 Charitable status of Academy proprietors etc**

- (1) A qualifying Academy proprietor is a charity.
- (2) A “qualifying Academy proprietor” is a company—
  - (a) which is limited by guarantee,
  - (b) whose registered office is situated in England and Wales,
  - (c) which in pursuance of Academy arrangements is the proprietor of an Academy, and
  - (d) whose object as expressed in its articles or memorandum of association (or each of whose objects as so expressed) is a charitable purpose.

- (3) Expressions used in subsection (2) and in the Companies Act 2006 have the same meaning in that subsection as in that Act.
- (4) In Schedule 2 to the Charities Act 1993 (exempt charities), after paragraph (c) insert—  
“*(ca)* a qualifying Academy proprietor (as defined in section 12(2) of the Academies Act 2010);”.

### **13 Academies: land**

Schedule 1 (Academies: land) has effect.

### **14 Academies: amendments**

Schedule 2 (Academies: amendments) has effect.

## *General*

### **15 Transitional provisions**

- (1) This section applies to references in a provision of an Act or any other instrument or document, in relation to times on and after the commencement date.
- (2) But it does not apply to references in sections 1 to 8 or this section, and is subject to any contrary provision made by or under this or any other Act.
- (3) A reference to Academy arrangements is to be read as including a reference to an agreement under section 482 of EA 1996.
- (4) A reference to an Academy is to be read as including a reference to a city technology college and a city college for the technology of the arts.
- (5) A reference to an agreement under section 482 of EA 1996 is to be read as being or (according to context) including a reference to Academy arrangements.
- (6) If an agreement under section 482 of EA 1996 has effect immediately before the commencement date in relation to a school which is known as an Academy, the agreement is to be treated as an Academy agreement under section 1 of this Act.
- (7) Subsections (8) and (9) apply if an agreement under section 482 of EA 1996 has effect immediately before the commencement date in relation to a school which is known as a city technology college or a city college for the technology of the arts.
- (8) If the proprietor of the school and the Secretary of State agree—
  - (a) the agreement under section 482 of EA 1996 is to be treated as an Academy agreement under section 1 of this Act, and
  - (b) the school is accordingly to be known as an Academy.
- (9) In any other case, the continued operation of the agreement under section 482 of EA 1996 is not affected by the repeal by this Act of—
  - (a) section 482(1) to (5) of EA 1996, or
  - (b) section 68 of EA 2002.
- (10) In this section “the commencement date” means the date on which section 1 comes into force.



## 16 Pre-commencement applications etc

- (1) Subsection (2) applies if, before the commencement date, the governing body of a maintained school in England make an application to the Secretary of State which, if it had been made on or after that date, would have been an application under section 3.
- (2) The application is to be treated as an application under that section.
- (3) Subsection (4) applies if, before the commencement date—
  - (a) steps are taken by the governing body of a foundation or voluntary school that has a foundation, and
  - (b) if section 3 had been in force, those steps would have satisfied the requirement of section 3(3) (consultation of foundation).
- (4) The steps are to be treated as satisfying that requirement.
- (5) Subsection (6) applies if, before the commencement date—
  - (a) consent to an application by a governing body is given, and
  - (b) if section 3 had been in force, the consent would have satisfied any requirement of section 3(4) (consent of trustees and persons appointing foundation governors).
- (6) The consent is to be treated as satisfying that requirement.
- (7) In this section “the commencement date” means the date on which section 3 comes into force.

## 17 Interpretation of Act

- (1) In this Act—
  - “EA 1996” means the Education Act 1996;
  - “SSFA 1998” means the School Standards and Framework Act 1998;
  - “EA 2002” means the Education Act 2002;
  - “EA 2005” means the Education Act 2005;
  - “EIA 2006” means the Education and Inspections Act 2006;
  - “ASCLA 2009” means the Apprenticeships, Skills, Children and Learning Act 2009;
  - “CSFA 2010” means the Children, Schools and Families Act 2010.
- (2) In this Act—
  - “the Academy”, in a case in which an Academy order is made, has the meaning given by section 6(2);
  - “the conversion date” has the meaning given by section 6(2);
  - “the local authority” in relation to a maintained school, means the authority by which the school is maintained;
  - “maintained school” means—
    - (a) a community, foundation or voluntary school, or
    - (b) a community or foundation special school.
- (3) Section 4(3) (when a maintained school is “converted into” an Academy) applies for the purposes of this Act.

- (4) EA 1996 and sections 1 to 13, 15 and 16 of this Act are to be read as if those sections were contained in EA 1996.
- (5) Unless the context otherwise requires, a reference in this Act to—
  - (a) a community, foundation or voluntary school, or
  - (b) a community or foundation special school,is to such a school within the meaning of SSFA 1998.

## **18 Extent**

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) An amendment or repeal made by this Act has the same extent as the provision to which it relates.

## **19 Commencement**

- (1) Sections 15 to 20 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on whatever day or days the Secretary of State appoints by order made by statutory instrument.
- (3) An order under subsection (2)—
  - (a) may make different provision for different purposes or different areas;
  - (b) may make incidental, consequential, supplemental, transitional or transitory provision or savings.

## **20 Short title**

- (1) This Act may be cited as the Academies Act 2010.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of EA 1996.