

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Academies

Academy orders

Section 55: Academy orders: involvement of religious bodies etc

275. *Section 55* amends section 4 of AA 2010.
276. Under section 4(1)(b) of AA 2010, the Secretary of State can make an Academy order in respect of a school if the school is eligible for intervention (within the meaning of section 59(2) of EIA 2006).
277. *Subsection (2)*, which inserts a new subsection (1A) into section 4 of the AA 2010, provides that before making an Academy order under section 4(1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must first consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.
278. *Subsection (3)* amends section 4(4) so that if an Academy order is made by the Secretary of State in respect of a foundation or voluntary school with a foundation, either on an application from the governing body or in respect of a school that is eligible for intervention, then he must give a copy of the order to the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.
279. *Subsection (4)* amends section 4(5) so that if the Secretary of State decides not to make an Academy order in respect of a foundation or voluntary school with a foundation following an application from the governing body, then he must inform the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body, of his decision and the reasons for it.

Section 56: Academies: consultation on conversion

280. *Section 56* replaces section 5 of AA 2010 with a new section 5. The original section 5 provides that before a maintained school can convert into an Academy, its governing body must consult those they think appropriate on the question of whether the school should convert into an Academy. The consultation may take place before or after the application, or before or after an Academy order is made, but must take place before the Academy arrangements are entered into.
281. The new section 5 inserted by *section 56* provides that, in the case of a school eligible for intervention (within the meaning in Part 4 of EIA 2006) either the school's governing body or the person with whom the Secretary of State proposes to enter into Academy

arrangements can carry out the consultation. In the case of a federated school the consultation can be carried out by any one or more members of the governing body.

Section 57: Academy conversions: federated schools

282. **Section 57** makes amendments to AA 2010 to enable a federated school to apply for an Academy order without requiring the agreement of the whole federated governing body.
283. **Subsection (2)** inserts a new subsection (6) into section 3 of AA 2010 to allow regulations to make provision about the proportion of the total number of members of a federated governing body, and members of a particular description, that can apply for an Academy order on behalf of a particular school in the federation.
284. **Subsection (4)** amends section 7 of AA 2010, which deals with the transfer of school surpluses after a maintained school converts to Academy status. **Subsection (4)(d)** provides for the amount of any school surplus held by a federated governing body that should be attributed to a school in the federation converting to Academy status to be determined in accordance with regulations.

Section 58: Academy orders: local authority powers

285. **Section 58** inserts a new subsection (2A) into section 6 of AA 2010. This makes clear that section 6(2) of AA 2010, which prohibits a local authority from maintaining a school once it has converted into an Academy, does not prohibit a local authority from doing any of the things set out in paragraphs (a) to (c) (which do not amount to “maintaining” a school). This puts beyond doubt, for example, that a local authority has the power to assist Academies by making payments to a private finance initiative (PFI) contractor in respect of Academies.

Section 59: Transfer of property, rights and liabilities to Academies

286. **Section 59** amends section 8 of AA 2010. Section 8 applies when an Academy order has effect and a school is converting into an Academy. In those circumstances, the Secretary of State has a power to make a property transfer scheme for the transfer of property (other than land), rights and liabilities held by local authorities in relation to a school or a school’s governing body to the proprietor of the new Academy. **Subsections (2)** and **(3)** provide that a property transfer scheme is now to be called a transfer scheme and that such a scheme includes, in addition to other property, rights and liabilities of local authorities or governing bodies, the rights and liabilities in relation to staff.
287. **Subsection (4)** changes the description of the recipient of property, rights and liabilities under a transfer scheme from “the proprietor of the Academy” to “a person concerned with the running of the Academy”. This ensures consistency with the terms of the new Schedule 1 to AA 2010 (inserted by **Schedule 14**) concerning the transfer of land.
288. The new Schedule 1 to AA 2010 also contains a power (at paragraph 13(3)(b)) for the Secretary of State to make a direction for the transfer of land, other property, rights and liabilities to vest in a person concerned with the running of an Academy where the governing body of a school are to be dissolved following an Academy order.