



# Academies Act 2010

## 2010 CHAPTER 32

### *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.
- [<sup>F1</sup>(6) In the case of a federated school, references in this section to the governing body include references to members of the governing body who—
  - (a) together make up a proportion of the total number of members that is specified in, or determined in accordance with, regulations, and
  - (b) consist of or include members of any prescribed description.]

#### **Textual Amendments**

**F1** S. 3(6) inserted (1.4.2012) by Education Act 2011 (c. 21), ss. 57(2), 82(3); S.I. 2012/924, art. 2

#### **Commencement Information**

**I1** S. 3 in force at 29.7.2010 by S.I. 2010/1937, art. 2, Sch. 1

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#### 4 Academy orders

- (1) The Secretary of State may make an Academy order in respect of a maintained school in England if—
- (a) [<sup>F2</sup>an application in respect of the school is made] under section 3, or
  - (b) the school is eligible for intervention (within the meaning of Part 4 of EIA 2006).
- [<sup>F3</sup>(1A) Before making an Academy order [under subsection (1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must consult—
- (a) the trustees of the school,
  - (b) the person or persons by whom the foundation governors are appointed, and
  - (c) in the case of a school which has a religious character, the appropriate religious body.]
- (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 [<sup>F4</sup>an educational institution] 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,<sup>F5</sup>...
  - (b) the local authority,<sup>F6</sup> and
  - (c) in the case of a foundation or voluntary school that has a foundation—
    - (i) the trustees of the school,
    - (ii) the person or persons by whom the foundation governors are appointed, and
    - (iii) in the case of a school which has a religious character, the appropriate religious body.]
- (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, <sup>F7</sup>...
  - (b) the local authority,<sup>F8</sup> and
  - (c) in the case of a foundation or voluntary school that has a foundation—
    - (i) the trustees of the school,
    - (ii) the person or persons by whom the foundation governors are appointed, and
    - (iii) in the case of a school which has a religious character, the appropriate religious body.]
- (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.
- [<sup>F9</sup>(8) In this section, “ the appropriate religious body ”, in relation to a school, means—

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- (a) in the case of a Church of England school or a Roman Catholic school, the appropriate diocesan authority;
  - (b) in any other case, such body or person representing the specified religion or religious denomination as is prescribed under section 88F(3)(e) of SSFA 1998.
- (9) In the case of a school in relation to which there is more than one religion or religious denomination specified, references to “the appropriate religious body” are to be read as references to both or all of the bodies concerned.
- (10) In subsections (8) and (9), “ specified ” means specified in the order under section 69(3) of SSFA 1998 relating to the school.
- (11) Expressions used in this section and SSFA 1998 have the same meaning as in that Act. ]

#### Textual Amendments

- F2** Words in s. 4(1)(a) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 57(3)**, 82(3); S.I. 2012/924, art. 2
- F3** S. 4(1A) inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 55(2)**, 82(3); S.I. 2012/84, art. 3
- F4** Words in s. 4(3) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 13 para. 2**; S.I. 2012/924, art. 2
- F5** Word in s. 4(4)(a) omitted (1.2.2012) by virtue of [Education Act 2011 \(c. 21\)](#), **ss. 55(3)(a)**, 82(3); S.I. 2012/84, art. 3
- F6** S. 4(4)(c) inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 55(3)(b)**, 82(3); S.I. 2012/84, art. 3
- F7** Word in s. 4(5)(a) omitted (1.2.2012) by virtue of [Education Act 2011 \(c. 21\)](#), **ss. 55(4)(a)**, 82(3); S.I. 2012/84, art. 3
- F8** S. 4(5)(c) inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 55(4)(b)**, 82(3); S.I. 2012/84, art. 3
- F9** S. 4(8)-(11) inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 55(5)**, 82(3); S.I. 2012/84, art. 3

#### Commencement Information

- I2** S. 4 in force at 29.7.2010 by [S.I. 2010/1937](#), art. 2, **Sch. 1**

#### [<sup>F10</sup>5 Consultation on conversion

- (1) Before a maintained school in England is converted into an Academy, there must be a consultation on the question of whether the conversion should take place.
- (2) 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.
- (3) In the case of a school that is eligible for intervention (within the meaning of Part 4 of EIA 2006), the consultation may be carried out by—
  - (a) the school's governing body, or
  - (b) a person with whom the Secretary of State proposes to enter into Academy arrangements in respect of the school or an educational institution that replaces it.
- (4) In any other case, the consultation must be carried out by the school's governing body.
- (5) The consultation must seek the views of such persons as the person carrying it out thinks appropriate.
- (6) In the case of a federated school, references in this section to the governing body include references to any of the members of the governing body.]

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### Textual Amendments

**F10** S. 5 substituted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 56**, 82(3); [S.I. 2012/84](#), **art. 3**

### Commencement Information

**I3** S. 5 in force at 29.7.2010 by [S.I. 2010/1937](#), **art. 2**, **Sch. 1**

## 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 <sup>F11</sup> an educational institution ] that replaces it, opens as an Academy (“the Academy”).

<sup>F12</sup>(2A) Subsection (2) does not prohibit the local authority from providing financial or other assistance in respect of the Academy, including by—

- (a) making payments in respect of some (but not all) of the expenses of maintaining the Academy,
- (b) providing premises, goods or services for the Academy, or
- (c) making premises, goods or services available to be used for the purposes of the Academy.]

(3) If the school is a selective school <sup>F13</sup> and is to be converted into an Academy school ], <sup>F14</sup> section 1A(1)(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 <sup>F15</sup>an educational institution] 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) <sup>F16</sup> If the Academy is an Academy school,] the relevant independent school standards are to be treated as met in relation to <sup>F17</sup>it] 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—

- <sup>F18</sup>(a) ] 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 <sup>F19</sup>, and
- (b) is to be converted into an Academy school.]

(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.

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- (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).

#### Textual Amendments

- F11** Words in s. 6(2) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(2)**; S.I. 2012/924, art. 2
- F12** S. 6(2A) inserted (15.11.2011) by [Education Act 2011 \(c. 21\), ss. 58, 82\(1\)\(e\)](#)
- F13** Words in s. 6(3) inserted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(3)(a)**; S.I. 2012/924, art. 2
- F14** Words in s. 6(3) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(3)(b)**; S.I. 2012/924, art. 2
- F15** Words in s. 6(3) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(3)(c)**; S.I. 2012/924, art. 2
- F16** Words in s. 6(5) inserted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(4)(a)**; S.I. 2012/924, art. 2
- F17** Word in s. 6(5) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(4)(b)**; S.I. 2012/924, art. 2
- F18** Word in s. 6(7) inserted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(5)**; S.I. 2012/924, art. 2
- F19** S. 6(7)(b) inserted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\)](#), **Sch. 13 para. 3(5)**; S.I. 2012/924, art. 2

#### Commencement Information

- I4** S. 6 in force at 29.7.2010 by [S.I. 2010/1937, art. 2](#), **Sch. 1** (with art. 5)

## 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;

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- (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 [<sup>F20</sup> in respect of the school ] 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.
- [<sup>F21</sup>This subsection is subject to subsection (9).]
- (7) For the purposes of subsection (6), the amount which, immediately before the conversion date, has been made available [<sup>F22</sup>in respect of a school to the 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.
- [<sup>F23</sup>(9) If the school is a federated school, the questions of—
- (a) whether the school has a surplus, and
  - (b) if so, the amount of the surplus,
- are to be determined in accordance with regulations.]

#### Textual Amendments

- F20** Words in s. 7(6)(a) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 57(4)(a)**, 82(3); S.I. 2012/924, art. 2
- F21** Words in s. 7(6) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 57(4)(b)**, 82(3); S.I. 2012/924, art. 2
- F22** Words in s. 7(7) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 57(4)(c)**, 82(3); S.I. 2012/924, art. 2
- F23** S. 7(9) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 57(4)(d)**, 82(3); S.I. 2012/924, art. 2

#### Commencement Information

- I5** S. 7 in force at 1.9.2010 by [S.I. 2010/1937](#), art. 3, **Sch. 2**

## 8 [<sup>F24</sup>Transfer schemes: other property, rights and liabilities]

- (1) This section applies if—
- (a) an Academy order has effect in respect of a school, and

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- (b) the school is to be converted into an Academy.
- [<sup>F25</sup>(2) The Secretary of State may make a scheme (a “transfer scheme”) in relation to—
- (a) property used or held for the purposes of the school by a local authority or the school's governing body, and
  - (b) rights and liabilities (including rights and liabilities in relation to staff) of the local authority or the governing body which were acquired or incurred for the purposes of the school.]
- (3) A [<sup>F26</sup>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 [<sup>F26</sup>transfer scheme] may provide for the transfer of property, rights and liabilities to [<sup>F27</sup>a person concerned with the running of the Academy].
- (5) A [<sup>F26</sup>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 [<sup>F26</sup>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 [<sup>F26</sup>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 [<sup>F26</sup>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 [<sup>F26</sup>transfer scheme] takes effect.
- (10) A transfer made by virtue of a [<sup>F26</sup>transfer scheme] is binding on all persons even if, apart from this subsection, it would have required the consent or concurrence of any person.

#### Textual Amendments

- F24** S. 8 heading substituted (1.2.2012) by [Education Act 2011 \(c. 21\)](#) , **ss. 59(5)** , 82(3) ; S.I. 2012/84 , [art. 3](#)
- F25** S. 8(2) substituted (1.2.2012) by [Education Act 2011 \(c. 21\)](#) , **ss. 59(2)** , 82(3) ; S.I. 2012/84 , [art. 3](#)
- F26** Words in s. 8(3)-(10) substituted (1.2.2012) by [Education Act 2011 \(c. 21\)](#) , **ss. 59(3)** , 82(3) ; S.I. 2012/84 , [art. 3](#)
- F27** Words in s. 8(4) substituted (1.2.2012) by [Education Act 2011 \(c. 21\)](#) , **ss. 59(4)** , 82(3) ; S.I. 2012/84 , [art. 3](#)

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**Commencement Information**

**16** S. 8 in force at 29.7.2010 by [S.I. 2010/1937](#) , art. 2 , [Sch. 1](#)



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