

ACADEMIES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Conversion of schools into Academies

Section 3: Application for Academy order

15. This section allows the governing body of a maintained school in England to apply to the Secretary of State to become an Academy.
16. A voluntary or foundation school with an existing foundation must consult that foundation before applying and can only make an application with the consent of the school's trustees and any other persons who are entitled to appoint foundation governors to the school. This means, for example, that a school with a religious character would need the consent of its local diocese or other religious authority before it could apply to become an Academy. 'Foundation' in this section has the meaning that it has in the School Standards and Framework Act 1998 (*subsection (5)*) and in general means a body of persons (other than a governing body), whether incorporated or not, holding land for the purposes of a school. It also includes foundation bodies, which are incorporated bodies holding land for the purposes of 3 or more schools, and who appoint foundation governors.

Section 4: Academy orders

17. This section permits the Secretary of State to make an Academy order which enables the conversion of a maintained school into an Academy in two circumstances: firstly, on the application of a school's governing body under section 3; or secondly, if the school is eligible for intervention (*subsection (1)*). 'Eligible for intervention' has the meaning given in section 59(2) of the Education and Inspections Act 2006, and covers schools subject to warning notices, and those requiring significant improvement or special measures. These Academy orders will not be made by statutory instrument but will be administrative orders (*subsection (6)*).
18. *Subsection (5)* provides that where a school applies to become an Academy but the Secretary of State decides not to make an order allowing it to do so, the governing body, the head teacher and the local authority must be informed of that refusal and the reasons.

Section 5: Consultation on conversion

19. This section 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.
20. The consultation may take place before or after the application, or before or after the order is made, but must take place before the Academy arrangements are entered into.

Section 6: Effect of Academy order

21. This section provides that when an Academy order has been made, the local authority must cease to maintain the school on the date when the Academy opens. This date is known as the 'conversion date' (*subsection (2)*) and will be the date specified as the Academy's opening date in the Academy arrangements.
22. On the conversion date, the school will be treated automatically as having met the independent school standards that are applicable under section 157 of the EA 2002 (*subsection (5)*). These are currently contained in the [Education \(Independent School Standards\) \(England\) Regulations 2003 \(SI 2003/1910\)](#). This means that the Academy will not need to be inspected by Ofsted before being registered as an independent school or prior to opening. Once open, the Academy will have to comply with the usual requirements placed upon Academies, and it will be inspected thereafter in the usual way by Ofsted in accordance with section 5 of the Education Act 2005.
23. Schools with a religious character will keep that religious character upon conversion to Academy status and will be treated as designated, on conversion, as independent schools having a religious character (*subsection (8)*). Similarly, selective schools will be able to keep their selective status upon conversion (see *subsection (3)*), but selective status will not be available to other converting schools, or any other Academies, which do not have existing selective arrangements (see section 1(6)(c)).
24. Where an Academy order has been made, a converting school or its maintaining local authority will not need to follow the school closure procedures in section 30 of the School Standards and Framework Act 1998 or sections 15 to 17 of the Education and Inspections Act 2006 (see *subsection (9)*).

Section 7: Transfer of school surpluses

25. This section requires that, where the Secretary of State approves a maintained school's application to become an Academy under this Act, the local authority must determine whether the school has a budget surplus, and, if so, the amount of that surplus and transfer that amount to the Academy proprietor.
26. Under existing legislation, surpluses of closing schools remain with the local authority. This includes situations where an existing school is closed to become an Academy. This section requires local authorities to transfer a school's surplus to the Academy proprietor where the school has been successful in its application to the Secretary of State under this Act to become an Academy.
27. A surplus consists of any unspent portion of the school's budget share (made available under section 50 of the School Standards and Framework Act 1998) as well as any unspent portion of any other funding made available to the school by the local authority, including government grants, and includes amounts brought forward from previous financial years.
28. The section provides for the Secretary of State to prescribe in regulations matters in connection with the determination and payment of any surplus, including timings, and for a right to apply for a review of a determination.

Section 8: Transfer of other property

29. This section permits the Secretary of State to make a property transfer scheme in relation to the property, rights or liabilities of a maintained school which are held for the purposes of the school by the local authority or the school's governing body. Such a scheme can have effect to transfer to the Academy various property or contractual rights or liabilities which were previously the property, rights or liabilities of the maintained school which the Academy replaces. This would permit the school, for example, to retain its electronic hardware, furniture, and cleaning or catering contracts.