

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Academies

Academy arrangements

Section 53: Academy arrangements: post-16 education and alternative provision

262. *Section 53* amends section 1 of AA 2010. These amendments provide that a person entering into Academy arrangements with the Secretary of State may undertake to establish and maintain one of three different types of Academy. Prior to this there was only one type of Academy. The new types are Academy schools (which broadly have the same characteristics as existing Academies), 16 to 19 Academies and alternative provision Academies. All three different types of educational establishment are to be known by the generic term “Academy”, but no institution can be considered as more than one type of Academy.
263. *Subsection (2)* inserts a new subsection (5) into section 1 of AA 2010. Section 1(5) currently sets out the undertakings that are to be given by those entering into Academy arrangements with the Secretary of State in order to be able to establish an Academy. The new subsection (5)(a) also sets out the undertakings that are to be given but now provides for different undertakings reflecting the type of Academy being established. In addition to undertaking that the educational establishment will have the characteristics relevant to the particular type of Academy, subsection (5)(b) also provides that a person entering into Academy arrangements with the Secretary of State must undertake to run or provide for the running of the institution.
264. *Subsection (3)* removes the current section 1(6) of AA 2010. Section 1(6) is replaced by the new sections 1A, 1B and 1C of AA 2010, inserted by *subsection (7)* of this section.
265. *Subsections (4), (5) and (6)* make consequential amendments to section 1 of AA 2010 to reflect the fact that Academies will no longer necessarily be “schools”. In particular, 16 to 19 Academies will not be “schools” for the purposes of section 4 of EA 1996.
266. *Subsection (7)* inserts new sections 1A, 1B, 1C and 1D into AA 2010. New section 1A sets out the characteristics required of an educational establishment for it to be an Academy school. With one exception these characteristics are the same as those which applied to Academies in AA 2010. The one exception is the requirement that if the Academy is providing secondary education its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Academy arrangements. This characteristic will no longer apply (reflecting the repeal made by section 52). New section 1A(2) provides that an educational institution may also meet the requirements for an Academy school if it is an independent school and it is specially organised to make special educational provision for pupils with special educational needs.

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

267. New section 1B(1) sets out the requirements to be met by 16 to 19 Academies. They must be educational institutions that are principally concerned with providing full-time or part-time education suitable to the requirements of those over compulsory school age but under 19 years old. Education is defined at section 1B(2) as including vocational, social, physical and recreational training. Section 1B(3) provides that an educational institution meeting these requirements will be known as a 16 to 19 Academy. The government intends to use this legislation to allow providers to set up free schools for those aged 16 to 19.
268. New section 1C(1) sets out the requirements to be met by alternative provision Academies. They must be principally concerned with the provision of full-time or part-time education for children of compulsory school age who, because of illness, exclusion or other reason would not otherwise receive suitable education. They must also provide education for children of different abilities, and provide education for children who are wholly or mainly drawn from the area in which the alternative provision Academy is situated. "Suitable education" means efficient education that is suitable to the child's age, ability and aptitude and to any special educational needs that the child may have.
269. New section 1D gives the Secretary of State powers to make regulations to apply statutory provisions to, or to disapply statutory provisions from, alternative provision Academies. This follows the way in which legislation is currently applied to pupil referral units. In the main, legislation applying to mainstream maintained schools is applied to pupil referral units through regulations. This is because of the need to modify/disapply it because of the different nature of alternative provision. These regulation-making powers allow the Secretary of State to follow this model for alternative provision Academies and to ensure, where appropriate, that legislation is consistent across alternative provision.
270. New section 1D(1) can be used to apply provisions that relate to maintained schools or pupil referral units to alternative provision Academies or to a description of alternative provision Academy. A "description of alternative provision Academy" is intended to provide for the likelihood that there may be different types of alternative provision Academy, for example an alternative provision Academy which only provides part-time provision, and legislation is likely to be applied to them differently. It is the Government's intention to make regulations under paragraph 3 of Schedule 1 to EA 1996 (power to apply provisions which apply to maintained schools to pupil referral units by regulation) so that pupil referral units will be able to convert to alternative provision Academies in the same way as maintained schools can convert to Academy schools. The powers taken in new section 1D to apply legislation to alternative provision Academies in this way are intended to be used to ensure that a consistent legislative approach is taken in relation to alternative provision, which will include pupil referral units and alternative provision Academies.
271. New section 1D(2) is a power to apply, with or without modifications, provisions that relate to Academies, Academy schools or 16 to 19 Academies to alternative provision Academies or a description of alternative provision Academy (or to disapply such provisions from alternative provision Academies or a description of alternative provision Academy). Again, this reflects the different educational environment of an alternative provision Academy.
272. New section 1D(3) is a power to apply with modifications provisions that relate to alternative provision Academies generally to a description of an alternative provision Academy (or to disapply such provisions from a description of alternative provision Academy). This is to reflect the fact that legislation may need to be applied differently to different types of alternative provision Academy, for example in relation to part-time alternative provision Academies or for alternative provision Academies which only provide education to children under 11.