

EXPLANATORY MEMORANDUM TO
THE ACADEMY CONVERSIONS (TRANSFER OF SCHOOL SURPLUSES)
REGULATIONS 2010

2010 No. 1938

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument sets out the framework within which a local authority must transfer the financial surplus of a predecessor school to an Academy, where the school has had its application to convert to Academy status approved.
 - 2.2 Specific deadlines are set out relating to the timing of the determination of the amount by the local authority, the right of the Academy to apply to the Secretary of State for a review, the conclusion of the review and the payment by the local authority to the Academy.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 7 of the Academies Act 2010 provides that, where a school converts to Academy status through the application process, the local authority must determine whether the school has a financial surplus immediately prior to the conversion date, and, if so, the amount of the surplus. It must then pay the amount to the Academy proprietor.
 - 4.2 Section 7 also states that regulations may make provision in connection with the determination and payment of a surplus – in particular relating to the local authority informing the Academy of the amount determined, the Academy’s right to apply to the Secretary of State for a review and procedures relating to such a review, and time limits for the whole process. These Regulations give effect to this power.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

- 7.1 When a maintained school becomes an Academy, the school closes and a new institution opens. The accumulated financial surplus or deficit of a closing school reverts to the local authority, which can then choose to pass on a surplus to a successor school or Academy.
- 7.2 Many of the existing Academies have been set up where there were concerns about standards at predecessor schools and have consequently resulted in a change of leadership and governance. The Government's intention under the Academies Act is to extend the freedoms and flexibilities of Academy status to other schools which are approved through an application process.
- 7.3 Schools approved through the new process will generally retain the same leadership, management and governance. They can, therefore, be seen as continuing schools which should enjoy the right to retain their surplus. The Regulations set out the detail by which this surplus is determined and paid over.
- 7.4 The local authority would have three months from the date of conversion to determine whether the predecessor school had a surplus immediately prior to the date of conversion and, if so, the amount of the surplus, and to inform the Academy of what it had determined. The period of three months is consistent with the timescale within which local authorities must close their financial accounts at the end of the financial year, though the conversion date may occur at another time during the year. The calculation would need to be consistent with usual accounting principles and would need to take into account work done, goods received or income due prior to the conversion date.
- 7.5 If the Academy disagreed with the amount determined, it could apply to the Secretary of State within one month of being informed of the determination by the local authority. The Secretary of State would then have three months to review the local authority's determination and either confirm it or substitute his own.
- 7.6 The local authority would have to pay over the surplus to the Academy within a month of either the Academy informing the local authority that it agrees with the amount determined or the end of the period within which an application for a review can be made, whichever is earlier, or, if there is a review, within a month of the Secretary of State's determination.

7.7 The timescales set out are designed to allow for a reasonable period for determination and review, while avoiding a prolonged process of negotiation.

7.8 Where a school has a deficit, this will also transfer but is being dealt with outside the legislation because there is no need to require the local authority to take specific action. The DfE will reimburse the local authority and recover the funding from the Academy's grant over a period of time.

- **Consolidation**

7.9 These Regulations do not consolidate other regulations.

8. Consultation outcome

8.1 Illustrative regulations were placed before Parliament during the passage of the Academies Act. It has not been possible to undertake a full consultation because the Regulations need to take effect from 1st September 2010, which is the first date at which schools may convert under the Academies Act.

9. Guidance

9.1 The Department for Education website has pages relating to Academies funding. Guidance and frequently asked questions relating to the transfer of surpluses will be placed here, including issues relating to schools which have their own bank accounts and the treatment of outstanding debtors and creditors. This guidance has taken into account comments from members of the Chartered Institute of Public Finance and Accountancy (CIPFA)'s Children's Services Panel.

10. Impact

10.1 There is an impact on charitable bodies because Academy trusts are charities. There is no other direct impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that local authorities will have to determine and pay over any surplus of schools which convert to Academies within a defined timescale. They would have had to undertake a determination in any case to account correctly for closing schools, but this may result in a more rapid conclusion. The Secretary of State will have a new role to consider applications for reviews of the determination.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The implementation of this instrument will be monitored by the Academies Finance and School Funding Teams within the Department for Education through their usual contact with Academies and local authorities.

13. Contact

Keith Howkins at the Department for Education Tel: 0207 227 5163 or email: keith.howkins@education.gsi.gov.uk can answer any queries regarding the instrument.