

*These notes refer to the Education Act 2002 (c.32)
which received Royal Assent on 24 July 2002*

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 5 – School Organisation

Academies and city colleges

Sections 65 to 69

Section 65 and Schedule 7: Academies

184. Section 482 of the EA 96, as originally enacted, made provision for the setting up of schools known as city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs). These are independent secondary schools with private sponsors which receive funding from central government. As their names suggest they have a particular subject emphasis and are situated in urban areas.
185. That section was amended by the LSA to allow for a further category of secondary school – city academies. These schools were based on a similar model to CTCs, but could have a curriculum emphasis drawn from a wider range of subjects, within limits prescribed by the Secretary of State.
186. Subsection (1) of section 65 replaces the whole section. It provides for the setting up of Academies. The basic model is the same as that for CTCs and city academies without some of the restrictions which apply to those schools.
- Academies can be set up anywhere in England (but not Wales). Unlike CTCs, CCTAs and city academies they are not limited to urban areas;
 - Academies can, with the agreement of the Secretary of State, have an emphasis on any subject area, or combination of areas;
 - Academies will be able to provide primary and/or secondary education, not just secondary education.
187. Since the power to create CTCs, CCTAs and city academies is being replaced, no more such schools will be created (but see sections 63 and 64 for what happens to existing schools).
188. Subsection (2) of section 65 amends section 483 of the EA 96. It provides that the funding agreement for an Academy may make provision for the repayment of capital grants to the Secretary of State in the event of the termination of the funding agreement. This differs from the existing – and continuing – provisions for CTCs and CCTAs where the funding agreement must make provision for the repayment of capital grant to the Secretary of State in such an event.
189. Subsection (3) of section 65 provides for a new Schedule (Schedule 7) which inserts a new Schedule (Schedule 35A) into the EA 96. This Schedule makes provision

about land in relation to Academies. It largely repeats the provision that was made by Schedule 8 to the LSA for city academies.

190. **Part 2** of the Schedule amends existing legislation so as to put Academies in the same position as CTCs, CCTAs and city academies. Since, as explained below, existing city academies are to become Academies, this is chiefly a question of replacing references to city academies with references to Academies.
191. The new Schedule also adds the following provisions:
- disapplication of the rule against perpetuities in relation to options granted in favour of an LEA where that land was transferred from that LEA to an Academy for no consideration. Without this disapplication the common law rule against perpetuities would limit to 21 years any option granted to return land to the LEA where the Academy closed or ceased to use the land;
 - disapplication of section 153 of the Law of Property Act 1925 so that leaseholds of not less than 300 years granted by LEAs when transferring land for Academies cannot be enlarged into freeholds;
 - an enabling provision for the Secretary of State to give class consent to allow LEAs to dispose of certain categories of land which had been used for the purposes of a county or community school.

Section 66: Arrangements for the admission of pupils to Academies

192. This section amends section 85 of the SSFA by inserting section 85B, which may require, through regulations, an Admission Forum to advise Academies about local admission arrangements. Where such advice is promulgated, this section imposes a duty on the governing body of an Academy to have regard to such advice.

Section 67: Conversion of city academies into Academies

193. To avoid unnecessary multiplication of categories, section 67 provides that all existing city academies are technically to become 'Academies'. Their funding agreements are deemed to be made under the new provision (but are otherwise unchanged).

Section 68: City colleges

194. In the case of an existing CTC or CCTA, a school may choose to change its name so that it becomes an Academy. In that case, its agreement will be deemed to be made under the new section 482. Otherwise CTCs and CCTAs are not affected by the new provisions.

Section 69: Uniform statutory trusts

195. **Section 69** provides for Academies and CTCs and CCTAs which provide denominational education to be added to denominational aided and foundation schools as the categories of schools which can benefit from funds held under uniform statutory trusts. Uniform statutory trusts are a standard type of statutory trust which may be incorporated in an order made by the Secretary of State in respect of a closed Church school, to allow the relevant Diocese to apply the proceeds of sale for the benefit of other Church schools.

Proposals to establish, alter or discontinue schools

Sections 70 to 75

Section 70 and Schedule 8: Proposals for additional secondary schools

196. This section provides that LEAs in England may invite other people to make proposals for the establishment of a new community, foundation or voluntary secondary school or

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Academy that is not replacing such a school (an Academy is defined in section 65). Only after it has invited such proposals may it make proposals itself. At present proposals by an LEA to establish a new community or foundation secondary school are published under section 28 of the SSFA and decided through the arrangements for local decision making set out in that Act. The point of the change is to encourage a wider range of promoters to bring forward proposals to meet the need for a new school.

197. The LEA must then:
 - publish a notice inviting proposals for the establishment of an additional community, foundation or voluntary secondary school or Academy, and identifying a possible site for the school;
 - publish any proposals that have been submitted in response to the notice;
 - publish any proposals of its own that it wishes to make.
198. An LEA may not make proposals under section 28 of the SSFA when it could issue a notice under the new provision (see the amendment made by paragraph 94 of schedule 21).
199. [Schedule 8](#) gives further details of the procedures to be followed and provides for regulations to further specify the necessary actions. In particular it provides for regulations to make provisions concerning comments by interested parties on the proposals that have been published.
200. Regulations will provide that following consultation the local SOC will be required to comment on the various options and to pass these comments to the Secretary of State who will then decide the proposals (or, in the case of an Academy, decide whether to enter into negotiations with the promoters with a view to signing a funding agreement with the Academy).
201. Proposals, which have been approved by the Secretary of State, are in general required to be implemented by the LEA which published the notice. However, a proposal for a voluntary controlled or foundation school may specify that the provision of the site will be the responsibility of the persons who made the proposal, and where a voluntary aided school is to be established at a site other than that specified in the notice, provision of the site will be the responsibility of the promoters.
202. If the land on which an Academy is to be sited is that identified in the notice published by the LEA, and certain other requirements are met, the Secretary of State may make a scheme for the transfer of the land to the promoters.

Section 71: Duty of LEAs to secure proposals

203. Where the Secretary of State is of the opinion that the provision for primary or secondary education in an area is, or is likely to become, insufficient, she may give a direction to the LEA to exercise its powers with a view to securing that provision is made for such additional number of pupils as is specified in the direction.
204. The LEA may use any combination of its existing powers to publish proposals under sections 28, 29 or 31 of the SSFA and the new powers of section 70 to invite proposals for the establishment of an additional community, foundation or voluntary secondary school or Academy. In meeting the direction the LEA must apply such principles as are specified in the direction.
205. The Secretary of State may also publish her own proposals for changes to schools or the establishment of new community or foundation schools to secure these places if the LEA does not comply with the direction within the time specified or she is not satisfied that the action taken by the LEA will secure the specified number of places. Regulations will prescribe the information to be contained in any proposals by the Secretary of State.

206. Any such proposals will be decided by the local SOC or Schools Adjudicator under the existing provisions of Schedule 7 to the SSFA. That Schedule sets out the procedures that currently apply to proposals made by the Secretary of State to address an insufficiency or excess of school places.

Section 72 and Schedule 9: Proposals relating to sixth forms

207. This section amends the LSA to enable the LSC in England, and the National Council for Education and Training for Wales (NCETW) to propose the establishment, alteration or closure of maintained school sixth forms. In exercising this power, the LSC is placed under an obligation to take account of any guidance from the Secretary of State. NCETW has an equivalent obligation in respect of guidance from the NAW. The section also provides for LSC proposals to be submitted to the Secretary of State, and for NCETW proposals to be submitted to the NAW, for decision; and for both the Secretary of State and the NAW to make regulations, as appropriate, setting out the processes, including the extent and nature of local consultation, to be followed by the LSC and NCETW in developing and submitting such proposals, and by the Secretary of State and the NAW in making a decision. The Schedule also specifies where responsibility lies for implementation of any approved proposals.
208. **Paragraph 115** of Schedule 21 amends Schedule 6 to the SSFA to enable regulations to be made which have the effect of providing that the SOC may not approve, and to provide that the LEA may not determine to implement, statutory proposals for changes to schools if they relate to undecided proposals by the LSC for the restructuring of sixth form education.

Section 73: Proposals by governing bodies of community schools

209. This section amends section 28 of the SSFA to provide that in addition to the existing powers of the governing bodies of foundation and voluntary schools to publish proposals for prescribed alterations to schools, the governing bodies of community schools maintained by an LEA in England may also publish such proposals. It is intended that regulations will prescribe that community schools may make proposals to enlarge the premises of the school, to increase by 27 or more pupils the number in a relevant age group to be admitted to the school, and to add a sixth form or extend a one-year sixth form to two years. At the moment only the LEA may publish such proposals in respect of community schools.

Section 74: Proposals for establishment of federated school

210. This section makes provision for a new school to be established as a federated school under a single governing body from its opening date. It ensures that such schools should be subject to the existing arrangements governing statutory proposals set out in Chapter 2 of the SSFA to establish new community, voluntary or foundation special schools.

Section 75 and Schedule 10: Changes to existing procedures

211. These provisions amend the procedure for dealing with statutory proposals for the establishment, alteration or discontinuance of schools in England. Schedule 6 to the SSFA 1998 is amended in relation to England to:
- allow comments of any kind, and not just objections, to be made in response to consultations in addition to statutory objections;
 - allow the local SOC to refer statutory proposals to the Schools Adjudicator for decision if they think it appropriate to do so, subject to regulations (for example, if a Committee is unable to decide a proposal because it has not been possible to achieve a quorum. This may occur if many members of a Committee have an interest in the result of a matter that is being decided and they withdraw from the discussion of the matter);

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- provide that promoters of new foundation or voluntary schools (other than Church of England or Roman Catholic dioceses, who already have groups on the SOC) whose proposals are rejected by the SOC shall have the right of appeal to the Adjudicator;
 - provide that the governing bodies of foundation and voluntary schools of a prescribed description who have published proposals of a prescribed description shall have the right of appeal to the Adjudicator if their proposals are rejected by the SOC (the intention is to apply this to popular schools which have published proposals to expand);
 - allow the LEA to refer proposals to the SOC for decision if it thinks it appropriate to do so and subject to regulations (this is intended to cover the situation where the proposals can only be approved conditionally, and therefore need to go to the SOC, since an LEA cannot make conditional approvals);
 - provide that proposals approved conditionally by the SOC or Adjudicator shall no longer be treated as rejected if the condition is not met by the specified date, but instead shall be considered afresh by whoever gave the conditional approval.
212. [Schedule 6](#) to the SSFA is amended in relation to Wales to:
- Provide that proposals approved conditionally by the NAW shall no longer be treated as rejected if the condition is not met by the specified date, but instead shall be considered afresh.
213. [Schedule 7](#) to the SSFA, dealing with the Secretary of State's powers to act in the case of an insufficiency or excess of school places in an area, is also amended as necessary in the same way.
214. [Schedule 7](#) to the LSA, dealing with procedures for inadequate sixth forms, is also amended to the same effect.