

**EXPLANATORY MEMORANDUM TO**  
**THE ACADEMIES (LAND TRANSFER SCHEMES) REGULATIONS 2012**

**2012 No. 1829**

1. This explanatory memorandum has been prepared by the Department for Education and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These regulations set out what documents and information a local authority must provide, and what steps it must take, where the Secretary of State makes a scheme for the transfer of school land from that local authority to a person concerned with the running of an Academy.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 The Education Act 2011 inserts into the Academies Act 2010 a new Schedule 1 which makes provision about land in relation to Academies. Part 1 of the new Schedule 1 is concerned with local authority land and re-enacts and extends provisions that were in Schedule 35A to the Education Act 1996 and in old Schedule 1 to the Academies Act 2010. It enables the Secretary of State to make a scheme to transfer local authority land that a local authority has identified as a possible site for a new school, or existing or former school land that is no longer needed for the school, from a local authority to a person concerned with running an Academy. The regulation-making power under which these regulations are made is intended to enable full effect to be given to the Secretary of State's scheme-making power. Similar regulation-making powers have been in place since the Learning and Skills Act 2000 but have not previously been used.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England.

6. **European Convention on Human Rights**

- 6.1 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 The powers to make a scheme to transfer to an Academy local authority land that has been used for the purposes of a school but is no longer so used (or is about to be no longer so used) have been available in successive Acts since 2000. In most cases it is anticipated that local authorities will transfer the land to the Academy and do so in a timely manner. The policy objective behind these regulations is to ensure that the existing land of the school can be properly identified when it is transferred to the successor Academy if the local authority concerned fails to co-operate over the provision of the necessary information.

## **8. Consultation outcome**

8.1 Consultation on the regulations with local authorities and other interested bodies took place between 9 November 2011 and 18 January 2012. There was very little interest in the consultation and we received only 13 responses in total: 10 from local authorities, two from representative union bodies and a response from the Catholic Education Service.

8.2 Changes were made to the regulations in the light of comments received. The Department removed the draft regulation requiring authorities to pay the Secretary of State's costs, and also extended the period for authorities to provide information.

## **9. Guidance**

9.1 The Department does not intend to issue specific guidance on the content of these regulations, but once the regulations have been made, the Department will draw local authorities' attention to them on the Department's website. We will also reference the regulations in future updates to the existing Land Transfer Guidance document, also available via the Department's website. This guidance is a toolkit for schools converting to Academy status, and their lawyers. It provides general advice on the arrangements that will need to be put in place to secure the use of land for an Academy. It is also of assistance to local authorities in understanding the framework in respect of land when a school wishes to convert to Academy status.

9.2 The scheme-making powers will only be employed as a last-resort option following discussion with the local authority concerned, during which the availability of the power as an option will be made clear.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible. While Academies are registered charities, the scheme-making powers only concern land which is held by local authorities.

10.2 The impact on the public sector is that land currently held by individual local authorities may be transferred to those concerned with the running of an Academy. The land would remain public land, which the Secretary of State may determine should return to the authority when it is no longer needed for the Academy.

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 Department will continue to review its policy covering Academies and Free Schools, and monitor the impact of these regulations at local level, including the transfer of land to Academies, and the need, if any, to make use of the Secretary of State's scheme-making powers.

12.2 One success criterion for regulations of this kind is the extent to which they do not need to be used, because the parties realise that we have sufficient levers to require the information and so they provide it voluntarily, whereas if we had no such powers there would be no reason why they should not continue to be resistant. The regulations may only be used when a scheme is made, and a scheme is very much a last resort, so one measure of success would be a decline in the number of cases where authorities delay the transfer of a school's land, and schools can convert more expeditiously. If it is necessary to make a scheme, and use the regulations to acquire the necessary information, we shall carefully monitor the ease of operation, and whether any elements are particularly onerous or unnecessary, or whether additional powers may be needed.

## **13. Contact**

13.1 Julia Armstrong at the Department for Education Tel: 020 7340 8100 or email: [julia.armstrong@education.gsi.gov.uk](mailto:julia.armstrong@education.gsi.gov.uk) can answer any queries regarding the instrument.