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STATUTORY INSTRUMENTS

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**2010 No. 1937 (C. 102)**

**EDUCATION, ENGLAND AND WALES**

**The Academies Act 2010 (Commencement  
and Transitional Provisions) Order 2010**

*Made* - - - - *28th July 2010*

The Secretary of State for Education makes the following Order in exercise of the power conferred by section 19(2) and (3) of the Academies Act 2010<sup>(1)</sup>.

**Citation and interpretation**

1.—(1) This Order may be cited as the Academies Act 2010 (Commencement and Transitional Provisions) Order 2010.

(2) In this Order “the Act” means the Academies Act 2010.

**Provisions coming into force on 29th July 2010**

2. 29th July 2010 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of Schedule 1 to the extent specified in column 2 of that Schedule.

**Provisions coming into force on 1st September 2010**

3.—(1) 1st September 2010 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of Schedule 2.

(2) Where a particular purpose is specified in column 2 of that Schedule in relation to any such provision, the provision comes into force on that date for that purpose only.

**Provisions coming into force on 1st January 2011**

4. 1st January 2011 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of Schedule 3 to the extent specified in column 2 of that Schedule.

**Transitional provisions**

5.—(1) This article applies if—

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(1) 2010 c 32.

- (a) an Academy order has effect in respect of a foundation or voluntary controlled school which is designated by order under section 69(3) of SSFA 1998 as a school having a religious character, and
  - (b) the school is converted into an Academy.
- (2) Despite section 6(8) of the Act, on and after the conversion date—
- (a) section 124A(2) and (3) of SSFA 1998 do not apply in relation to an existing non-reserved teacher while the teacher is employed or engaged as a teacher at the Academy,
  - (b) section 59(2) to (4) of SSFA 1998 continue to apply in relation to an existing non-reserved teacher, and an existing member of the non-teaching staff, while that person is employed or engaged at the Academy.
- (3) An “existing non-reserved teacher” is a teacher who—
- (a) is employed or engaged as a teacher at the school immediately before the conversion date,
  - (b) is not a reserved teacher (within the meaning given by section 58(9) of SSFA 1998) at that time, and
  - (c) becomes employed or engaged as a teacher at the Academy on the conversion date.
- (4) An “existing member of the non-teaching staff” is a person who—
- (a) is employed or engaged for the purposes of the school immediately before the conversion date, otherwise than as a teacher, and
  - (b) becomes employed or engaged for the purposes of the Academy on the conversion date.
- 6.—**(1) This article applies if—
- (a) an Academy order has effect in respect of a foundation or voluntary school which is designated by order under section 69(3) of SSFA 1998 as a school having a religious character,
  - (b) the school is converted into an Academy, and
  - (c) immediately before the conversion date, section 60(7) of SSFA 1998 applied to a teacher at the school.
- (2) On and after the conversion date, section 60(7) of SSFA 1998 continues to apply in relation to an existing teacher at the school while the teacher is employed or engaged as a teacher at the Academy.
- (3) An “existing teacher” is a teacher who—
- (a) is employed or engaged as a teacher at the school immediately before the conversion date, and
  - (b) becomes employed or engaged as a teacher at the Academy on the conversion date.

28th July 2010

*Jonathan Hill*  
Parliamentary Under Secretary for Schools  
Department for Education

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Article 2

Provisions coming into force on 29th July 2010

<i>Column 1</i>	<i>Column 2</i>
Section 1	
Section 2 save for subsections (5) and (6),	
Sections 3 to 6	
Sections 8 to 11	
Section 12 save for subsection (4)	
Section 13	
Section 14	To the extent that it relates to the paragraphs in Schedule 2 to the Act specified in column 1.
Schedule 1	
Schedule 2 save for paragraph 10	

SCHEDULE 2

Article 3

Provisions coming into force on 1st September 2010

<i>Column 1</i>	<i>Column 2</i>
Section 2 (5) and (6)	
Section 7	
Section 14	To the extent that it relates to the paragraph in Schedule 2 to the Act specified in column 1.
paragraph 10 of Schedule 2	Only in relation to the proprietor of an Academy opening on or after 1st September 2010.

SCHEDULE 3

Article 4

Provisions coming into force on 1st January 2011

<i>Column 1</i>	<i>Column 2</i>
Section 12 (4)	
Section 14	To the extent that it is not already in force.
Schedule 2	To the extent that it is not already in force.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Academies Act 2010 (“the Act”) on 29th July 2010, 1st September 2010 and 1st January 2011.

### **Provisions coming into force on 29th July 2010**

Section 1 of the Act replaces provisions in section 482 of the Education Act 1996. It enables the Secretary of State to make “Academy arrangements” (arrangements which take the form of an Academy agreement or arrangements for Academy financial assistance) with another person, to establish and run an Academy.

Section 2 (1) to (4) makes provision about the terms of an Academy agreement.

Section 3 enables a governing body of a maintained school in England to apply to the Secretary of State to become an Academy. 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.

Section 4 enables the Secretary of State to make an Academy order whereby a maintained school converts into an Academy either on the application of the governing body of the school under section 3, or where the school is eligible for intervention within the meaning of section 59(2) of the Education and Inspections Act 2006. These orders will be administrative orders and not made by statutory instrument.

Section 5 provides that before a maintained school can convert to an Academy the governing body must consult those they think appropriate either before or after an application or an Academy order is made.

Section 6 provides that when an Academy order has been made, the local authority must cease to maintain the school on the date the Academy opens.

Section 8 enables the Secretary of State to make a property transfer scheme in relation to the property, rights or liabilities of a maintained school held for the purposes of the school by a local authority or the governing body.

Section 9 requires the Secretary of State to take into account the impact on other maintained schools, Academies and further education institutions in the area when deciding whether to enter into Academy arrangements in relation to an additional school. An additional school is a school which does not replace a maintained school and is not subject to an Academy order.

Section 10 provides that before entering into Academy arrangements in respect of an additional school the person entering into those arrangements must consult those they think appropriate on whether the arrangements should be entered into.

Section 11 requires the Secretary of State to publish, for each academic year, a report detailing all Academy arrangements entered into during that year and the performance of the Academies during that year.

Section 12 (1) provides that where Academy proprietors are qualifying Academy proprietors under section 12(2) of the Act, they are charities. Section 12 (4) amends Schedule 2 to the Charities Act 1993 and provides that a qualifying Academy proprietor is an exempt charity. Section 12 (4) is not

brought into force until 1st January 2011. Therefore an Academy proprietor will need to be registered with, and regulated by, the Charity Commission until section 12 (4) is brought into force.

Section 13 introduces Schedule 1 to the Act which makes provision about land in relation to Academies.

Section 14 introduces Schedule 2 to the Act which makes a number of amendments to existing legislation.

### **Provisions coming into force on 1st September 2010**

Section 2(5) relates to Academy pupils with low incidence special educational needs or disabilities. It amends the School Finance (England) Regulations 2008 (SI 2008/228) to provide that expenditure on services for such Academy pupils become a class of expenditure for the purpose of the non-schools education budget. Section 2(6) enables the Secretary of State to make alternative arrangements where a local authority fails to secure satisfactory provision for pupils with low incidence special educational needs or disabilities.

Section 7 requires a local authority to determine whether a school has a budget surplus and to transfer that surplus to the proprietor of an Academy where the Secretary of State has approved an application for a maintained school to become an Academy.

Paragraph 10 of Schedule 2 to the Act adds an Academy proprietor to the list of public bodies in Part 4 of Schedule 1 to the Freedom of Information Act 2000 Act. It is commenced on 1st September in respect of Academies opening on or after 1st September 2010.

### **Provisions coming into force on 1st January 2011**

Section 12(4) amends Schedule 2 to the Charities Act 1993 to provide that a qualifying Academy proprietor, as defined by section 12(2) of the Act, is an exempt charity.

Paragraph 10 of Schedule 2 to the Act is brought into force on 1st January 2011 in respect of all proprietors of Academies opened before 1st September 2010, which will include city technology colleges and city colleges for the technology of the arts. They are added to the list of public bodies in Part 4 of Schedule 1 to the Freedom of Information Act 2000 Act.

### **Transitional provisions**

Article 5 makes transitional provision for staff, who are not reserved teachers as defined by section 58(9) of the School Standards and Framework Act 1998 (“the SSFA 1998”), at foundation and voluntary controlled schools with a religious character. The staff to whom these transitional provisions relate have rights under section 60(2) of the SSFA 1998 (which applies section 59(2) to (4)) not to be discriminated against on religious grounds. Article 5 preserves these rights for such staff in post when the school converts to an Academy with a religious character. Without this transitional provision section 124A of the SSFA 1998 would apply so that preference could be given on religious grounds in respect of their appointment, promotion, remuneration or termination of employment or engagement.

Article 6 makes transitional provision for existing staff who had protected rights under section 60(7) of the SSFA 1998.