

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Academies

Academy arrangements

Section 52: Academies: removal of requirement to have specialism

260. *Section 52* removes section 1(6)(b) from AA 2010, which requires Academies providing secondary education to have an emphasis on a particular subject area or areas. Section 1(6)(b) replaced similar provisions in section 482 of EA 1996.
261. The removal of section 1(6)(b) means that new schools which are set up as Academies and existing schools which convert to become Academies will no longer be required, where they provide secondary education, to have an emphasis on one or more subject areas. However, an Academy can, if it so chooses, have or continue to have a secondary curriculum which retains such an emphasis and it will still be required to provide a balanced and broadly based curriculum, in accordance with the requirements of section 78 of EA 2002.

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.
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.

Section 54: Consequential amendments: 16 to 19 Academies and alternative provision Academies

273. [Section 54](#) gives effect to Schedule 13.

Schedule 13

274. [Schedule 13](#) makes amendments to other legislation consequential on the fact that there are now three different types of Academies. Many of these changes reflect the fact that Academies are no longer necessarily schools and amend references to “school” to “educational institution”. Others specify the type of Academy to which the provision applies.

Academy orders

Section 55: Academy orders: involvement of religious bodies etc

275. [Section 55](#) amends section 4 of AA 2010.
276. Under section 4(1)(b) of AA 2010, the Secretary of State can make an Academy order in respect of a school if the school is eligible for intervention (within the meaning of section 59(2) of EIA 2006).
277. *Subsection (2)*, which inserts a new subsection (1A) into section 4 of the AA 2010, provides that before making an Academy order under section 4(1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must first consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.
278. *Subsection (3)* amends section 4(4) so that if an Academy order is made by the Secretary of State in respect of a foundation or voluntary school with a foundation, either on an application from the governing body or in respect of a school that is eligible for intervention, then he must give a copy of the order to the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.
279. *Subsection (4)* amends section 4(5) so that if the Secretary of State decides not to make an Academy order in respect of a foundation or voluntary school with a foundation following an application from the governing body, then he must inform the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body, of his decision and the reasons for it.

Section 56: Academies: consultation on conversion

280. [Section 56](#) replaces section 5 of AA 2010 with a new section 5. The original section 5 provides that before a maintained school can convert into an Academy, its governing body must consult those they think appropriate on the question of whether the school should convert into an Academy. The consultation may take place before or after the

application, or before or after an Academy order is made, but must take place before the Academy arrangements are entered into.

281. The new section 5 inserted by [section 56](#) provides that, in the case of a school eligible for intervention (within the meaning in Part 4 of EIA 2006) either the school's governing body or the person with whom the Secretary of State proposes to enter into Academy arrangements can carry out the consultation. In the case of a federated school the consultation can be carried out by any one or more members of the governing body.

Section 57: Academy conversions: federated schools

282. [Section 57](#) makes amendments to AA 2010 to enable a federated school to apply for an Academy order without requiring the agreement of the whole federated governing body.
283. [Subsection \(2\)](#) inserts a new subsection (6) into section 3 of AA 2010 to allow regulations to make provision about the proportion of the total number of members of a federated governing body, and members of a particular description, that can apply for an Academy order on behalf of a particular school in the federation.
284. [Subsection \(4\)](#) amends section 7 of AA 2010, which deals with the transfer of school surpluses after a maintained school converts to Academy status. [Subsection \(4\)\(d\)](#) provides for the amount of any school surplus held by a federated governing body that should be attributed to a school in the federation converting to Academy status to be determined in accordance with regulations.

Section 58: Academy orders: local authority powers

285. [Section 58](#) inserts a new subsection (2A) into section 6 of AA 2010. This makes clear that section 6(2) of AA 2010, which prohibits a local authority from maintaining a school once it has converted into an Academy, does not prohibit a local authority from doing any of the things set out in paragraphs (a) to (c) (which do not amount to "maintaining" a school). This puts beyond doubt, for example, that a local authority has the power to assist Academies by making payments to a private finance initiative (PFI) contractor in respect of Academies.

Section 59: Transfer of property, rights and liabilities to Academies

286. [Section 59](#) amends section 8 of AA 2010. Section 8 applies when an Academy order has effect and a school is converting into an Academy. In those circumstances, the Secretary of State has a power to make a property transfer scheme for the transfer of property (other than land), rights and liabilities held by local authorities in relation to a school or a school's governing body to the proprietor of the new Academy. [Subsections \(2\)](#) and [\(3\)](#) provide that a property transfer scheme is now to be called a transfer scheme and that such a scheme includes, in addition to other property, rights and liabilities of local authorities or governing bodies, the rights and liabilities in relation to staff.
287. [Subsection \(4\)](#) changes the description of the recipient of property, rights and liabilities under a transfer scheme from "the proprietor of the Academy" to "a person concerned with the running of the Academy". This ensures consistency with the terms of the new Schedule 1 to AA 2010 (inserted by [Schedule 14](#)) concerning the transfer of land.
288. The new Schedule 1 to AA 2010 also contains a power (at paragraph 13(3)(b)) for the Secretary of State to make a direction for the transfer of land, other property, rights and liabilities to vest in a person concerned with the running of an Academy where the governing body of a school are to be dissolved following an Academy order.

Academies: other provisions

Section 60: Academies: new and expanded educational institutions

289. *Subsection (1)* substitutes a new section 9 into AA 2010. Under the current section 9 the Secretary of State, when considering whether to enter into Academy arrangements in relation to an additional school, must take into account the impact on maintained schools, Academies and institutions within the further education sector in the area in which the additional school is, or is proposed, to be. An additional school is a school which does not replace a maintained school and is not subject to an Academy order under subsection 4 of AA 2010.
290. The new section 9 is similar, but removes the term “additional school”. The new section will apply when the Secretary of State is deciding whether to enter into Academy arrangements in relation to a new educational institution or an existing educational institution that, if arrangements are entered into, will provide education for pupils of a wider range of ages. An educational institution that replaces a discontinued maintained school, Academy or sixth form and caters for the same age range as the institution or institutions it replaces is not a new school for the purposes of this section.
291. The Secretary of State must consider the impact on alternative provision such as pupil referral units of entering into Academy arrangements in addition to considering the impact on the educational institutions previously listed in section 9.
292. *Subsection (2)* substitutes a new section 10 into AA 2010. The existing section 10 provides that before entering Academy arrangements with the Secretary of State in relation to an additional school the person entering into those arrangements must consult those they think appropriate as to whether the arrangements should be entered into. As with new section 9 above, new section 10 no longer uses the term “additional school”. The duty to consult will apply to the person entering into arrangements in relation to a new educational institution or an existing educational institution that caters for a wider age range than the institution it replaces.
293. The duty to consult does not apply to persons entering into Academy arrangements for a new educational institution following an invitation from a local authority under section 7 of EIA 2006. A local authority has a duty to consult those they think appropriate under section 9 of that Act before issuing a notice inviting proposals for a new school under section 7.

Section 61: charges at boarding Academies

294. **Section 61** inserts a new section 10A into AA 2010. Section 10A is based closely on section 458 of EA 1996. Subsections (2) to (5) of section 458 provide that, in certain circumstances, registered pupils boarding at maintained schools have the right to have their boarding fees remitted by the local authority for the area in which they would ordinarily reside were they not at boarding school.
295. New section 10A is intended to give the same right to registered pupils boarding at Academies. However, this section does not replicate section 458(1) of EA 1996, which allows local authorities to charge boarding fees, as proprietors of boarding Academies would already be allowed to charge boarding fees under the terms of their funding agreement with the Secretary of State made under section 1 of AA 2010.
296. The fee remission works on the same basis as in section 458 of EA 1996. The section requires a pupil’s home local authority to pay the pupil’s boarding fees where either one of the conditions set out at subsections (2) or (3) applies. These conditions are not connected or dependent on each other. The conditions are:
- Condition A - where the only suitable place for the pupil to receive education is at the boarding school, taking into account the pupil’s age, ability, aptitude and any special educational needs;

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- Condition B - where payment of the full boarding fee would cause financial hardship to the pupil's parent.
297. Where Condition A applies, the local authority must pay to the Academy proprietor the whole of the boarding fee. Where Condition B applies, the local authority is required to pay to the Academy proprietor such part of the boarding fee as is necessary to prevent the financial hardship.
298. Subsection (6) prevents the proprietor of an Academy from charging a parent for boarding fees that have been paid to the proprietor by the local authority under this section.

Section 62: staff at Academies with religious character

299. **Section 62** amends Part 5A of SSFA 1998 (employment of teachers at independent schools having a religious character). In the maintained sector, a foundation or voluntary controlled school with a religious character must include "reserved" teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal. Reserved teachers are those who have been selected for their fitness and competence to give religious education in accordance with the tenets of the religion or religious denomination of the school, and who are appointed on such grounds. In contrast, a voluntary aided school may apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.
300. Section 124A of SSFA 1998 provides that independent schools which have a religious character may also apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.
301. **Subsection (3)** inserts a new section 124AA into SSFA 1998 which will apply to all voluntary controlled and foundation schools with a religious character which have converted into Academies. It will provide that teachers at these Academies must include reserved teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal, thereby preserving the distinction between such schools in the maintained sector.
302. In addition, subsection (2) of new section 124AA provides that the Secretary of State may make an order for a specific school which will disapply section 124AA for that individual school. In these cases, section 124A will apply. The Secretary of State intends to use this power if he has agreed changes to an Academy's governance arrangements such that the religious body has majority control over the Academy in the same way that it does over a voluntary aided school governing body.

Section 63: Academies: land

303. **Section 63** gives effect to Schedule 14 which makes provision about land in relation to Academies. Schedule 14 replaces Schedule 1 to AA 2010 with a new Schedule 1 to that Act. Schedule 14 also amends section 77 of, and Schedule 22 to, SSFA 1998 to give the Secretary of State additional powers to transfer the publicly funded land of maintained schools to Academies, whilst ensuring that the public interest in land at Academies continues to be protected.

Schedule 14

304. **Paragraph 1** of Schedule 14 replaces Schedule 1 to AA 2010 with a new Schedule which re-enacts and extends existing legislation and contains some new provisions. In particular, the new Schedule 1 incorporates and amends the remaining provisions of Schedule 35A to EA 1996 and provisions in the original Schedule 1 to AA 2010. Schedule 35A to the EA 1996 is repealed by **paragraph 16** of Schedule 14.

305. **Schedule 1** is divided into four parts, the first three parts reflecting the fact that land at a particular school or Academy may be held by any of the following: a local authority, a governing body, a foundation body or the trustees of a maintained school, or by any person holding land for an Academy.
306. Other than paragraph 16, Schedule 1 relates to land that is publicly owned or publicly funded as defined in paragraph 22(3) of the Schedule, but does not apply to land that is wholly privately owned.
307. **Part 1** of Schedule 1 concerns local authority land. It re-enacts and extends provisions in Schedule 35A to EA 1996 and in Schedule 1 to AA 2010, which this Schedule is replacing. It enables the Secretary of State to make a scheme to transfer an existing or former school's land (now including an Academy) from a local authority to a person concerned with the running of an Academy where the land is no longer needed for the school (paragraphs 1 and 3). It also enables the Secretary of State to make a scheme to transfer any local authority land that has been identified by the local authority as a possible site for a new school to a person concerned with the running of an Academy (paragraphs 2 and 3). Part 1 also requires a local authority to seek the Secretary of State's consent to any proposed disposal or appropriation of existing or former school land and enables the Secretary of State to compulsorily purchase land back from a third party and transfer it to a person concerned with the running of an Academy if the land is sold in contravention of any requirement to seek his consent (paragraphs 4, 5, 6 and 7).
308. **Part 2** of Schedule 1 concerns publicly funded land held by governing bodies, foundation bodies or trustees of foundation or voluntary schools. It incorporates and amends some provisions from Schedule 1 to AA 2010, which this Schedule is replacing, and includes new provisions. Part 2 enables the Secretary of State to make directions to transfer publicly funded land at foundation and voluntary schools to persons concerned with the running of Academies in the situations where such a school: converts to Academy status pursuant to an Academy order, is discontinued, or wishes to dispose of surplus land (paragraphs 10, 11 and 12). Provision is made for the payment of compensation in respect of any private share in the land. Paragraph 13 enables land and other property held by a governing body to transfer automatically to either the local authority or, if the Secretary of State directs, to a person concerned with the running of an Academy on dissolution of the governing body pursuant to an Academy order.
309. **Part 3** of Schedule 1 concerns publicly funded land held for the purposes of an Academy. Paragraph 14 enables the Secretary of State to protect public investment in private land held for Academies. Paragraph 15 enables the Secretary of State to make a direction in respect of publicly funded land on the closure of an Academy, subject to the payment of compensation for any private share in the land. Paragraph 16 requires that where trustees of a maintained school retain land for the purposes of the successor Academy on conversion of any such school to Academy status, they are required to give a minimum period of two years' notice to the Academy proprietor if they wish to terminate the Academy's occupation of the land. If the land is publicly funded, the Secretary of State can make a direction in relation to the land, subject to the payment of compensation for any private share. Paragraph 17 requires a person who holds land for the purposes of an Academy to notify the Secretary of State if they wish to dispose of publicly funded land, and provides a power for the Secretary of State to make a direction in respect of the land, subject to the payment of compensation for any private share.
310. **Part 4** contains miscellaneous provisions designed to give full effect to the Schedule. In particular, paragraph 21 provides a regulation-making power which enables secondary legislation to give full effect to the provisions in the Schedule, and in particular the power to make schemes. Paragraph 22 contains a definition of publicly funded land for the purposes of the Schedule.
311. **Paragraphs 2 to 15** of Schedule 14 amend Schedule 22 to SSFA 1998 to ensure that surplus publicly funded land held by the governing body or trustees of a foundation or voluntary school may be made available for Academies.

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312. Part A1 of Schedule 22 to SSFA 1998, which was inserted by Schedule 4 to EIA 2006, sets out a statutory procedure for the disposal of surplus publicly funded non-playing field land held by governing bodies, foundation bodies and trustees of foundations and voluntary schools.
313. *Paragraphs 2 to 11* of Schedule 14 amend part A1 of Schedule 22 to SSFA 1998 and provide that where a governing body, foundation body or trustees wish to dispose of publicly funded land they must first notify the Secretary of State, and must not take any further steps to dispose of the land without his consent. The Secretary of State then has the option of making a direction transferring the land to an Academy, under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Act). If he chooses not to make a direction then the governing body, foundation body or trustees of the school in question can proceed to dispose of the land under the provisions in Part A1 of Schedule 22 to SSFA 1998. *Paragraph 9* also amends paragraph A13(7) of Schedule 22 to SSFA 1998 so that a change of use of land by trustees is not to be treated as a disposal where the land will be used for an Academy (this provision previously provided that changes of use were not to be treated as disposals only where the land would continue to be used by a maintained school, and did not include a reference to Academies).
314. *Paragraph 13* amends paragraph A23 of Schedule 22 and provides that where a local authority wishes to apply to the adjudicator for the transfer to them of publicly funded land they think is no longer needed by a foundation or voluntary school, they must notify the Secretary of State of their intention, and take no further action until they have received a response. The Secretary of State may then decide to make a direction to transfer the land to an Academy under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Act), failing which the local authority can proceed with the application under the statutory procedure in Part A1 of Schedule 22 to SSFA 1998.
315. *Paragraph 14* amends paragraph 5 of Schedule 22 to SSFA 1998 (discontinuance of foundation, voluntary and foundation special schools) to add an additional power for the Secretary of State to make a direction under paragraph 11 of Schedule 1 to AA 2010, transferring the land to an Academy.
316. *Paragraph 15* amends paragraph 7 of Schedule 22 to SSFA 1998 to enable the Secretary of State to direct that land or other property held by a governing body that is dissolving on discontinuance for reasons other than an Academy conversion is transferred to an Academy instead of a local authority.
317. *Paragraph 18* amends section 77 of SSFA 1998. Section 77 requires the Secretary of State's consent to be sought by local authorities, governing bodies or foundation bodies of maintained schools or trustees of foundation and voluntary schools (in the case of publicly funded land) where they propose to dispose or change the use of playing field land. The amendment in *paragraph 18* enables the Secretary of State to direct, on such an application for consent to dispose of or change the use of playing fields, that the land is transferred to a person concerned with the running of an Academy, subject to the payment of compensation for any private share in the land. *Paragraph 18* also now requires the Secretary of State's consent to be sought where the playing fields are proposed to be used for other educational purposes or recreational facilities.

Section 64: Academy admissions arrangements: references to adjudicator

318. *Section 64* amends Chapter 1 of Part 3 of SSFA 1998 to allow the adjudicator to consider and to determine eligible objections or referrals relating to the admissions arrangements of Academies, as they do for those of maintained schools. Under section 88H of SSFA 1998, as amended by the Act, any person or body will be able to make objections to the adjudicator about an Academy's admission arrangements (*subsection (3)*). Under section 88I, as amended, the Secretary of State will be able to make referrals to the adjudicator where it appears to the Secretary of State that an Academy's admission arrangements do not or may not conform with the requirements relating to admission

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arrangements. The adjudicator also has a discretion to consider admission arrangements other than those referred by the Secretary of State (*subsection (4)*).

319. The requirements relating to an Academy's admission arrangements, including the application of the School Admissions Code, are set out in the Academy agreement between the Secretary of State and an Academy (see new subsection (5)(b) of section 88K, as inserted by *subsection 5(b)*).
320. Where the adjudicator decides on any objection or referral, the decision is binding on the admission authority (and in the case of an objection, the person making the objection). The adjudicator must publish a report containing that decision and the reasons behind it. The power to make regulations under sections 88H, 88I and 88K is amended so that the regulations will also apply to Academies.

Section 65: Academies: minor amendments

321. This section gives effect to *Schedule 15* which contains consequential amendments that reflect amendments made to the AA 2010.

Schedule 15

322. *Schedule 15* amends Schedule 4 to the Finance Act 2003 and Schedule 17 to the Equality Act 2010, replacing references to section 482 of EA 1996 with references to section 1 of AA 2010. These amendments simply reproduce in textual amendments the effect of section 15 of AA 2010.