



Department  
for Education

# **The Academy Conversions (Transfer of School Surpluses) Regulations 2010**

**Consultation on replacing The Academy  
Conversions (Transfer of School Surpluses)  
Regulations 2010 with The Academy  
Conversions (Transfer of School Surpluses)  
Regulations 2013**

**September 2013**

# Consultation on replacing The Academy Conversions (Transfer of School Surpluses) Regulations 2010 with The Academy Conversions (Transfer of School Surpluses) Regulations 2013

**To** Finance contacts in all English local authorities and other interested parties

**Issued** 26 September 2013

**Enquiries To** If your enquiry is related to the policy content of the consultation you can contact the team on

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# Proposed Changes to The Academy Conversions (Transfer of School Surpluses) Regulations 2010

Changes on which we are consulting are in standard type. Purely technical changes are in italics.

*Regulation 3 makes transitional arrangements whereby the 2010 regulations will continue to apply for schools which convert to academy status before 1 January 2014.*

*Regulation 4 applies the new regulations to pupil referral units which convert to academy status.*

*Regulation 5(1) requires the local authority to inform the academy of the determination of a surplus within four (rather than three) months after the conversion date.*

*Regulation 5(2) requires local authorities when notifying a determination to make clear to academies the processes to be followed under Regulation 6 if the academy does not agree with the determination.*

**Regulations 5(3) and 5(4)** concern federated schools, ie schools that were previously part of a federation of maintained schools and convert to academy status. **Regulation 5(3)** requires the local authority to agree with the proprietor of the academy a methodology for determining the surplus. **Regulation 5(4)** specifies arrangements for splitting the surplus amount of federated schools based upon pupil numbers, if a methodology cannot be agreed upon.

**Regulation 6(2)** provides that the academy will be deemed to have agreed with the determination if it does not ask for a review within one month of being informed of the determination been made, unless in the Secretary of State's view exceptional circumstances apply.

**Regulation 6(3)** requires local authorities and academies to use reasonable endeavours to reach agreement on the amount of surplus before the academy decides to refer the determination to the Secretary of State.

**Regulation 6(4)** requires the academy to explain to the Secretary of State why it considers exceptional circumstances apply if it is asking for an extension of time under Regulation 6(2).

**Regulation 6(7)** allows the Secretary of State to extend the three month period for reviewing a determination by such period as he determines, after informing both the academy and the local authority.

**2013 No. XXXX**

**EDUCATION, ENGLAND**

**The Academy Conversions (Transfer of School Surpluses)  
Regulations 2013**

*Made* - - - - *Date*

*Laid before Parliament* *Date*

*Coming into force* - - *Date*

The Secretary of State for Education makes the following Regulations(**a**) in exercise of the powers conferred by section 7 of the Academies Act 2010(**b**) and paragraph 3 of Schedule 1 to the Education Act 1996(**c**):

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Academy Conversions (Transfer of School Surpluses) Regulations 2013 and come into force on 1st January 2014.

(2) They apply in relation to any maintained school in England in respect of which an Academy order has effect where the order was made under section 4(1)(a) of the Academies Act 2010 (Academy order following application by school) and the conversion date(**d**) is on or after 1st January 2014.

**Interpretation**

2. In these Regulations—

“the 1998 Act” means the School Standards and Framework Act 1998(**e**);

“the 2010 Act” means the Academies Act 2010;

“the proprietor” means the proprietor of the Academy.

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(a) See section 579(1) of the Education Act 1996 (c.56) for the definition of “regulations”. This definition applies by virtue of section 17(4) of the Academies Act 2010.

(b) C.32.

(c) C.56.

(d) “Conversion date” is defined in section 6(2) of the Academies Act 2010.

(e) C.31.

## Revocation

3. The Academy Conversions (Transfer of School Surpluses) Regulations 2010<sup>(a)</sup> are revoked on 1st January 2014, except where the conversion date in respect of a maintained school is before 1st January 2014.

## Amendments

4.—(1) The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007<sup>(b)</sup> are amended as follows.

(2) For paragraph 29 of Schedule 1 substitute—

“**29** The Academy Conversions (Transfer of School Surpluses) Regulations 2013 apply in relation to units as they apply in relation to maintained schools.”.

## Determination of school surplus

5.—(1) Subject to paragraph (6), the local authority must inform the proprietor of the determinations made by them under section 7(2) of the 2010 Act within four months, beginning with the conversion date.

(2) The authority must include in the notification under paragraph (1) details of—

- (a) how the proprietor may request a review of the determination under regulation 6(1);
- (b) the consequence of not requesting a review within a period of one month under regulation 6(2); and
- (c) the obligation on the local authority and proprietor to use reasonable endeavours to reach agreement under regulation 6(3).

(3) Where a federated school is converted into an Academy in circumstances where the federation was allocated a single budget share in accordance with regulations made under section 47 of the 1998 Act<sup>(c)</sup>, the local authority must determine whether the federated school has a surplus and, if so, the amount of that surplus, in accordance with a methodology agreed with the proprietor, and where this cannot be agreed, in accordance with paragraph (4).

(4) Where, immediately before the conversion date of the school, any amount made available to the governing body of the federation (under section 50 of the 1998 Act or otherwise) has not been spent by the governing body or any head teacher in the federation (“the total unspent sum”), the school has a surplus and the amount of that surplus is  $A \times (B/C)$  where—

A is the total unspent sum;

B is the total number of pupils registered at the school on the date used for ascertaining pupil numbers specified in regulations made under section 47 of the 1998 Act in force immediately before the conversion date; and

C is the total number of pupils registered at all of the schools within the federation on that date.

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(a) S.I. 2010/1938.

(b) S.I. 2007/2979.

(c) Section 47 was amended by section 101 of, and paragraph 6 of Schedule 16 to, the Education Act 2005 (c.18).

### **Review of local authority determination**

6.—(1) A proprietor who disagrees with any determination made by the local authority under section 7(2) of the 2010 Act may apply to the Secretary of State for a review of that determination within one month, beginning with the date on which the proprietor is informed of that determination in accordance with paragraph 5(1).

(2) If no application for review of the determination is made within one month as provided for in paragraph (1), the proprietor will be taken to have agreed with that determination and may only apply to the Secretary of State for review of that determination, if in the Secretary of State's view exceptional circumstances apply.

(3) Before making an application under paragraph (1) or (2) the local authority and proprietor must use reasonable endeavours to reach agreement on the amount of surplus payable to the proprietor.

(4) An application for a review under paragraph (1) or (2) must include the proprietor's reasons for making it and, if it is made under paragraph (2), also include the reason the proprietor considers exceptional circumstances apply.

(5) The proprietor must provide the local authority with a copy of any application made under paragraph (1) or (2) within one week, beginning with the date on which the application is made.

(6) Subject to paragraph (7), within three months, beginning with the date on which an application is received under paragraph (1) or (2), the Secretary of State must—

- (a) review the determination made by the local authority,
- (b) confirm that determination or substitute the Secretary of State's own determination, and
- (c) inform the proprietor and the local authority of the outcome of the review.

(7) The Secretary of State may extend the period for taking the actions in paragraphs 6(a) to (c) by such period as the Secretary of State determines, where the Secretary of State first informs the proprietor and local authority of the extension.

### **Payment of school surplus**

7.—(1) Subject to paragraph (2), the authority must pay to the proprietor the amount of any surplus determined under section 7(2) of the Act within one month, beginning with the earlier of the following dates—

- (a) the date on which the proprietor informs the local authority that the proprietor agrees with their determination; or
- (b) the date on which the period specified in regulation 6(1) (period within which proprietor may apply for review) ends.

(2) If the proprietor applies for a review under regulation 6(1) or (2), the local authority must pay to the proprietor the amount of any surplus determined under section 7(2) of the Act or by the Secretary of State under regulation 6(6)(b), as the case may be, within one month, beginning with the date on which the authority is informed of the outcome of the review.

*Name*

Position

Date

Department for Education

### **EXPLANATORY NOTE**

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