STATUTORY INSTRUMENTS

2013 No. 3037

EDUCATION, ENGLAND

The Academy Conversions (Transfer of School Surpluses) Regulations 2013

Made - - - -	*3rd December 2013*
Laid before Parliament	*6th December 2013*
Coming into force - -	*1st January 2014*

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 section 19 of 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) These Regulations 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 1st January 2014, or later.

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 which a maintained school has converted into(**f**).

Revocation and saving

3.—(1) The Academy Conversions (Transfer of School Surpluses) Regulations 2010(**g**) are revoked on 1st January 2014, save as is provided for in paragraph (2).

(**a**) See section 579(1) of the Education Act 1996 for the definition of "regulations". This definition applies by virtue of section 17(4) of the Academies Act 2010.
(**b**) 2010 c.32.
(**c**) 1996 c.56.
(**d**) "Conversion date" is defined in section 6(2) of the Academies Act 2010.
(**e**) 1998 c.31.
(**f**) "Converted into" is defined in section 4(3) of the Academies Act 2010.
(**g**) S.I. 2010/1938.

(2) The Academy Conversions (Transfer of School Surpluses) Regulations 2010 apply in relation to maintained schools 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 is before 1st January 2014.

Amendments

4.—(1) The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007(**a**) 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 of federated schools

5.—(1) Where a federated school(**b**) 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(**c**), the local authority must determine whether the school has a surplus and, if so, the amount of that surplus, in accordance with a methodology agreed with the proprietor, or where this cannot be agreed, in accordance with paragraphs (2) and (3).

(2) The school will have a surplus if immediately before the conversion date there is an amount that has been made available to the governing body of the federation (under section 50 of the 1998 Act or otherwise) that has not been spent by the governing body or any head teacher in the federation.

(3) The amount of the school's surplus is calculated in accordance with $A \times (B / C)$ where—

(a) *A* is the amount referred to in paragraph (2);

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

Notification of determination of school surpluses

6.—(1) A local authority must notify the proprietor of the determination made by them under section 7(2) of the 2010 Act within four months, beginning with the conversion date.

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

(a) how the proprietor may request a review of the determination under regulation 7(1);

(b) the consequence of not requesting a review under regulation 7(1) within a period of one month as described in regulation 7(2); and

(c) the obligation on the local authority and proprietor to use reasonable endeavours to reach agreement under regulation 7(3).

Review of local authority determination

7.—(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

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(**a**) S.I. 2007/2979, amended by SI 2012/3158; there are other amending instruments but none is relevant.
(**b**) "Federated school" has the meaning given by section 24(2) of the Education Act 2002, by virtue of section 17(2) of the Academies Act 2010.
(**c**) Section 47 was amended by section 101 of, and paragraph 6 of Schedule 16 to, the Education Act 2005 (c.18).

within one month, beginning with the date on which the proprietor is notified of that determination in accordance with regulation 6(1).

(2) If no application for review of the determination is made within one month as provided for in paragraph (1), the proprietor may only make an application to the Secretary of State for a review of that determination under this paragraph where the application includes the reason that the proprietor considers that there are exceptional circumstances which mean the Secretary of State should conduct a review requested outside of the one month period.

(3) Before the proprietor makes 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—

(a) the proprietor's reasons for disagreeing with the determination; and

(b) what endeavours have been made to reach agreement under paragraph (3).

(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) Where an application is made under paragraph (2) the Secretary of State must—

(a) determine whether there are exceptional circumstances which mean a review requested outside of the one month period should be conducted; and

(b) notify the proprietor and the local authority of that determination.

(7) Where an application is received under paragraph (1) or where following receipt of an application under paragraph (2) the Secretary of State has determined that there are exceptional circumstances under paragraph (6), then within three months beginning with the date on which an application is received under paragraph (1) or the Secretary of State has determined that there are exceptional circumstances under paragraph (6), 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) notify the proprietor and the local authority of the outcome of the review.

(8) The Secretary of State may extend the period for taking the actions in paragraph (7) by such period as the Secretary of State determines, in accordance with paragraph (9).

(9) The Secretary of State must notify the proprietor and local authority of any extension under paragraph (8), within three months beginning with the date on which an application is received under paragraph (1) or the Secretary of State has determined that there are exceptional circumstances under paragraph (6).

Payment of school surplus

8.—(1) Subject to paragraph (2), the local 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 notifies the local authority that the proprietor agrees with its determination; or

(b) the date on which the period specified in regulation 7(1) (period within which proprietor may apply for review) ends.

(2) Where the Secretary of State reviews a determination of the local authority under regulation 7(7)(a), the local authority must—

(a) in circumstances where the local authority has made no payments to the proprietor in respect of the surplus, pay to the proprietor the amount of any surplus confirmed or determined by the Secretary of State under regulation 7(7)(b) within one month, beginning with the date on which the local authority is notified of the outcome of the review under regulation 7(7)(c); or

(b) in circumstances where the local authority has already paid an amount to the proprietor in respect of the surplus, pay such further amounts to the proprietor in accordance with the amount of any surplus confirmed or determined by the Secretary of State under regulation 7(7)(b) within one month, beginning with the date on which the local authority is notified of the outcome of the review under regulation 7(7)(c).

John Nash
Parliamentary Under Secretary of State
Department for Education

3rd December 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 7 of the Academies Act 2010 requires local authorities to transfer a maintained school's surplus to the Academy proprietor when the school converts to an Academy following an order following an application by the governing body.

These Regulations revoke the previous Academy Conversions (Transfer of School Surpluses) Regulations 2010, except in relation to conversions occurring before 1st January 2014. They also amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 so that the Regulations apply to Pupil Referral Units converting to Academies.

Regulation 5 makes provision in respect of determining surpluses in federated schools.

Regulation 6 sets time limits for notifying proprietors of Academies whether there is, and if so the amount of, a surplus.

Regulation 7 makes provision about the procedure for requesting a review by the Secretary of State of any local authority determination.

Regulation 8 makes provision about the time limit by which a local authority must pay a surplus to the proprietor of an Academy.

No impact assessment has been prepared for these Regulations as they do not impact on business, charities or voluntary bodies and the impact on the public sector is minimal.

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