EXPLANATORY MEMORANDUM TO

THE ACADEMY CONVERSIONS (TRANSFER OF SCHOOL SURPLUSES) REGULATIONS 2013

2013 No. 3037

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

2. Purpose of the instrument

2.1 The Regulations set out the framework for the determination by a local authority of any amount made available to the school by the authority which remains unspent when the Secretary of State has approved the school's application to become an Academy. They make provision for review of the determination by the Secretary of State and payment of the determined amount to the proprietor of the Academy.

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

3.1 None.

4. Legislative Context

4.1 The Regulations replace the Academy Conversions (Transfer of School Surpluses) Regulations 2010 for schools converting on or after 1st January 2014. They also amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 so that the new Regulations apply to Pupil Referral Units converting to Academies.

4.3 The main changes to the 2010 Regulations are: to extend the timescales for surpluses to be determined; to provide that if the proprietor of an Academy requests a review of the level of surplus outside of the prescribed time limit the Secretary of State may consider the review if exceptional circumstances apply; to provide for arrangements for splitting surplus balances at federated schools; and to allow the Secretary of State to extend the period for reviewing the local authority's determination after informing the proprietor and the local authority.

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

7.1 The Regulations will allow more time for local authorities and schools to determine final surplus balances, in the light of experience suggesting that three months is not enough.

7.2 The Regulations provide absolute closure where requests for reviews are not received in time (unless exceptional circumstances apply) in order to clarify the position around late requests for reviews. The reason that this is necessary was because under the previous set of Regulations there was some confusion about the possibility of requesting reviews out of time.

7.3 The Regulations will provide a solution for local authorities and federated schools who are experiencing difficulties agreeing a methodology for determining the amount of surplus, by setting out a straight forward formula for circumstances where agreement cannot be reached.

8. Consultation outcome

8.1 The Department consulted on the draft Regulations between 26 September and 7 November 2013. A link to the consultation documents is here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245028/Academy_Conversions_Transfer_of_School_Surpluses_Regs_Consultation_Document_final.pdf

8.2 The consultation elicited 25 responses, mostly from local authorities but also from schools, Academies and other interested parties. A large majority of responses were in favour of the changes and recognised the intention to improve the system.

8.3 A few concerns were raised about the Secretary of State being able to extend the period for reviewing a determination by such period as he determines, one saying that this potentially gives rise to an indefinite timeframe and another that it is in everyone's interest to resolve a determination as soon as possible. Ministers have noted these concerns, but have nonetheless retained the provision in the light of experience that it is not always possible to obtain all necessary data from the proprietor and local authority so as to conclude the review within three months. Full details of the Department's response to the consultation will be published on its website when the Regulations are laid before Parliament (www.education.gov.uk).

9. Guidance

9.1 Further guidance on the Regulations for local authorities and Academies will be available on the Department's website.

10. Impact

10.1 These Regulations do not impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is confined to local authorities and schools, and is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 The Department will keep under review the changes to the Regulations and will monitor their impact at local level, to ensure that they are working effectively.

13. Contact

13.1 Adrian Thompson at the Department for Education can answer any queries regarding the instrument. Tel: 01325 735609 or email: SurplusandDeficits.Academies@education.gsi.gov.uk