# EXPLANATORY MEMORANDUM TO

# THE ALTERNATIVE PROVISION ACADEMIES (CONSEQUENTIAL AMENDMENTS TO ACTS) (ENGLAND) ORDER 2012

**2012 No. [XXXX]**

**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 To make amendments to primary legislation consequential on the creation of alternative provision Academies (since Free Schools are in law an Academy, whenever the term "Academy" is used in this Memorandum it should be taken to include Free School). The Schedule to the Order makes amendments to existing legislation to ensure that it applies correctly, or does not apply, to alternative provision Academies.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 The Education Act 2011 provides for new alternative provision Academies. Consequential amendments were made under Schedule 13 to that Act to reflect the creation of this new type of Academy. This order deals with the consequential amendments to primary legislation which were not made in Schedule 13 to the Education Act 2011. A further statutory instrument will be laid to make consequential amendments to secondary legislation.

## 5. Territorial Extent and Application

5.1 This instrument applies to England.

## 6. European Convention on Human Rights

The Lord Hill of Oareford has made the following statement regarding Human Rights:

In my view the provisions of the Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 are compatible with the Convention rights.

## 7. Policy background

7.1 Alternative provision is the term commonly used to describe education that is arranged for pupils who are without a school place or who need extra support. Reasons for this are varied and include cases where pupils are ill, are a new arrival in an area, or have behavioural issues which need to be tackled outside the usual mainstream school setting.

7.2 The Education Act 2011 creates two new types of Academy: alternative provision Academies, and 16-19 Academies. These regulations concern alternative provision Academies. The ability to become an alternative provision Academy will put pupil referral units and those who want to provide alternative provision on the same footing as maintained schools. It will give them the opportunity to access the greater freedoms and benefits of Academy status.

7.3 Some pupils only need alternative provision to supplement their mainstream education. Therefore, unlike mainstream education providers (including existing Academies), there is a significant proportion of part-time alternative provision. The consequential amendments which are made by the Schedule to this order are intended to ensure that legislation that applies to full-time alternative provision Academies by virtue of their being independent schools also applies to part-time alternative provision Academies. (Independent schools are defined as full-time establishments, and therefore part-time alternative provision Academies for this reason do not meet the definition).

7.4 The amendments in paragraphs 9 and 28 of the Schedule to the draft order relate to the religious designation of a school. Section 124B of the School Standards and Framework Act 1998 provides that an independent school has a religious character if designated as having such a character by order made by the Secretary of State. Schools with a 'religious character' are able to reflect faith beliefs in staffing policies. The amendment to section 124B in paragraph 9 of the Schedule provides that that section does not apply to alternative provision Academies. Amendment 28 of the Schedule amends paragraph 5(b) of Schedule 11 to the Equality Act 2010, which allows certain schools with a religious ethos to discriminate against a pupil in admissions or services on religious grounds, so that it does not apply to alternative provision Academies. Alternative provision providers meet the needs of small groups of troubled and vulnerable pupils. We would expect alternative provision Academies to recruit the appropriate professionals to address those needs and be open to all pupils who need their help. Alternative provision Academies are still free to have a distinct ethos based on a set of morals that are aligned with a particular faith.

## 8. Consultation outcome

8.1 Not applicable. This order covers consequential amendments in relation to provisions creating alternative provision Academies in the Education Act 2011.

## 9. Guidance

9.1 There is no guidance specific to these amendments, since they are consequential. However, guidance on how to apply to become an alternative provision Free School, for existing non-maintained and new providers, is available on the DfE website at: https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00094-2011

9.2 Guidance for existing maintained alternative provision providers (i.e. Pupil Referral Units (PRUs)) who wish to convert to become an AP Academy will be available shortly.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument since the order covers consequential amendments arising out of the Education Act 2011. The impact assessment for the Act is available at:

http://www.education.gov.uk/aboutdfe/departmentalinformation/educationbill/a0073748/education-bill

## 11. Regulating small business

11.1 This legislation does not apply to small business. The legislation, under the Education Act 2011, does give a relevant small business the opportunity to become an alternative provision Free School and thereby take advantage of the associated benefits. However, this order just covers consequential amendments in relation to that legislation.

## 12. Monitoring & review

12.1 The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 covers consequential amendments in relation to provisions in the Education Act 2011 to create Alternative Provision Academies. Monitoring and review will be carried out in relation to the parent provisions.

## 13. Contact

David Fugurally at the Department for Education email: david.fugurally@education.gsi.gov.uk can answer any queries regarding the instrument.