



Department
for Education

The Academy Conversions(Transfer of School Surpluses) Regulations 2013

Government consultation response

December 2013

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Introduction

The consultation on replacing The Academy Conversions (Transfer of School Surpluses) Regulations 2010 with The Academy Conversions (Transfer of School Surpluses) Regulations 2013 set out proposals;

- 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 will not consider the review unless exceptional circumstances apply; and
- to provide for arrangements for splitting surplus balances at federated schools.

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.

The Regulations will 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 Regulations will also 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.

The consultation on the draft Regulations lasted for six weeks between 26 September and 7 November 2013. It was targeted at local authorities, schools and other interested parties and was available on the GOV.UK website.

Summary of responses received and the Government's response

A targeted consultation on replacing The Academy Conversions (Transfer of School Surpluses) Regulations 2010 with The Academy Conversions (Transfer of School Surpluses) Regulations 2013 was completed on 7 November. 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. However, concerns were raised about the Secretary of State extending the period for reviewing a determination by such period as he determines.

Main findings from the consultation

Question 1: Regulation 5(1) – Do you think the 4 month timescale is necessary and sufficient? If not, please comment on how long you think the timescale should be and why.

17 respondents answered Yes, 7 respondents answered No, and 1 respondent answered Don't Know.

A summary of comments from the majority who agreed with this change are below.

“4 months is necessary to ensure that all liabilities are settled and to give both parties time to process post conversion invoices etc. 4 months ought to be sufficient time.”(local authority)

“It would be worth considering extending the timescale from 3 months to 4 months as not all schools are efficient in providing all the necessary data and/or completing financial processes eg completing monthly returns (sending in bank statements), amending budgets on their financial system etc that are required in order to get to the cash figure/transfer of school surpluses figure.” (local authority)

A summary of comments from the minority who disagreed with this change are below.

“Although we are not against a 4 month timescale, we are currently operating within the 3 month timescale and see no reason for the change. Where academies go at the start of the calendar year, there is no year end issues.” (local authority)

“No consider the current 3 month time frame adequate to resolve any outstanding queries and process charges relating to school activity prior to conversion. Where convertor schools make the appropriate decisions early and service providers react to the changes promptly 3 months is adequate. An extended period will only encourage matters to drift.” (local authority)

Government's response

We are pleased to see that the majority of respondents agree with this change. We will be implementing it to ensure local authorities and schools have sufficient time to determine and finalise their closing balances. We do not think that extending the timescale for an extra month will cause any significant problems. (This is provided for in regulation 6(1) in the final version of the Regulations).

Question 2: Regulations 5(3) and (4): For Federated School Balances - Do you agree that the local authority and academy should agree on the method of determining the surplus, and if no agreement is reached, there is a split based on pupil numbers?

19 respondents answered Yes, 4 respondents answered No, and 2 respondents answered Don't Know.

A summary of comments from the majority who agreed with this change are below.

“Our federated schools have retained their own balances, so the identification of a specific surplus in this instance is more straightforward. However, in instances where a surplus cannot be identified or agreement reached, we agree that a split based on pupil numbers is acceptable.” (local authority)

“It seems a reasonable way forward. If there is no particular issue, such as, what each school brought to the federation, a split on pupil numbers seems acceptable.” (local authority)

A summary of comments from the minority who disagreed with this change are below.

“Our local authority currently does not have any federated schools, however, the Council agrees that the local authority and the academy should agree on the method of determining the surplus. However, the Council does not consider that pupil numbers are an appropriate way of splitting the surplus should no agreement be reached. Schools that are federated may have different profiles, for example one may be a sparse school, one may have a higher proportion of deprived pupils or pupils with low cost high incidence SEN. An alternative default method if no agreement is reached may be to apply the surplus balance to the local authority funding formula to identify how it would be split between the federated schools. This would ensure that other factors impacting a school are taken into account as well as pupil numbers.” (local authority)

Government's response

We are pleased to see that a large majority of respondents agree with this change. We will be implementing it to 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 straightforward formula for circumstances where agreement cannot be reached. (This is provided for in regulation 5 in the final version of the Regulations).

Question 3: Regulations 6(2) and (4) – do you agree that the academy should be deemed to have agreed to the determination made by the local authority if it does not apply to the Secretary of State within one month, unless in the Secretary of State’s view exceptional circumstances, explained in the academy’s late application, apply to the case?

24 respondents answered Yes, 1 respondent answered No, and 0 respondents answered Don’t Know.

A summary of comments from the majority who agreed with this change are below.

“One month would seem to be a reasonable length of time in which to contest the balance. To allow a longer period of time would impact on the LA’s ability to close their ledger and produce their Statement of Accounts with any assurance that there would not be further changes.” (local authority)

“This would be helpful in order to deal with queries effectively and swiftly.” (local authority)

The comment from the respondent who disagreed with the change is below.

“There is often some dialogue with academies about details of the determination. It would be more flexible if the one month deadline applied from the last time that the authority revised the determination following representations from the academy.” (local authority)

Government’s response

We are pleased to see that an overwhelming majority of respondents agree with this change. We are therefore going ahead with the principle of this change, but for clarity’s sake are expressing the rule slightly differently. Since we are providing that if a review is requested outside of the one month period the Secretary of State only has to carry out the review where in his view exceptional circumstance apply. We do not think it is necessary to say also that the academy is “taken to agree to the determination” unless exceptional circumstances apply. The practical effect will be the same as what was originally proposed. (This is provided for in regulation 7 in the final version of the Regulations).

Question 4: Regulation 6(3) – do you agree that the local authority and academy should be required to use reasonable endeavours to reach agreement before the academy makes an application to the Secretary of State?

25 respondents answered Yes, 0 respondents answered No, and 0 respondents answered Don't Know.

A summary of comments are below.

“It would be good practice for this to take place.” (local authority)

“A local agreement is always more preferable than involving the Secretary of State.” (local authority)

“This should be the normal process within all local authorities.” (local authority)

Government's response

We are delighted that 100% of respondents agree with this change. We will be implementing it as we believe local resolution is preferable to state intervention. (This is provided for in regulation 7(3) in the final version of the Regulations).

Question 5: Regulation 6(7) – do you agree that the Secretary of State should be able to extend the period for reviewing a determination by such period as he determines?

16 respondents answered Yes, 8 respondents answered No, and 1 respondent answered Don't Know.

A summary of comments from the majority who agreed with this change are below.

“Yes, but only in exceptional circumstances.” (local authority)

“Only in exceptional circumstances and only in consultation with both the LA and academy in question. Extending the period for further review could;

- Have a detrimental effect on the cash flow of an academy if funds are not released until the surplus is agreed by the converting academy.
- Delay the collection of funds by the LA from the EFA in the case of an academy converting with a deficit balance.

Affect the accuracy of the financial information recorded in the LA's financial accounts for a converting academy if the conversion is on 1st April.” (local authority)

A summary of comments from the minority who disagreed with this change are below.

“Delaying the process unduly is not helpful to either the academy or the LA. A decision should be made one way or the other within a month by the Secretary of State. 4 months should be long enough to generate evidence to back up the final position. It may well be that certain differences are historic and have limited supporting evidence. In these cases, an objective adjudication by the Secretary of State will probably be the only way that such disputes are decided.” (local authority)

“Surely three months is long enough for the Secretary of State to review a case. Neither a school or LA would want the decision (and receipt of the surplus) prolonged.” (local authority)

Government's response

We are pleased that the majority of respondents agree with this change but note that a sizeable minority disagree. We will however be implementing it, 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. (This is provided for in regulation 7(8) in the final version of the Regulations).

Question 6: Do you have any other comments?

A summary of comments below.

“We welcome this consultation as having dealt with a number of academy conversions over the past 3 years we have found from experience that the 3 month window is very tight, especially when it runs across a school holiday.” (local authority)

“Our local authority’s approach to working with schools looking at the academy conversion process and the calculation of balances does not seem to put undue pressure on either party. We have been able to keep the process of calculation and transfer of balances as simply as possible and well within the existing time frame. The local authority view is that the current process is not broken and does not require change.” (local authority)

Next steps

The Regulations will be laid before Parliament to come into force on 1 January 2014.

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.



Department
for Education

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