

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE PROVISION ACADEMIES AND 16 TO 19 ACADEMIES
(CONSEQUENTIAL AMENDMENTS TO SUBORDINATE
LEGISLATION)(ENGLAND) ORDER 2012

2012 No. 979

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 secondary legislation consequential to the creation of alternative provision Academies and 16 to 19 Academies (which includes Free Schools since Free Schools are in law an Academy, so 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 and 16 to 19 Academies.

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

3.1 None.

4. Legislative Context

4.1 Amendments made to the Academies Act 2010 by the Education Act 2011 provide for the first time for alternative provision Academies and 16 to 19 Academies. What were previously called “Academies” under the Academies Act are now called “Academy schools”. Consequential amendments to primary legislation were made under Schedule 13 to that Act to reflect the creation of these new types of Academy. This Order deals with the 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 and 16 to 19 Academies (Consequential Amendments To Subordinate Legislation)(England) Order 2012 are compatible with the Convention rights.

7. Policy background

7.1 The Education Act 2011 creates two new types of Academy: alternative provision Academies, and 16 to 19 Academies. The ability to become an alternative provision Academy will put pupil referral units and others who want to provide alternative provision on the same footing as maintained schools. 16 to 19 Academies will widen the choices available to young people, encouraging more of them to continue in education past their GCSEs. These developments will increase the opportunities to access the greater freedoms and benefits of Academy status.

Alternative Provision Academies

7.2 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.

7.3 Some pupils only need alternative provision to supplement their mainstream education. Therefore, unlike mainstream education providers (including existing Academies), a significant proportion of alternative provision providers are part-time or very small. For alternative provision, almost all of 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 or very small alternative provision Academies. (Independent schools are defined as non-maintained schools which provide full-time education for at least five pupils of compulsory school age, or one child with a statement of SEN or one looked after child. Therefore part-time alternative provision Academies, or those who offer full-time education to fewer than five pupils, for this reason do not meet the definition).

7.4 The first exception is the amendment to regulation 12(1) of the Police Act 1997 (Criminal Records) Regulations 2002 (paragraph 11(3)(a) in the Schedule to the Order). This ensures that disclosure of information on a person's suitability for employment, by an employment agency to an AP Academy that is not exclusively or mainly for the provision of full-time education, will be exempt from the prohibition on disclosure of information in section 124 of the Police Act 1997.

7.5 The second exception is the amendments to regulations five, six, and nine of the School Information (England) Regulations 2008 (paragraph 24 in the Schedule to the Order). This ensures that the requirement on local authorities to publish information, online or through prospectuses, to help parents choose a school for their child does not apply to AP Academies. These provisions are not relevant to AP as it is not part of the schools admissions process and works on a referral basis.

16 to 19 Academies

7.6 A 16 to 19 Academy is a new type of education institution. The amendments made by this Order provide the appropriate legal framework within which they can operate. The general principle behind the amendments is that the framework should reflect broadly that of sixth form colleges or other further education institutions. For example, the amendment to regulation 2 of the Education (Grant) (Financial Support for Students) Regulations 2001¹ extends to 16 to 19 Academies the Secretary of State's power to pay grant to further education institutions for students studying higher education. This power currently applies in relation to sixth form colleges and other further education institutions.

8. Consultation outcome

8.1 Not applicable. This Order covers consequential amendments in relation to provisions creating alternative provision and 16 to 19 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 or 16 to 19 Free School is available on the DfE website at:
<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/a0074965/how-to-apply-to-open-a-free-school>

9.2 Guidance for existing maintained alternative provision providers (i.e. Pupil Referral Units (PRUs)) who wish to convert to become an alternative provision Academy is available on the DfE website at:
<http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/a00203944/ap-academies>

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

¹ S.I. 2894.

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 a 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 and 16 to 19 Academies (Consequential Amendments to Acts) (England) Order 2012 covers consequential amendments in relation to provisions in the Education Act 2011 to create alternative provision and 16 to 19 Academies. Monitoring and review will be carried out in relation to the parent provisions.

13. Contacts

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

16 to 19 Academies: Elridge Foster at the Department for Education (email: elridge.foster@education.gsi.gov.uk)