



Department
for Education

Transfer of land by local authorities

Schools Bill Factsheet

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Contents

Schools Bill Factsheet: Transfer of land by local authorities	3
What is the Government's Policy objective?	3
What does this measure do?	3
Why is legislation needed?	4
What is the effect of the legislation?	4
How will this work in practice?	5
Key questions and answers	5

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What is the Government's Policy objective?

The Government's aim is that all children will benefit from being taught in a school in, or in the process of joining, a multi academy trust by 2030. That is why the Government has committed to support schools to become academies by removing barriers to conversion that apply to schools with particular characteristics, including those with a religious character.

What does this measure do?

This measure therefore relates to academies where land is held on separate charitable school trusts, rather than by an academy trust company. Such trusts are most commonly, but not exclusively, linked to Church of England or Roman Catholic dioceses.

Many of these schools operate on land that was gifted or purchased to be held on a special trust which limits it to being used for a church school. This land is usually held for this use by the charitable trustees as a permanent endowment and made available free of charge to the school. The control the trustees have as the freehold landowner is important for the character of the school and in ensuring the land continues to be used for its original charitable purpose.

The Government recognises that when considering whether their schools should become academies, charitable school trustees will want to be confident that the nature and purpose of their trust will be preserved. The Government is introducing a measure to preserve trustees' existing land interest once schools whose sites are held on charitable trusts become academies.

There are occasions when it is necessary and/or advantageous to move a school to a new site which has been provided by a local authority (LA). The measure is intended to address some of the differences in existing legislation between maintained foundation and voluntary schools and academies when this happens and involves the provision and transfer of a new site for an existing school with these trusts.

These measures are intended to give confidence to maintained schools that their unique religious character will be protected in the long term once after they have converted to become academies and to secure the support of religious bodies, including the Churches, for the Government's proposals for all schools to join, or be in the process of joining, a multi academy trust by 2030. The Government's aim is to both encourage, and remove any barriers to, Church and faith schools joining a multi academy trust.

Why is legislation needed?

Schools sometimes need to move site – either because of local reorganisation and changing pupil numbers which may mean they need to expand and cannot do so on their current site, or because their current buildings are no longer suitable. Local authorities will be working with schools in their area to help facilitate these moves due to their overarching responsibility for providing school places and may be providing new sites for schools as part of this.

Some schools currently operate on land which is held on a special trust, and which may have been purchased or gifted to be held and used for specific charitable purposes. This applies to most faith schools where, for example, the original gift may require land to be used for a church school. It may also apply to non-denominational schools with historic trusts based on similar charitable gifts. When these schools move site, the trustees may be asked to surrender the land they currently hold in return for the new local authority provided site.

Whilst schools remain as maintained foundation or voluntary schools, when the authority provides a new site (other than playing field) it must transfer the legal interest it holds in the land (usually a freehold) to the trustees of the charitable school trust. This ensures parity in the assurance and control the trustees have between the new site and the old site which they have surrendered – the trustees had a freehold before and they would have a freehold in future.

However, this obligation to transfer the legal interest does not currently exist after these schools have converted to academies. The law allows LAs to assist academies by providing land. However, this is normally through the provision of a 125-year lease, regardless of any charitable site trust. This changes the nature of the charitable school trustees' land holding. If trustees hold a particular site specifically for a school and then the school moves to another site, they cannot carry out the purpose of the trust if nothing else is done, as the land ends up without a school. Trusts consider this risk a barrier to agreeing to a conversion. The legislation is therefore needed to add a requirement for local authorities to transfer land provided for an academy in circumstances where the charitable trustees are being asked to give up their current land interest in return, so that the purpose of the trust to provide land for a school can continue to be preserved, rather than fail.

What is the effect of the legislation?

If a local authority decides to use its discretionary power to provide a new site for an academy, they will need to consider whether any of the academy's existing land is held on a separate charitable school trust. If it is, then the local authority will be required to transfer the interest it holds in the land it is providing – usually the freehold – to the trustees. In return, the trustees will be required to transfer proceeds of sale from the old site to the local authority (unless the authority agrees to accept a transfer of the land

instead). This exchange ensures the current nature and purpose of the trust are preserved.

However, there may be situations where the charitable purposes of the land are wider than just the school, and trustees may wish to retain their current site for use other than a school. Trustees may therefore choose to retain their land, but if they do, the local authority will no longer be under a duty to transfer the new site and may instead offer a lease.

The effect of the legislation is to replicate for these schools as academies what would have happened if they had relocated to a new site as a maintained foundation or voluntary school.

How will this work in practice?

The local authority, the academy trust, and the charitable trustees may agree locally that the school should be moved to a new site which the authority has identified and agreed to make available.

The charitable site trustees will need to agree to dispose of their current site. Usually this will be by commercial sale once it is vacated but depending on the circumstances the local authority may agree to accept the current site in exchange for the new one. If the site is to be sold, the trustees will agree with the authority the amount of sale proceeds to pass to them, bearing in mind the value of the new premises that the authority will transfer to the trustees. The academy trust will also arrange to end any occupancy agreements which might apply to any land currently occupied or used by the academy but not held by the trustees – for example playing field leased from the local authority.

The parties will need to agree the extent of the new site to be transferred to the trustees and draw up the necessary transfer documents. Local authorities will not be required to transfer playing field land. Playing field land will therefore be made available through a lease.

In the event that the parties cannot reach agreement on any issue relating to the transfer, they may refer the matter to the Schools Adjudicator for a decision.

Alternatively, the trustees may decide to retain the current site to use for wider charitable purposes. If they decide to do so, they will then agree a lease for the new site with the local authority.

Key questions and answers

Is this a genuine blocker to schools becoming academies?

The Department has seen that resolving land issues and giving landowners, trustees, and academy trusts certainty about the future of a school's site can be a cause of delay

or hesitation in schools converting to academy status. We know that in particular charitable trustees will want to ensure the relationship they have had with the school will continue. This is a measured and reasonable step to provide assurance and clarity, ensure equitable treatment across all authorities, and so help smooth the path to academisation.

Will local authorities have to provide land for academies?

No, the clause does not change the current legislative provision that local authorities have a discretionary power to assist academies by providing a site.

Isn't this is a big ask of local authorities?

Local authorities are being asked to do no more than if these schools had remained maintained foundation and voluntary schools and subsequently moved site.

How much of the proceeds of sale do the trustees need to transfer – What if their interest is worth more than the new site?

The clause provides for the trustees to pay the local authority a “just sum”, making clear that they should have regard to the value of the interest the local authority is transferring. In other words, the trustees should not be expected to transfer proceeds of sale greater than the value of the land interest they are receiving.

But, in many cases, the proceeds of sale will be less than the value of the local authority's interest in the new premises; and, in those cases, the trustees may be expected to transfer the full proceeds of sale. They will not, however, be required to pay more than those proceeds, with the exception of any interest that may have accrued on the proceeds if there has been a delay between sale of the old premises and payment to the local authority.

Can the local authority ever potentially get the land or its value back?

Any land provided to an academy by a local authority remains publicly funded land. It may not be disposed of without reference to the Secretary of State, and at that point the Secretary of State can return the land to the local authority, or direct the trust to pay the local authority consideration from the proceeds of sale.

If the land is publicly funded land, how is the trustee value recorded? What if the trustee value is the majority of the value of the publicly funded land?

The split of public and charitable interest would be determined at the point the land came to be disposed of, and any decision on use of the Secretary of State's powers would

reasonably take the balance of interest into account. For this reason, it will be important that the trustees and local authority keep good records of statutory transfers.



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