

Briefing Note to Schools Forum:18th January 2022

Clarification on the proposal to retain a proportion of a surplus balance where a school is directed to convert.

Background:

Members of Schools Forum will recall that at the November Schools Forum meeting we presented a proposal to revise the Leeds Scheme for Financing Schools to clarify the council's position on the treatment of surplus balances in the case of directed academy conversions. The revision would state in those circumstances that the council would retain any surplus balance over 8%.

When a school converts to academy status as a voluntary conversion any surplus or deficit is transferred to the academy. However, if a school is directed to convert by the Secretary of State then any deficit defaults to the council. According to DfE regulations, under this conversion route, any surplus also remains with the LA (though the surplus can be transferred to the academy trust and, in practice, some LAs including Leeds have agreed to this in the past).

Leeds has no formal policy in place regarding this set of circumstances and it is important that one is established so all schools are aware of what will happen if they are in this situation in the future. This change to the scheme would clearly state how directed conversion surpluses will be treated and allows the authority to retain funds to mitigate the effect of any deficit balances which, under DfE regulations, must be retained by the Local Authority.

Therefore, schools were asked to vote and comment on the following proposed paragraph, to be written into the Leeds Scheme for Financing Schools:

"Where a school is directed to convert to academy status under section 4 (1)(b) of the Academies Act 2010 the school may retain a proportion of the surplus (excluding specific grants) up to 8% of school budget share; any surplus amount over this percentage will revert to the LA."

The consultation results indicated that of the 45 responses received on this proposal. 35 (78%) supported the proposal and 10 (22%) did not.

Schools Forum Challenge:

The above proposal was discussed and challenged by members of School Forum on the basis that it was contrary to the ESFA Guidance March 2018 'Treatment of surplus and deficit balances when maintained schools become academies' (Copy attached for reference).

Section 5. of the guidance states that:

5 Sponsored academies with a surplus balance on conversion

5.1 Where a school is to open as a sponsored academy, there are two possible routes to closure of the maintained school:

the route where the governing body or Interim Executive Board (IEB) applies for an AO; and the route where the SoS issues an AO in respect of a school eligible for intervention. There will be a difference in the treatment of surplus balances on conversion, depending on the route taken:

- where the SoS issues an AO following an application from the maintained school's governing body or IEB, the law requires that the surplus will transfer to the AT;
- under the other route, the surplus remains with the LA (though the surplus can be transferred to the AT and, in practice, some LAs have agreed to this)

As can be seen from the guidance above there are two different treatments of the surplus balance which is dependent on the route to closure of the maintained school.

If the maintained schools governing body or IEB applies for an Academy Order then the surplus will remain with the Academy Trust.

If the Secretary of State (SoS) issues an Academy Order in respect of a school eligible for intervention then the surplus remains with the Local Authority, although the guidance does state that this surplus can be transferred to the Academy Trust. Our proposal to retain any surplus balance over 8% of total budget share based on this second route as per the guidance.

The proposed paragraph for inclusion in the Leeds Scheme specifically refers to academy conversion under Section 4(1)(b) of the Academies Act 2010 which define the conversion route as below:

Section 4(1)(b)

The Secretary of State may make an Academy order in respect of a maintained school in England if—

(a) [E2] an application in respect of the school is made [E2] under section 3, or

(b) the school is eligible for intervention (within the meaning of Part 4 of EIA 2006) [E3] other than by virtue of section 61 or 62 of EIA 2006 [E3].

Recommendations:

On the clarification of the guidance as above we would request that Maintained and SILC Schools Forum members proceed to vote and support the original proposal to include the following paragraph into the Leeds Scheme for Financing Schools:

“Where a school is directed to convert to academy status under section 4 (1)(b) of the Academies Act 2010 the school may retain a proportion of the surplus (excluding specific grants) up to 8% of school budget share; any surplus amount over this percentage will revert to the LA.”