



Department  
for Education

# **Treatment of surplus and deficit balances when maintained schools become academies**

**Guidance note for schools, local  
authorities and academy trusts**

**March 2018**

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# Summary

## About this guidance

When a maintained school becomes an academy, legislation sets out a process for the transfer of any surplus the school may have at the point of conversion. This guidance sets out what happens to a *surplus* balance when a school ceases to be maintained by the local authority (LA) and becomes an academy under the Academies Act 2010. It also sets out what happens to any *deficit* a converting school may have. It is intended to help LAs comply with their duties, and ensure that deficit or surplus balances are transferred within the statutory timescales. This guidance should be read alongside the legislation: the Academies Act 2010, the Academy Conversions (Transfer of School Surpluses) Regulations 2013 and the School and Early Years Finance (England) Regulations 2018.

## Expiry or review date

This guidance will be reviewed annually and updated when required.

## What legislation does this guidance refer to?

- The Academies Act 2010<sup>1</sup>
- The Academy Conversions (Transfer of School Surpluses) Regulations 2013 (“the 2013 Regulations”)
- The School and Early Years Finance (England) Regulations 2018 (“the Finance Regulations”)

## Who is this guidance for?

- This guidance is for:
- LAs
- School leaders, school staff and governing bodies in all maintained schools and academies
- Academy trusts

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<sup>1</sup>Section 7 of the Academies Act 2010 requires local authorities to transfer a maintained school’s surplus balances when the school converts to an academy. The Academy Conversions (Transfer of School Surpluses) Regulations 2013 set out the procedure that the local authority must follow in determining and paying the amount.

## Key points

### 1 Definition of converter academies and sponsored academies

1.1 In this document, converter academies are those that convert (whether as a standalone academy or as part of a multi academy trust) by means of an academy order (AO) made after an application by the governing body of the school. Schools which are eligible for intervention, within the meaning of Part 4 of the Education and Inspections Act 2006, and schools that have applied to become an academy but where the Regional Schools Commissioner (RSC), on behalf of Secretary of State (SoS), does not consider the school strong enough to convert without the additional support of a sponsor are treated as sponsored academies, even where their route to becoming an academy is through an application for an AO by the governing body.

### 2 Converter academies with a surplus balance on conversion

2.1 If a school has a surplus balance when it converts to academy status, the 2013 Regulations provide that:

- the LA must determine and notify the amount of that surplus within **four months** of the date of conversion;
- if that amount is agreed, pay it to the Academy Trust (AT) within one month following the AT's agreement to the determination;
- the LA and AT must work together to reach an agreement on the determination within the four month timescale. However, should agreement not be possible, the AT has a right to apply to the SoS for a review. This must ordinarily be done within one month of the determination, giving reasons for the disagreement and an account of what endeavours have been made to reach agreement;
- an AT may also make a request for a review at a later time, but only in exceptional circumstances. The AT must set out why it considers there to be exceptional circumstances, and it is for the SoS to determine whether exceptional circumstances exist;
- the SoS has three months from receiving the request for a review, or deciding that exceptional circumstances apply, to make a decision. However, he can extend the period for reviewing a determination; and
- the LA then has one month in which to pay over the surplus following receipt of this decision.

2.2 If the new academy has made commitments against an anticipated surplus, advice should be sought from the Education and Skills Funding Agency (ESFA) on how to secure an advance of funding to meet this commitment. The preferred approach in these circumstances is for ESFA to make a partial payment in anticipation of an agreement on the amount of the surplus.

### **3 Capital and revenue differentiation (converter projects)**

3.1 For converter academy capital projects, where the Department is notified of a committed capital surplus alongside a revenue deficit, we advise LAs to preserve the capital surplus so that the school can use it on the capital project they have in mind and to pay that capital surplus over to the school, rather than netting it off the revenue deficit. This ensures that capital funding is not spent on revenue. Revenue surpluses, on the other hand, can be used to reduce or clear a capital deficit.

### **4 Converter academies with a deficit balance on conversion**

4.1 Deficit balances unlike surplus balances are not covered in the same way by primary legislation and regulations. The Department's policy, however, is to treat deficits in a similar way, so the Department reimburses LAs and recovers the money back from the academy through abatement of General Annual Grant (GAG). The Department has to ensure the amount due is a true reflection of what is owed and will only pay once the amount is agreed by both parties. In the event of a disputed deficit balance, the AT may apply to the SoS for a review. The SoS will base his decision on the evidence provided by both parties.

4.2 If a school is concerned that the size of its deficit could prevent it from converting, but the school is not eligible for intervention or otherwise eligible to be treated as a sponsored academy, it is open to the LA to agree to absorb part or all of the deficit rather than insist on it being repaid by the school. This is most likely to apply where the school is joining the AT of an external sponsor, but as a converter academy.

### **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).

## 6 Sponsored academies with a deficit on conversion

6.1 Where a school with a deficit is to open as a sponsored academy, the deficit remains with the LA, to be funded from its core budget. School deficits are not an allowable charge on the LA's schools budget (funded by its allocation of Dedicated Schools Grant); however, if the schools forum has agreed to de-delegate a contingency provision, then the deficit may be funded from that contingency, depending on the criteria agreed for its use. This arrangement applies to all sponsored academies as defined in section 1.1.

6.2 LAs should work closely with schools becoming an academy to ensure that they manage the risk of an increasing deficit, and if a school is not managing its expenditure in a satisfactory manner, the LA may withdraw delegation of the school's budget share in order to limit the potential cost to the LA's budget. Some LAs may have an approach which sees their finance officers working closely with school improvement officers, so they can identify at an early stage schools which are underperforming and may require a sponsored academy solution, and can provide additional financial monitoring prior to them becoming an academy.

## 7 Federated schools

7.1 The 2013 Regulations require that a LA and AT should agree on the method of determining the surplus balance for a school that was a federated school, and if no agreement is reached, the balance would be split based on pupil numbers.

7.2 The formula used for splitting surplus balances at federated schools where there is no agreement is  $A \times (B / C)$ , where:

**A** is the amount of a school's delegated budget that has not been spent by the governing body or any head teacher in the federation immediately before the conversion date;

**B** is the total number of pupils registered at the school immediately before the conversion date; and

**C** is the total number of pupils registered at all of the schools within the federation on that date.

7.3 As in the case of non-federated schools, the LA and AT must use reasonable endeavours to reach agreement on the amount of surplus payable. Where agreement cannot be reached, the AT has the right to ask the SoS for a review.

## **8 Schools with internal loans outstanding**

8.1 The Department would expect that the liability to repay a loan made by the LA to a maintained school would normally transfer to the academy, which would continue repayments from its revenue budget on the previously agreed schedule, unless the LA and school agree to liquidate the loan and pay it off at the point of transfer. The transfer of responsibility for the loan should be reflected in a legal agreement between the LA and the AT, either by amending the Commercial Transfer Agreement (CTA) or in a separate agreement. Any current loan repayments a maintained school has to make will need to be checked for their affordability alongside the repayment of any deficit at the point of conversion. The Department will not recognise as a loan any arrangement that is agreed between the LA and a maintained school after the governing body or IEB has made an application to become a sponsored academy or after the school becomes eligible for intervention by the SoS, unless the AT sponsoring the academy has agreed to take on the liability. The Department will also not recognise as a loan any sum that has been provided in order to fund a deficit that has arisen because a school's recurrent costs exceed its current income and where this has been agreed or an existing loan arrangement was revised on or after 22 March 2018.

## **9 Other borrowing and leases**

9.1 Schools may have borrowed from other lenders prior to conversion and have liabilities for continuing repayments. SoS approval of this borrowing is required before the loan is taken out. The associated repayment liabilities would normally transfer to the academy, which would continue repayments from its revenue budget on the previously agreed schedule, unless the lender and school agree to liquidate the loan and pay it off prior to the school becoming an academy.

9.2 One form of such borrowing is leases. There is a distinction between operating leases and finance leases. A broad explanation of the distinction between these two types of leases is that an operating lease is where the school makes a regular payment to use the equipment and the equipment is returned to the provider at the end of the lease, and a finance lease is where the body making the payment acquires the asset at the end of the repayment period. It is up to the prospective academy's accountants, however, to determine whether a lease is an operating lease or finance lease. Finance leases are regarded as a form of borrowing and, as with any borrowing other than the internal loans that LAs make to their maintained schools, SoS approval of this borrowing is required before the lease is taken out.

9.3 If any such borrowing occurs prior to the school becoming an academy, it will be necessary for the finance lease payments or repayments of the loan to be checked for affordability alongside the repayment of any deficit at the point of conversion.

9.4 Any queries in relation to the contents of this note should be submitted through the [contact form](#).





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