Department for Education

Changes to the criteria for agreeing loan schemes

Government consultation response

March 2018

Contents

Introduction

Local authorities are required to have a scheme for financing schools, setting out the financial relationship they have with their maintained schools. We publish statutory guidance setting out the detail of what the scheme should or may contain. This includes guidance for authorities about how to operate an internal loan scheme (section 4.10). Its original purpose was to encourage internal arrangements within the authority that would enable schools to spread the cost of large one-off items of expenditure, particularly capital items, over more than one year to make these more affordable. It was not intended as a means to support schools in general financial difficultly, which is covered separately under section 4.9 (licensed deficits) of the guidance.

We are aware that some authorities are now using loans in place of licensed deficits, as our guidance states that loan liabilities will normally transfer to academies on conversion. This may be a way round the requirement that deficits of schools that become sponsored academies revert to the local authority.

On 24th March 2017, we published a consultation that proposed changes to the operation of local authority financial schemes. The proposed changes were to clarify the purpose of loans and distinguish them from licensed deficits. This is to ensure loans are only used for their intended purpose to spread the cost of large one-off individual items of a capital nature, over more than one year to make these more affordable. Loans were not intended as a means to fund deficits that have arisen because a school's recurrent cost exceeds its recurrent income.

The consultation also proposed to make a related revision to section 8.1 of the Treatment of surplus and deficit balances when maintained schools become academies guidance note for schools and local authorities.

We published a further consultation on the 15th November seeking views on our proposals on how we will challenge breaches to the criteria for loan agreements and when the changes will come into force. We also clarified that we are proposing to make a directed revision to local authorities' schemes for financing schools and that the revision to the criteria for agreeing loan schemes will not be applied retrospectively to existing loans when schools convert. This is the government's response to the consultation and sets out:

- a summary of the consultation proposal
- an overview of the key themes arising from the responses we received, and our decisions on the basis of these responses
- a timeline of next steps

Summary of the consultation proposals

‘Changes to the criteria for agreeing loan schmes’ consultation

Question 1 of the first consultation proposed a directed revision to the local authority scheme for financing schools to clarify the purpose of loan schemes and distinguish them from licensed deficits. We proposed to set out that new loans must only be approved to assist schools in spreading the cost over more than one year of large one-off individual items of capital expenditure.

Question 2 of the consultation proposed an addition to the wording on the treatment of loans. This is to clarify that any sum that has been provided to a school where its recurrent costs exceed its recurrent income will not be recognised as a loan.

‘Implementation of the changes to the criteria for agreeing loan schemes’ consultation

Question 1 of the further consultation proposed to make a directed revision to all local authorities’ schemes for financing schools to clarify the purpose of loan schemes and distinguish them from licensed deficits. We proposed to create a process for determining what should happen to loans that have been made in breach of the loan scheme criteria. We set out the powers the Secretary of State has under paragraph 13(4)(d) of the Academies Act 2010, to make a direction to the effect that a loan does not transfer in individual cases.

Question 2 of the further consultation proposed that the changes to the criteria for agreeing loan schemes would not be applied retrospectively to existing loans. We proposed that the changes to the criteria for agreeing loans schemes would come into force from the date of the publication of the government response to this consultation.

Overview of responses received

'Changes to the criteria for agreeing loan schemes' consultation

The initial consultation ran between 24th March 2017 and 21st April 2017. Within this time, we received 75 responses to each question.

Table 1 shows a breakdown of responses by role.

Role	Total	Percent
Head teacher/ principal	2	3%
Local authority representative	52	69%
Sector organisation respresentative	7	9%
Schools business manager/ bursar	6	8%
Other education professional	4	5%
Other	2	3%
Not answered	2	3%

Table 1: responses by role

The majority of responses, a total of 52 were from local authority representatives, which is unsurprising considering that the consultation questions relate to statutory guidance for local authorities.

Table 2 shows a breakdown of responses by organisation type.

Organisation type	Total	Percent
Academy	2	3%
Maintained school	3	4%
Local authority	53	71%
Representative body	9	12%
Other	4	5%
Not answered	4	5%

Table 2: responses by organisation type

Again, unsurprisingly the majority of responses were from local authorities. Representative bodies such as teaching unions, local authority unions and other bodies also made up a significant proportion, nearly 18%.

The full list of organisations that responded can be found in Annex A.

We received consultation responses from 64 of the 152 local authorities in England that have education responsibilities.

Two respondents requested that their comments be kept confidential, a further 66 confirmed they were happy for their responses to be made public and 7 declined to answer. The organisations that provided details are listed in Annex A. The list excludes the two respondents who requested for their responses be kept confidential.

‘Implementation of the changes to the criteria for agreeing loan schemes’ consultation

The further consultation ran between 15 November 2017 and 13 December 2017. Within this time we received 20 responses to each question.

Table 3 shows a breakdown of responses by role.

Role	Total	Percent
Local authority representative	15	75%
Sector organisation representative	1	5%
Schools business manager/ bursar	3	15%
Other	1	5%

Table 3: responses by role

The majority of responses, (15) were from local authority representatives, which is unsurprising considering that the consultation questions relate to statutory guidance for local authorities.

Table 4 shows a breakdown of responses by organisation type.

Organisation type	Total	Percent
Maintained school	2	10%
Local authority	15	75%
Representative body	2	10%
Other	1	5%

Table 4: responses by organisation type

The majority of responses were from local authorities.

The full list of organisations that responded can be found in Annex A.

We received responses from 17 of the 152 local authorities in England that have education responsibilities.

Two respondents requested that their comments be kept confidential, a further 17 confirmed they were happy for their responses to be made public and 1 declined to answer.

Question analysis

‘Changes to the criteria for agreeing loan schemes’ consultation

Question 1

Do you agree with the proposal to issue a directed revision to clarify the purpose of loan schemes?

	Total	Percent
Yes	30	40%
No	42	56%
Not Answered	3	4%

The main reason respondents agreed with the proposal to make a revision to the scheme was that they welcomed the clarity that it provided to the existing statutory guidance on loans and licensed deficits. Within the scheme for financing schools statutory guidance, the original purpose of loan schemes was to spread the cost of large one-off items of expenditure, particularly capital items, over more than one year. Licensed deficits allow for an arrangement whereby schools are allowed to plan for a deficit budget, these can be used for schools in a generally poor financial position.

Some local authorities already understood the current guidance to mean loans are intended for capital expenditure and welcomed the revisions to ensure fairness between local authorities. Those in favour of the revision expressed their concern about local authorities using loans to fund deficits that have arisen due to costs exceeding budgets; that in this situation a licensed deficit should be used.

The most common reason for disagreeing with the proposal was that the revision would remove local authorities’ ability to plan for a school’s deficit. Respondents commented that using loans is a way for local authorities to mitigate the risk of schools falling into deficit and not having to repay funds to the local authority. Others felt that loans were the only way for local authorities to strategically plan for deficits over a number of years.

Respondents were concerned that the proposed revisions were contrary to government policy to promote self-management of schools and that the proposals would negatively affect the delegation given to maintained schools.

Other reasons cited by respondents disagreeing with the proposals were that school budgets are under increasing pressure. We received comments that the revisions will mean that more schools will fall into deficit and that local authorities are facing similar cuts and cannot be held responsible for these deficits.

Question 2

Do you agree with the proposal to amend the guidance on the treatment of surpluses and deficits when a maintained school becomes an academy?

	Total	Percent
Yes	27	36%
No	46	61%
Not Answered	2	3%

A number of respondents felt that deficits are an unnecessary barrier for schools wishing to convert to an academy and welcomed an amendment to the current guidance on the treatment of surpluses and deficits.

Respondents that opposed the revisions suggested that the changes would give converting sponsored academies an incentive to run up large deficits, as the deficit would remain with the local authority upon conversion. Respondents commented this would penalise both local authorities and maintained schools. Some also considered that there is no valid reason why converter and sponsored academies should be treated differently when it comes to a transfer of a deficit balance.

A number of comments mirrored the responses from question 1. The concerns centred on how the revisions will have an impact upon local authorities' strategic planning. We received comments that loans are a method for local authorities to safeguard against the risk of maintained schools running up a deficit and that the revisions will remove maintained schools' accountability for good financial management.

'Implmentation of the changes to the criteria for agreeing loan schemes' consultation

Question 1

Do you agree with the proposal to create a new process for loans made in breach of the loan scheme criteria?

	Total	Percent
Yes	5	25%
No	15	75%

The comments received for opposing the proposals were in line with the views provided for the first consultation. A reduction in the funding resources held by local authorities and concerns that these proposals had an unfair impact on local authorities and maintained schools were the main reasons why respondents disagreed with the proposals. These respondents stated that local authorities should not be penalised by the academy programme and that maintained schools should not be unfairly treated for not being an academy. A number of respondents said that it was not a local authority's choice for a maintained school to be subjected to an academy order.

Some respondents felt that these proposals would remove incentives for maintained schools to manage their budgets. Additionally, that this was the role of the governing body of the school and not the local authority. Some respondents commented that local authorities do not have the power to intervene with school budgets and they are powerless to stop maintained schools from running up a deficit.

Respondents raised concerns about how these proposals would have an impact on other schools within the local authority area, as it was claimed the implementation of the proposals could divert funding from other maintained schools. Other reasons provided for disagreeing with the consultation was that the Department for Education writes off loans for academies that are in deficit and that these rules should apply equally to all schools. Additionally, we received comments that a number of local authorities delegate all financial power to their maintained schools and that these proposals are forcing local authorities to take a more interventionist approach.

Respondents that supported the proposals state that these changes will provide clarity and transparency in how loan schemes are operated. We received comments that if local authorities are agreeing loans for maintained schools in a generally poor financial position, than they have failed in their responsibility. These respondents similarly stated that although less funding resources are available to local authorities, these issues should be mitigated by early intervention by the local authority.

Question 2

Do you agree with the proposal for when the changes to the criteria for agreeing loans will come into force?

	Total	Percent
Yes	7	35%
No	13	65%

The majority of the responses commented that these proposals should be enforced at a later date to allow local authorities to have a transition period to implement these changes. Some commented that this should be from the start of the new financial year or the start of the new academic year, whereas a number of the respondents who disagreed with the proposal stated that as they opposed the consultation in principle, these updates should never be enforced.

Respondents commented that it could be difficult to identify the driving cause behind the need for a loan. These respondents claimed that it is likely that a deficit could be caused by a mixture of large capital expenditure and normal spending exceeding income. Others questioned whether costs associated with redundancies could be treated as a loan.

Some of those who agreed to the proposal stated that the changes should not be implemented retrospectively and should only be applied following the release of the updated guidance.

Many other comments mirrored those provided in response to the first consultation question. These included concerns over loss in funding, how this could cause more schools to fall into deficit and how these proposals should not unfairly disadvantage local authorities or maintained schools.

Government response to consultation findings

We have taken the issues raised by the respondents to the consultation into consideration, but continue to believe that a revision of the schemes for financing schools is necessary. In line with this, we will also be updating section 8.1 of the guidance on the treatment of surplus and deficit balances when maintained schools become academies.

Loans were only ever intended to be used to spread the cost of large one-off individual items of capital expenditure, over more than one year. A revision in the guidance is needed to make this clearer and ensure consistent implementation.

We have considered suggestions that the revisions will result in unfair treatment between academies and maintained schools. Assumptions were made that academies are given loans to manage deficits and the revisions to the guidance would mean this option was no longer available for maintained schools.

We expect academy trusts to manage their finances appropriately and in accordance with their funding agreement and the Academies Financial Handbook. If an academy were at risk of falling into deficit the Department for Education ("the department") would offer guidance and support.

A cash advance is a reprofiling of the academy's general annual grant (GAG) so that payments are front loaded with automatic deductions taken from later GAG payments. Loans differ as they are actual payments to schools and conditions must be in place that a corresponding sum is subsequently repaid from the budget share.

In the most serious cases, the ESFA may provide additional funding to protect the education of children. Academy trusts are expected to repay any additional funding once they have reached a stable financial position. The provision of financial support will only be considered if a trust demonstrates that it has considered all other options, including, making improvements funded from their own budget. Additional financial support is only provided to academy trusts as a last resort.

The aim of any financial support is to achieve financial stability that offers value for money and maintains educational standards. Funding is recoverable and repayment terms are agreed between the ESFA and the trust. The ESFA will only fund the minimum needed to enable the trust to achieve financial stability. There is an agreed repayment schedule, which the ESFA challenges and scrutinises at each stage. This is agreed through a robust and credible recovery plan drawn up by the trust.

In the very rare cases where additional funding is provided, trusts are expected to pay this back. However, in exceptional cases, such as those where additional funding is absolutely necessary to stabilise the school's finances and ensure minimal disruption to pupils' education, the ESFA can provide a grant.

Local authorities are able to agree sustainable plans for school deficits using the licensed deficit scheme, which works in a similar way to how the department supports academies. Loans are intended for large one-off individual items of capital expenditure that benefit the school for more than one financial year.

Concerns were raised that the revisions will give schools that are to become sponsored academies an incentive to run up a deficit. We received comments that these schools will have no incentive for prudent financial management and that a local authority's powers of intervention are limited. It is nevertheless a local authority's responsibility to ensure that a school is managed correctly and does not fall into deficit.

Local authorities have a number of powers available to them to mitigate the risk of schools running up a deficit prior to conversion. Where a local authority has identified a school at risk of falling into deficit, it can issue a notice of concern. These notices can be issued where action needs to be taken to safeguard the financial position of the school or the authority.

The notice can include restrictions, limitations or prohibitions on the governing body in relation to management of funds delegated to it. These may include a requirement that all relevant staff undertake appropriate training to address weaknesses in financial management, insisting an appropriately trained person chairs the finance committee of the governing body, placing more stringent restrictions on the day-to-day financial management of a school, including the provision of monthly accounts to the authority and insisting on regular financial monitoring meetings. Further information on this can be found in section 2.15 of the schemes for financing schools guidance.

As a last resort, local authorities have the ability to completely withdraw financial delegation from maintained schools to prevent further deficits being incurred.

We have considered comments over the difference of treatment between a sponsored academy and other forms of academies. A sponsored academy was previously a maintained school subject to an Academy Order under section 4 of the Academies Act 2010. These are maintained schools that have been highlighted for intervention and are sponsored by other highly functioning academies or academy trusts. These are not to be confused with good schools that have made the decision to convert to an academy, with a sponsor. In this case, the financial management team will stay the same. An academy is additionally considered a sponsored academy where the Secretary of State makes an academy order for a school that is eligible for intervention, or where a school has applied to become an academy but where the Regional Schools Commissioner acting on behalf of the Secretary of State does not consider the school strong enough to convert without the additional support of a sponsor.

A number of comments received stated that it would be difficult to identify the reason for a loan and that in most circumstances this would be a combination of capital expenditure and a school's recurrent cost exceeding its recurrent income.

When a maintained school converts to academy status, the Secretary of State has powers of direction as to whether liabilities (including loans) will transfer, either in full or part, to the new Academy school (paragraph 13(4)(d) of the Academies Act 2010). We propose to introduce a process under which the Secretary of State can consider whether to make a direction that the loan does not transfer in individual cases, if the loan had been made in breach of the directed revision that we are making to schemes. Within this process we will fully review from where the need of a loan has originated and if the loan is compliant with the revised guidance.

We have assessed comments that the updates should be enforced at a later date, such as the start of the financial or academic year. We consider these proposals are clarifying the original purpose of loan schemes and it is therefore essential that the directed revision is implemented following the release of the updated guidance.

In the consultation document, we addressed that the changes to criteria for agreeing loan schemes would not be applied retrospectively to existing loan schemes when schools convert.

The department is committed to ensuring regulations and guidance are consistently implemented and as such is confident these proposed revisions are necessary.

Next steps

This is a directed revision and as such all local authorities must update their schemes and ensure any new loans are in line with the criteria. We are also making a related change to the guidance on the treatment of surpluses and deficits when a maintained school becomes an academy.

From the 22 March 2018, we expect new loans to be made in line with the provision in schemes. Where a maintained school converts to an academy, it would be our expectation that the academy will only continue to repay a new loan or changes to an existing loan agreed between the local authority and its predecessor maintained school if it meets the criteria below:-

‘to assist the school in spreading the cost over more than one year for a large one-off individual item of capital nature that has had/will have, a benefit to the school lasting more than one financial year’

From the date of publication, it would be our expectation that the Secretary of State would consider whether to make a direction under paragraph 13(4)(d) of the Academies Act 2010, to the effect that a new loan would not transfer to the new academy school. A case-by-case approach will be followed and all applications would be viewed on their own merits. Every decision will take into account the purpose of the loan and if it is compliant with revised guidance.

The revision to the criteria for agreeing loan schemes will not be applied retrospectively to existing loans when schools convert.

Annex A: list of organisations that responded to the consultation

'Changes to the criteria for agreeing loan schemes' consultation

- The Littlehampton Academy
- London Diocesan Board for Schools
- West Hoathly CE Primary School
- Highdown School and Sixth Form Centre
- Effervesce Ltd - School Finance Specialists
- EiE Trust
- The Community College Whitstable
- Sinclair Primary Schools
- Bedford Borough Council
- Portsmouth Council
- Brighton & Hove City Council
- Hampshire County Council
- Luton Borough Council
- London Borough of Havering
- Borough of Poole
- Rochdale BC
- South Tyneside Council
- West Berkshire Council
- Surrey County Council
- Church of England Education Office
- Northumberland County Council
- Gloucestershire County Council
- Sunderland City Council
- Leicestershire County Council
- Merton Local Authority
- Dorset County Council
- Bath and North East Somerset
- Wiltshire Council
- Kent County Council
- Milton Keynes Council
- Croydon Council

- National Union of Teachers
- North Somerset Council
- Bristol City Council
- Isle of Wight Council
- Bracknell Forest Council
- Newcastle City Council
- Sheffield City Council
- North Yorkshire County Council
- East Sussex County Council
- St Helens Council
- Northamptonshire County Council
- Lancashire Schools Forum
- West Sussex County Council
- Oxfordshire County Council
- Swindon BC
- Lancashire County Council
- Devon County Council
- Hertfordshire County Council
- Tameside MBC
- Essex County Council
- Lincolnshire County Council
- Wakefield Metropolitan District Council
- Worcestershire County Council
- Staffordshire County Council
- Julie Cordiner Education Funding Specialist
- London Borough of Lewisham
- Society of County Treasurers
- Calderdale MBC
- London Borough of Redbridge
- Gateshead Council
- The Hackney Learning Trust
- Manchester City Council
- London Borough of Islington
- Cheshire East Council

‘Implementation of the changes to the criteria for agreeing loan schemes’ consultation

- Bitterne Park Primary School
- Herefordshire Council
- Gloucestershire County Council
- Reading Borough Council
- Leicestershire County Council
- Bury Council
- Holly Grove Primary School
- Hampshire County Council
- Kinver Primary Federation
- Kent County Council
- Association of school and college leaders (ASCL)
- Knowsley Metropolitan Borough Council
- London Borough of Lewisham
- London Borough of Islington
- Julie Cordiner Education Funding Specialist
- Hertfordshire County Council
- Bedford Borough Council

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