Department for Education

Guide to the transfer of surpluses and deficits

August 2010

Purpose

1. To ensure the timely transfer of accumulated balances from schools converting to academies to their successor academies.

Academies Act

2. Under the Academies Act, schools which are successful in their application to convert will generally operate with the same leadership and management and can, therefore, be seen much more as a continuation of the previous school. Legally, however, they would still become a new institution and separate legal entity, and have to open a separate bank account.

3. Where applications for conversion are approved under the new arrangements, the Act requires the local authority (LA) to pay over the school's surplus to the academy. Regulations set out the procedures to be followed in relation to timescales and the academy's right to apply to the Secretary of State for a review of the LA's calculation. Where an academy is set up under the previous procedures, then surpluses and deficits would continue to revert to the LA.

4. The regulations state that the LA would have three months from the conversion date to determine whether the school had a surplus and, if so, the amount of the surplus. This timescale would be consistent with the usual LA deadlines for year-end closure of accounts, though conversion may often take place at other times of the year. If it did not agree with the amount, the academy would then have a month from receiving the LA's determination in which to apply to the Secretary of State for a review. The Secretary of State would have three months from receiving the application to make a determination. The LA would then have a month in which to pay over the surplus following receipt of this determination.

5. If the academy did not request a review, then the LA would have to pay over the surplus within one month of either being informed by the academy that it agreed with the amount or of the end of the period in which the academy could apply for a review, whichever was earlier.

6. As the former school would maintain its own financial records, the successor academy will need to support the local authority's accounts closure process if the timescale is to be met effectively.

7. If the academy has made commitments against an anticipated surplus payment, they may need an advance of funds and would need to discuss this with the Young People's Learning Agency (YPLA), which is responsible for distributing funds to academies.

8. Where a school converting under the new legislation has a deficit, then the DfE will reimburse the LA for the deficit, and the YPLA will then recover it from the academy over a period of time by reduced payments of General Annual Grant.

Schools with their own bank accounts

Background

9. Maintained schools are allowed to have their own bank accounts separate from the local authority (LA)'s account. These accounts would not normally have LA staff as signatories. In operating these accounts, however, the school's managers are acting as agents of the LA and any funding allocated to the school remains the property of the LA until spent. Bank accounts have to be operated within the requirements of the LA's Scheme for Financing Schools and are consolidated within the LA's year-end final accounts. These arrangements apply irrespective of whether a school is community, aided or foundation.

10. A school which becomes an academy legally closes as a maintained school and opens as a separate institution. Under current legislation, surpluses and deficits of closing schools revert to the LA, and the LA would need to ensure that the school's bank account was closed. The academy then has to open its own bank account.

Procedural issues

11. The Act is clear that the LA has to pay over the surplus to the academy. Therefore, the amount of the surplus can only be determined after the school has, effectively closed.

12. After conversion, however, the school bank account signatories are likely to have transferred to become academy employees and the school's governing body ceased. These employees will not be able to act as the LA's agents and could potentially have a conflict of interest.

13. It is therefore good practice for either: the LA to take full control of the bank account at the date of conversion; or at least to become a co- signatory to the account to recognise that the cash in the account(s) is the property of the LA. In either situation, there will be substantial administrative work to complete before the surplus is determined. The LA will, therefore, need to decide whether it is practical or desirable for this all to be done by its finance team, or whether the school or academy staff should continue with much of the work in view of their knowledge of the individual transactions and the location of the prime accounting records.

14. The cash balance in the bank account will be different, and often higher, than the surplus determined under proper accounting principles after three months of converting to academy status. This is because there will be outstanding payments where goods have been received or work done in relation to school-related activity prior to conversion date. Conversely, there may be income due which has not yet been received or collected. Accruals would need to be made before the final surplus is calculated.

15. The final surplus reported for entry in the LA's accounts and section 251 statements would take into account any remaining accruals relating to payments not yet made or income not yet received. However, it is suggested that the LA should pay over the cash balance remaining in the bank account at the point of determination, so that there can be a "clean break"; otherwise the LA would be left with further administrative work relating to these outstanding items and would be unable to physically close the bank account. All outstanding debtors and creditors relating to the former school would also transfer to the academy as part of the calculation of the transferred surplus or deficit.

16. There would consequently need to be agreement that, if actual expenditure or income items within the accruals turn out to be different to those assumed, then the academy would be responsible for the cost or benefit, including VAT, of those differences; this is an issue for all converters. LAs could seek to include this in the "Transfer Agreement" which has to be signed between the LA, predecessor school's governing body and academy's governing body, and covers issues such as staffing information, pensions and transfer of assets.

Schools using LA bank accounts

17. More detailed guidance has been produced for schools with their own bank accounts because LAs will have greater controls over access to their own financial systems and should, therefore, be more easily able to implement a process which ends access by the school at a certain cut-off date.

18. LAs in which schools do not have their own bank accounts will, however, still want to consider issues in this note relating to authorisation of orders and payments on their systems, and the transfer of responsibility for outstanding liabilities after the determination has been made. There may also need to be a particularly good level of communication with internal LA services which sell to, or charge, schools through the LA system, as these services will need to be aware of the timescale laid down in regulations for determining the surplus.

Schools with internal loans outstanding

19. The Department would expect that the liability to repay a loan made by the local authority would normally be transferred to the academy, which would continue repayments from its revenue budget on the previously agreed schedule. The transfer of responsibility for the loan should be reflected in a legal agreement between the LA and the academy trust. This could be done through either amending the commercial transfer agreement or in a separate agreement.

20. Permission from the Secretary of State for the loan repayments to be continued would be needed before the academy's funding agreement was signed, and would only be given if it was clear that the academy could afford repayments and that the legal liability for the loan had been transferred or both parties had agreed to this.

21. Given such an agreement, there would be no need for the LA to insist on the immediate repayment of the total outstanding loan at the date of conversion. The Department would discuss with the LA and the school on an individual basis what action should be taken to safeguard both parties' interests if an agreement to continue previously agreed repayments cannot be concluded.

Department for Education

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