Department for Education

Implementation of the changes to the criteria for agreeing loan schemes

Government consultation

Launch date 15 November 2017
Respond by 13 December 2017

Contents

Introduction

The Department for Education (the Department) ran a consultation from 24 March to 21 April 2017 to seek views on a proposed directed revision to local authorities' schemes for financing schools. Local authorities are required to publish schemes for financing schools setting out the financial relationship between them and the schools they maintain. The scheme for financing schools guidance lists the provisions that a local authority's scheme should or may include. We proposed to make a directed revision inserting new wording into local schemes and 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.

Overall, we received 75 responses to the initial consultation; the majority of the respondents did not agree with the two proposals:

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

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?

The highest proportion of responses received were from local authority representatives (71% of the total response). Out of the local authority responses 65% did not agree with proposal 1 and 71% did not agree with proposal 2. The majority of the responses we received focused on how the revisions might give maintained schools an incentive to run up deficits and using a loan is a way for local authorities to mitigate against this risk. We also received a high number of comments on how local authorities cannot be responsible for all deficits as the responsibility for spending decisions sits with individual schools.

These comments failed to take into account that it is a local authority's responsibility to ensure that a school is managed correctly and that the local authority has the power to intervene where it has concerns over the financial management of maintained schools. Where a local authority has highlighted a school at risk of falling into deficit, it can issue a notice of concern. These notices can be issued where actions need 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:

- Insisting 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
- Insisting on regular financial monitoring meetings at the school attended by the local authority

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 also received many comments that were not substantially related to the proposals to make a directed revision to local authorities' schemes for financing schools to clarify purpose of loan schemes, for example on the treatment of sponsored academies and converter academies. We additionally received comments on how there should not be a financial advantage or disadvantage of being a maintained school or an academy.

The comments received do not change the Department's view that the proposals in the consultation are appropriate, and we do not intend to change the original proposals. Loans were only ever intended to be used to assist schools in spreading the costs over more than one year of large one-off individual items of a capital nature. A directed revision to local authorities' schemes for financing schools is needed to make this clearer and ensure consistent implementation. The responses that were in favour of the changes welcomed this clarification.

Other responses we received to the consultation raised some additional points and Ministers have agreed that it is necessary to launch an additional consultation to address the technical implication of the changes. The Department is now seeking views on how we will challenge breaches to the criteria for loan agreements and when the changes will come into force. We are also clarifying that we are proposing to make a directed revision to local authorities' schemes for financing schools. The revision to the criteria for agreeing loan schemes will not be applied retrospectively to existing loans when schools convert.

Who this is for

- Chief finance officers and finance officers at local authorities
- Governors and school leaders, particularly of maintained schools which are planning to convert to academies
- Chairs and clerks of schools forums
- Diocesan representatives
- Other interested parties

Issue date

The consultation was issued on 15 November 2017.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team via email:

loanschemes.consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the DfE Contact us page.

Additional copies

Additional copies are available electronically and can be downloaded from GOV.UK DfE consultations.

The response

The results of the consultation and the Department's response will be published on GOV.UK in early 2018. This will include the full response to the original consultation.

About this consultation

This consultation document makes two proposals:

- that breaches of the criteria for loan agreements may be subject to a direction under Schedule 1 to the Academies Act 2010 that the loan will not transfer when schools affected convert to academies
- that the change to the criteria for agreeing loan schemes will come into force from the date of publication of the government response to this consultation

It is important to note that this document clarifies that we are proposing to make a directed revision to local authorities' schemes for financing schools. The document additionally clarifies that the changes will not be applied retrospectively to existing loans when schools convert.

We would like to hear your views on our proposal. In particular, please let us have any representations on any impacts you consider the proposals may have on protected characteristics.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

- loanschemes.consultation@education.gov.uk

By post

AMSG: Funding Division
Level 5
Department for Education
2 St Pauls Place
Sheffield
S1 2JF

Deadline

The consultation closes on 13 December 2017.

Proposal 1 – How breaches to the criteria for loan agreements will be challenged

Background

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 schemes should or may contain. This includes guidance for authorities about how to operate an internal loan scheme (section 4.10). The original purpose of loan schemes was to allow internal arrangements within the authority that would enable schools 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 support schools in general financial difficulty, as explained in section 4.9 of the guidance, local authorities should agree for a maintained school in financial difficulties to have a licensed deficit. As explained in the initial consultation we are aware that some authorities are now using, or considering using, loans in place of licensed deficits.

Proposal and rationale

We proposed to make a directed revision to local authorities' schemes for financing schools to clarify the purpose of loan schemes and distinguish them from licensed deficits. We consider that any loans made to fund a deficit of a school in general financial difficulty (and not to spread the cost over more than one year of large one-off individual items of capital expenditure) should not transfer to an academy on conversion. We are therefore proposing to put in place a process for determining what should happen to loans that have been made in breach of the loan scheme criteria.

Paragraph 13 of Schedule 1 of the Academies Act 2010 sets out what happens to land, property, rights and liabilities on the conversion of a maintained school. There is a presumption that loans will transfer to the person running the academy. However, we are proposing to use powers the Secretary of State has under paragraph 13(4)(d). These enable her to make a direction to the effect that a loan does not transfer in individual cases. We propose making use of this power in cases where loans have been made in breach of the directed revision that we are making to schemes. We propose to create a new approach whereby each decision will be considered carefully and on a case-by-case basis, taking into account the purpose of the loan and the extent to which it is compliant with the revised guidance. Local authorities and converting schools would then be specifically notified as part of the conversion process where a loan was not going to transfer. We would welcome views on how this process should operate.

The current guidance for schemes for financing schools states:

4.10 Loan schemes

It is open to an authority to include in its scheme a form of loan arrangement for schools which does not operate by way of a licensed deficit but rather by way of actual payments to schools or expenditure by the authority in respect of a particular school on condition that a corresponding sum is repaid from the budget share. If so, the same parameters for the arrangement should appear in the scheme as listed at 4.9 above for licensed deficits.

Again, an authority may wish to invite schools with balances in external accounts to use some or all of those balances to back a loan scheme, and the scheme should make clear on what basis this would occur.

If there is a loans scheme on this basis the authority must show in its budget statements the amount centrally retained for what would be a devolved payment to schools, and the payment should appear in the out-turn statements.

We propose making a directed revision to all local authorities' schemes, inserting the new wording:

"Loans will only be used to assist schools in spreading the cost over more than one year of large one-off individual items of a capital nature that have a benefit to the school lasting more than one financial or academic year. Loans will not be used as a means of funding a deficit that has arisen because a school's recurrent costs exceed its current income. If loans are made to fund a deficit, the Secretary of State will consider using the power under paragraph 13(4)(d) of Schedule 1 to the Academies Act 2010 to make a direction to the effect that such a loan does not transfer in individual cases.

Proposal 2 – When the changes to the criteria will come into force and how these changes will be applied retrospectively

Background

We have published guidance on the treatment of surpluses and deficits when a maintained school becomes an academy. The guidance includes our expectation that an academy will continue to repay loans made by the local authority to its predecessor maintained school under an internal scheme. During the initial consultation, a number of respondents raised questions about the proposed timing of the change to the definition of loans. Questions were raised about whether the change would be retrospective and so apply to loan arrangements that are already in place.

Proposal and rationale

The changes to the criteria for agreeing loan schemes will not be applied retrospectively to loans that are already in place. We are now seeking views on when the changes to the criteria for agreeing loans schemes will come into force. We are proposing that this should be from the date of the publication of the government response to this consultation. Where a maintained school converts to an academy, it would be our expectation that the academy will only continue to repay the loans agreed between the local authority and its predecessor maintained school under an internal scheme if any loans agreed after the publication date of the government response meet the definition 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'

Paragraph 8.1 of the guidance currently states:

"The Department would expect that the liability to repay a loan made by the LA to a maintained school (which is technically an advance of funding from the LA) 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."

We propose adding to paragraph 8.1:

“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 [PUBLICATION DATE].”

Consultation questions

Proposal 1 – Do you agree with the proposal to create a new process for loans made in breach of the loan scheme criteria?

Proposal 2 – Do you agree with the proposal for when the changes to the criteria for agreeing loans will come into force?

Department for Education

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