



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Children, Young People and Education, Executive Member for Finance and Governance
LEAD OFFICERS:	Head of Finance, Strategic Director of Children & Education (DCS)
DATE:	Thursday, 9 November 2023

PORTFOLIO/S AFFECTED:	Children, Young People and Education
WARD/S AFFECTED:	(All Wards);
KEY DECISION:	N

SUBJECT: Academy Conversions

1. EXECUTIVE SUMMARY

The Academies Conversion is a Central Government Policy and initiated by an Order by the Secretary of State. As result of this Order, the school site occupied by the schools, together with all the relevant associated rights, liabilities and staff transfer over to the Academy Trust. The Local Authority is required to grant a 125 year lease of the school site and the playing fields and also complete a Commercial Transfer Agreement (CTA).

This report informs the Executive Board of the obligation arising from each Academy Order to execute and complete legal documentation associated with the conversions, primarily in the form required by the Department for Education (DfE).

The report also outlines the financial processes that may be necessary to minimise or mitigate the risk for the Local Authority to absorb a School(s) deficit budget at the point of the school converting to an Academy.

2. RECOMMENDATIONS

Under Section 4 of the Academies Act 2010, the Secretary of State for Education makes an Academy Order, which recommends the named school to become an Academy.

The Executive Board notes that

- the Strategic Director of Children & Education in consultation with the Executive Member for Children, Young People and Education will agree conversions in line with:
 - The Academies Act 2010
 - The Academy Conversions (Transfer of School Surpluses) Regulations 2013
 - The Schools and Early Years Finance (England) Regulations 2023; and
- the Deputy Director of Legal and Governance will complete all necessary legal agreements including any lease necessary as outlined in the legal implications in order to execute such conversions; and

- where it is considered necessary to do so, and in accordance with the approved Scheme of Financing Schools, the Strategic Director of Finance and Resources may issue a “notice of concern” letter to schools in respect of financial delegation in order to safeguard the financial position of the Local Authority and/or a school ahead of a school becoming a sponsored academy.

3. BACKGROUND

The Academy Act 2010, section 5B details the requirements placed upon the Local Authority in respect of the Duty to facilitate Conversion; those being:

- (1) Where an Academy order under section 4(A1) or (1)(b) has effect in respect of a school, the governing body of the school and the local authority must take all reasonable steps to facilitate the conversion of the school into an Academy.
- (2) Where the Secretary of State notifies the governing body or local authority that the Secretary of State is minded to enter into Academy arrangements with a specified person, their duty under subsection (1) includes a duty to take all reasonable steps to facilitate the making of Academy arrangements with that person.

When a maintained school becomes an academy, legislation sets out a process for the transfer of any financial surplus the school may have at the point of conversion. It also sets out what happens to any deficit a converting academy may have. The academisation of a school can be either through an Academy Converter route or a Sponsored Academy route. For an academy converter with a deficit budget at the point of conversion the DfE reimburses Local Authorities any such deficit and recovers the money back from the academy through abatement of General Annual Grant (GAG). Where a school with a deficit is to open as a sponsored academy, the deficit remains with the Local Authority, to be funded from its core budget. It is therefore recommended that Local Authorities 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 Local Authority may withdraw delegation of the school’s budget share in order to limit the potential cost to the Local Authority’s budget.

4. KEY ISSUES & RISKS

Failure to comply with The Academy Act 2010 in relation to the Local Authorities duty to facilitate an academy conversion may result in reputational damage between the Local Authority and the DfE alongside reputational and relationship damage between the Local Authority, Schools and Academy Trusts.

Issuing schools that are an academy by means of a sponsored route a Notice of Concern may minimise or mitigate the risk for the Local Authority to absorb a deficit budget at the point of the school converting to an academy.

The Local Authority may issue a Notice of Concern to the governing body of any school it maintains where, in the opinion of Chief Officers, the school has failed to comply with any provisions of the scheme for financing schools. The principal criterion for issuing a Notice of Concern, and determining the requirements included within it, must be to safeguard the financial position of the Local Authority or school, and any such notice must set out the reasons and evidence for it being made and may place on the governing body restrictions, limitations or prohibitions in relation to the management of funds delegated to it.

The purpose of this provision is to enable a local authority to set out formally any concerns it has regarding the financial management of a school it maintains and require a governing body to comply with any requirements it deems necessary. The notice must clearly state what these requirements are and the way in which and the time by which such requirements must be complied with in order for the

notice to be withdrawn. It will also state the actions that the Local Authority may take where the governing body does not comply with the notice.

Where a local authority issues a notice of concern the scheme should provide for the notice to be withdrawn once the governing body has complied with the requirements it imposes.

5. POLICY IMPLICATIONS

No

6. FINANCIAL IMPLICATIONS

If the notice of concern isn't in place and the sponsored academy converts to an academy with a deficit balance, this cannot be covered by the Dedicated Schools Grant (DSG) (unless the authority de-delegates for schools in deficit, which we currently do not at Blackburn with Darwen) it would have to come from the council general fund. Therefore it is in the Local Authority's best interest to try and prevent those schools going into deficit.

Also any income from charging schools for academy conversions (see section 8) will be used to increase resource to manage future academy conversions.

7. LEGAL IMPLICATIONS

There are 2 main elements to an academy transfer agreement between the local authority and the school. These are the Commercial Transfer Agreement (CTA), which documents the transfer of assets and liabilities from the governors of the named school to named Academy Trust. The CTA is a much more time consuming exercise than the other documentation as the CTA ensures all liabilities transfer, including contracts, staffing information and any loans by the Local Authority to the new Academy Trust.

Depending on the pre-conversion category of the school, the Secretary of State will require the Local Authority to either grant the Academy Trust a 125 year for the school site and (if required) playing fields or the freehold of the school site to the Academy Trust and 125 year for the playing fields.

8. RESOURCE IMPLICATIONS

Initially academy conversions will be met through existing resource across Education, Finance, Legal, Procurement and Growth Teams. However, as the number of school requiring conversion increases additional resource will be require to facilitate timely conversions. There is a provision in place for the Local Authority to charge schools that make an application to convert to an academy, however in accordance with s.93 of the Local Government Act 2003, a local authority cannot charge for services that it is required by legislation to provide. Local authorities are therefore barred by statute from charging for the conversion of Inadequate and coasting schools.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

Any changes or amendments to the scheme for financing schools are subject to approval through School Forum.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION: 1

CONTACT OFFICER:	Carol Grimshaw, Head of Service, Schools System Support Kirsty Thompson, Finance Manager, Schools and Education
DATE:	26 October 2023
BACKGROUND PAPER:	None