

PARLIAMENTARY MINUTE

Provision of a DfE guarantee that the Department will meet any outstanding Local Government Pension Scheme liabilities on Academy Trust closure

1. *It is normal practice, when a government department proposes to undertake a contingent liability in excess of £250,000 for which there is no specific statutory authority, for the department concerned to present to Parliament a Minute giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.*

Background

2. Under the Local Government Pension Scheme (LGPS) Regulations 2008 an academy proprietor (i.e. the company which runs the academy and called an “Academy Trust”) is required to offer all of its non-teaching staff membership of the LGPS. In England the scheme is managed locally in 79 different Administering Authorities.

3. Some academies are experiencing significantly higher LGPS employer contribution rates to those set when they were a local authority maintained school. The main reason for this is because academies are not funded through the local authority which previously gave assurance to the Administering Authority that LGPS costs would be met in the long term. We are seeking to regain parity for academies with the maintained school sector regarding the risks that they present to the pension fund in the event of the closure of an Academy Trust, and to encourage equitability of treatment.

4. We are providing a guarantee to LGPS Administering Authorities that in the event of the closure of an Academy Trust any outstanding LGPS liabilities will not revert to the fund. Providing such assurances will give Administering Authorities the confidence they need to treat academies equitably and ensure that there is no significant divergence in employer contribution rates upon academy conversion.

5. In the first instance, where an Academy Trust closes, we will ensure that the closure is effectively managed and would expect the liabilities to be met from the Academy Trust’s assets on closure. The Secretary of State has the power to determine how the assets of an Academy Trust are disposed. Any remaining outstanding LGPS deficit would then be met by the Department in full.

6. The annual estimated contingent liability (CL) ceilings (rounded to the nearest £500k) going forward are set out below:

FY	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
CL (£)	6.5m	8.5m	10.5m	11.5m	12m	13m	13.5m	14m

7. The estimated ceiling figures are the maximum level of financial exposure to the Department per annum, if the projected Academy Trust closures, based on academy pension deficit information and maintained school closure data, were to occur. The reason for providing estimated costs only to 2020-21 is that this is the end of the forecast period and does not imply that the guarantee will cease at that point. There is no planned end date. A reassessment will be undertaken at regular intervals to determine whether the guarantee remains affordable.

8. The Department and HM Treasury will reserve the right to withdraw the guarantee at any time following a reasonable notice period. Grounds for the Department withdrawing the guarantee include if the levels set out above are exceeded and projected costs are no longer affordable from within the Department's existing budget or are not approved by HM Treasury. HM Treasury also reserves the option to re-assess the approval of the guarantee at a later date, as appropriate, due to spending considerations or policy developments.

Likelihood of crystallisation

9. The closure of the Academy Trust with the consequential ceasing of employee and employer contributions would result in the LGPS liability crystallising and a payment being immediately made to the fund. However, the likelihood of an Academy Trust closing is extremely low. Where there remains a need for education provision within an area, the Department would seek to appoint a new provider to take over management of an existing Academy Trust and so take on the associated LGPS liabilities. A closure due to falling rolls, resulting in the crystallisation of the liability, would be unlikely to happen immediately and would be managed over a period of years. Furthermore, the power to close an Academy Trust in these circumstances rests with the Secretary of State.

10. Given the low probability that an Academy Trust will close and in view of the Secretary of State's powers to determine how the assets of an Academy Trust should be disposed of, the level of Departmental exposure is such that any remaining liabilities can be met from the Department's programme budget. If the liability is called, provision for any payment will be sought through the normal supply procedure and will be met from within the Department's Spending Review settlement.

Special urgency

11. We are seeking exemption to the fourteen parliamentary sitting days on grounds of special urgency as:

a) DCLG is due to launch a consultation on pooling arrangements in the summer and the guarantee will underpin these proposals;

b) Administering Authorities are unlikely to review their assessments of

academy LGPS contribution rates before the guarantee comes into force. This will impact financially on those schools looking to convert in September and may prevent some schools from converting.

12. *The Treasury has approved the proposal in principle. If, during the remaining period of parliamentary sitting days in this session, beginning on the date on which this Minute was laid before Parliament, a Member signifies an objection by giving notice of a Parliamentary Question or by otherwise raising the matter in Parliament, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.*