

## SCHOOLS FORUM 7 DECEMBER 2017

<b>Title of paper:</b>	De-delegation of 2018/19 Health and Safety Building inspection funding
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<p><b>Summary</b></p> <p>The purpose of this report is to update Schools Forum on the statutory and legislative health and safety responsibilities of the Local Authority (LA) in relation to maintenance and testing of maintained school properties and how the funding requested is used to support this.</p> <p>This report seeks approval from Schools Forum to allocate funding for schools health and safety building equipment inspections for maintained primary and secondary schools.</p> <p>This report outlines two options for the funding of the tests and inspections.</p> <ol style="list-style-type: none"> <li>1. Fund the cost to health and safety tests and inspections from the schools health and safety buildings maintenance reserve for the financial years 2018/19 and 2019/20. or</li> <li>2. Fund the cost to health and safety tests and inspections from a combination of funding from the schools health and safety buildings maintenance reserve and de-delegated funding from maintained schools for the next two financial years 2018/19 and 2019/20 to cover the costs of tests and inspections for the next five financial years.</li> </ol> <p>This report seeks maintained schools to approve:</p> <ul style="list-style-type: none"> <li>• Their preferred option;</li> <li>• If they agree option 1 is the preferred option, then both the primary and the secondary phase need to vote together to show if they agree with the proposal;</li> <li>• If they agree option 2 is the preferred option, then maintained primary and secondary schools need to vote individually to show if they agree to de-delegate funding for the proposal. Also both phases will need to vote to approve the use of the schools health and safety buildings maintenance reserve.</li> </ul>	
<b>Recommendation(s):</b>	
<b>1</b>	To <b>note</b> the statutory and legislative health and safety responsibilities of the LA in relation to building maintenance of maintained primary and secondary schools and the type of costs that the requested funding will be used to fund, detailed in paragraph 1.2.
<b>2</b>	For mainstream maintained primary and secondary schools to <b>approve</b> the allocation of £0.257m from the maintained schools health and safety building maintenance reserve to fund the costs for health and safety tests and inspections for maintained schools in the financial year 2018/19 and 2019/20.

**3** If recommendation 2 is not approved, then maintained primary and secondary schools approval is sought to adopt **Option 2** outlined in paragraph 1.6.

For maintained mainstream primary schools to **approve** the de-delegation of:  
Health and safety building inspection funding in 2018/19 based on a rate of £9.79 per pupil.  
Total estimated funding requested to be de-delegated for mainstream maintained primary schools is £0.109m.

For the maintained mainstream secondary school to **approve** the de-delegation of:  
Health and safety building inspection funding in 2018/19 based on a rate of £9.79 per pupil.  
Total estimated funding requested to be de-delegated for the mainstream maintained secondary schools is £0.013m.

For both maintained primary and secondary schools to **approve** the allocation of £0.257m of the health and safety buildings maintenance to cover the costs of tests and inspections from 2018/19 to 2022/23.

## **1. REASONS FOR RECOMMENDATIONS**

1.1 The overall responsibility for health and safety lies with the employer. The Health and Safety Executive state that in England the Local Authority is the employer in community schools.

The Health and Safety at Work Etc. Act 1974 and subsequent legislation places a general duty on employers to ensure so far as is reasonably practicable the health, safety and welfare at work of all of their employees and non-employees.

To meet the statutory building health and safety responsibilities, Property Maintenance, situated within Building Services at the LA ensure that the Statutory and Legislative maintenance and testing regimes are undertaken within Nottingham City Council's portfolio of properties, which includes maintained schools, to ensure that all property health and safety issues are identified.

1.2 The funding requested in this report in 2018/19 is to be used by:

- Property Maintenance to fund the tests and inspections in maintained primary and secondary schools. These tests and inspections include, but are not restricted to:
  - Air Conditioning Units
  - Asbestos surveys
  - Automatic doors and gates
  - Boilers
  - Electrical circuit testing
  - Emergency lighting
  - Fire alarms
  - Heat pumps
  - Legionella risk assessments
  - Lifts
  - Lightning protection
  - Pressure sets
  - Stage lighting

Note that according to statutory and best practice, each of these servicing requirements vary in frequency, up to a 5 year interval. **Appendix A** outlines the tests and inspections carried out in schools and their frequency (excludes asbestos testing).

**Appendix B** shows the tests and inspections carried out in each school and the total projected cost for each school for all of the tests.

- 1.3 Approval of the funding for Health and Safety inspections is required for maintained mainstream school sites to enable the LA to deliver its statutory obligation regarding the health and safety of these sites.
- 1.4 Any remedial works that are required due to schools failing any tests or inspections will be organised and paid for from the Dedicated Schools Grant against the Capital expenditure from revenue funding held centrally within the Schools Block.
- 1.5 De-delegation approvals are annual regardless of the statutory nature.
- 1.6 Noted below are two proposals for the funding of the schools building health and safety tests and inspections in schools. The options below are being put forward to Schools Forum to give maintained schools the opportunity to decide if they wish to opt to:

**Option 1**

1. Fund the costs of the tests and inspections for 2018/19 and 2019/20 from the schools health and safety buildings maintenance reserve, after which maintained schools will be responsible for servicing contracts from 2020/21;

Or

**Option 2**

2. Maintained schools continue to de-delegate funding for 2018/19 and 2019/20 and this money as well as the Schools buildings Health and safety reserve would then be used to fund the tests and inspections for the next five years. Maintained schools would then be responsible for servicing the contracts from the financial year 2023/24. This option would ensure that no school would be treated unfairly if their five yearly inspections were due in the years 2020/21, 2021/22 or 2022/23 and thus would otherwise not have these funded by the de-delegated contributions in 2018/19 and 2019/20.

## **2. BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 In order to achieve a competent level of functionality the LA will consider the relevant legislation and documentation, which may include:

- Statutory legislation and regulation
- Industry regulation
- Approved Codes of Practice
- Guidance documentation
- Equipment manufacturer's instructions and recommendations
- Best practice

A policy has been produced by the Property Maintenance Team "Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties – Policy statement & Testing Procedures (October 2013 v 1.2b)". This document confirms Nottingham City Council's responsibilities and intentions as Corporate Landlord in relation to tests and inspections carried out in Nottingham City properties, in line with corporate policies. The aim of the document is to give support and advice and ensure clarifications of property related health and safety responsibilities are understood. This document can be found in the Schools Safety Manual.

Property Maintenance Team have put in place a timetable for tests and inspections, which reflect a combination of statutory guidance and appropriate practice. The LA uses internal and external contractors to carry out the tests and inspections. The timetable for tests and inspections, undertaken in-house or by contractors, range from daily to up to every five years dependent on the particular test or inspection.

- 2.2 Note that the funding does not include the Property Maintenance advisory service on such remedial matters; this service is available via an Education Services Nottingham contract.
- 2.3 Where tests and inspections are required as part of a health and safety management system, such as asbestos, legionella or fire safety, separate policies relating to these items are included in the appendices B, C and D of the “Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties – Policy statement & Testing Procedures (October 2013 v 1.2b)”.
- 2.4 Approval to de-delegate the schools health and safety building inspection budget has been given by both the primary and secondary phases representatives of Schools Forum each financial year since 2013/14. Due to the basis upon which de-delegated budgets were calculated, which is on the pupil numbers in maintained schools in the Autumn Term prior to the financial year it is going to be applied, unfortunately as schools have academised the costs charged against the de-delegated funding has reduced but the budget has remained the same. Therefore, the schools health and safety buildings maintenance reserve balance has been rising over the last four years.

As at the 31 March 2016 the balance on the Health and Safety Building Maintenance Reserve was £0.177m.

- 2.5 This is why it is recommended that either options 1 or 2 in paragraph 1.6 are adopted to clear this balance on the reserve and to reduce the costs to maintained schools.
- 2.4 **Table 1** shows the budget and expenditure on the schools health and safety building maintenance in the last four years since the funding was first de-delegated.

<b>Table 1: Breakdown of Schools Health and Safety Building Maintenance</b>				
<b>Year</b>	<b>Budget</b>	<b>Outturn/ Forecast</b>	<b>Variance</b>	<b>Explanation</b>
2013/14	£0.273m	£0.231m	£0.042m	The under-spend of £0.042m at the year end was transferred to the Health and Safety Building Maintenance Reserve.
2014/15	£0.253m	£0.174m	£0.079m	The under-spend of £0.079m at the year end was transferred to the Health and Safety Building Maintenance Reserve.
2015/16	£0.208m	£0.174m	£0.034m	The under-spend of £0.034m at the year end was transferred to the Health and Safety Building Maintenance Reserve.

2016/17	£0.199m	£0.177m	£0.022m	The under-spend of £0.022m at the year end was transferred to the Health and Safety Building Maintenance Reserve.
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### **3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 If the health and safety inspections were undertaken by the school (i.e. the LA does not organise them on the schools' behalf) then according to health and safety legislation the LA would still retain the overall responsibility that they are undertaken. Therefore the LA would need to monitor the schools to ensure that they are taking place. In the event that they do not take place in a timely fashion to the relevant standard, the LA has the legal responsibility to instruct the school to act and/or undertake the inspection and tests automatically and recharge the school. The LA may choose to add officer time to this recharge.

### **4. OUTCOMES/DELIVERABLES**

- 4.1. To approve this funding will enable the LA to fulfil its statutory duties in relation to Health and Safety on maintained mainstream school sites.
- 4.2. Schools will receive an annual report in April/May including the schedule of tests for the academic year and names of the contractors who the LA have commissioned.

### **5. FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 5.1 As per "The national funding formula for schools and high needs Policy document – September 2017" for the next two financial years (2018/19 and 2019/20) local authorities will continue to set their local funding formula to distribute their schools block funding, in consultation with schools and their School Forum. Local authorities will be funded based on the new national funding formula. Included within this "soft approach" is the ability for local authorities to be able to still request approval from maintained primary and secondary school representatives on Schools Forum for de-delegated services.
- 5.2 This report provides Schools Forum with two options for the funding of health and safety tests and inspections as outlined in paragraph 1.6.
- 5.3 If maintained primary and secondary schools were to approve option 1 the costs of the tests and inspections would be funded from the health and safety building maintenance reserve for the financial years 2018/19 and 2019/20 and schools would then be responsible for funding the costs of tests and inspections from the financial year 2020/21. This is when de-delegation is no longer an option through the National Funding Formula, as the "hard formula" would then be in place. **Table 2** below is a breakdown of the income and expenditure required for option 1 over the two financial year's.

<b>Table 2: Option 1 - Income and expenditure analysis for 2018/19 and 2019/20</b>		
Current H & S building maintenance reserve balance	-£0.177m	
Plus forecast underspend in 2017/18	-£0.080m	
Total forecast H & S building maintenance reserve		-£0.257m
Less Forecast expenditure in 2018/19 and 2019/20		£0.200m
<b>Net surplus</b>		<b>-£0.057m</b>

- 5.4 Note that the current balance of the schools health and safety building maintenance reserve is £0.177m as stated 2.4. At the end of the financial year 2017/18 it is projected that the closing balance will be £0.257m. Therefore, if this option were to be approved there would be a forecast surplus of £0.057m on the reserve at the end of 2019/20.
- 5.5 If there is a surplus balance on the reserve at the end of 2019/20 this will be reviewed and a separate report brought to Schools Forum outlining the proposed use of the remaining balance.
- 5.6 It should be noted that both options contain forecast expenditure estimates which are based on the current recharging basis. At present several of the servicing contracts are out to tender and maintained schools are currently being revaluated on their school meterage which will affect the recharges moving forward. Therefore, an accurate forecast cannot be achieved. However, when the budget is reviewed after the first year, if there is a risk of insufficient funding to cover both financial years then this would be highlighted to Schools Forum and a request for additional funding would be requested through de-delegation in 2019/20.
- 5.7 If maintained primary and secondary schools were to approve option 2, this would require the use £0.257m of the of the health and safety building maintenance reserve as well as maintained schools de-delegating £9.79 per pupil for the next two financial years. **Appendix C** shows an estimate of how much funding each school would be de-delegating based on the October 2016 Autumn Term census.

Should the balance on the reserve be higher than £0.257m at the end of 2017/18 the rate per pupil for 2019/20 could be reduced. If there was insufficient funding at the end of the first year the amount per pupil would need to be increased in 2019/20.

**Table 3** below shows a breakdown of the projected income and expenditure for **option 2** over the five years.

<b>Table 3: Option 2 - Income and expenditure analysis for 2018/19 to 2022/23</b>		
Current H & S building maintenance reserve balance	-£0.177m	
Plus forecast underspend in 2017/18	-£0.080m	
Estimated income from de-delegation in 18/19 & 19/20	-£0.243m	
Total estimated H & S building maintenance reserve		-£0.500m
Less Forecast expenditure in 2018/19 and 2019/20		£0.500m
<b>Net surplus/(Deficit)</b>		<b>0</b>

- 5.8 Unfortunately, due to the ESFA guidelines the LA has to request the de-delegation of funding on an annual basis. However, if this option were to be adopted it would be on the understanding that maintained schools would approve de-delegation in 2018/19 and 2019/20 separately.
- 5.9 Whichever option is adopted the full cost of the tests and inspections must be recouped from either the reserve or from a combination of the reserve and de-

delegated funding.

- 5.10 It is a statutory requirement to minimize risks and to be financially prudent, the Health and safety building reserve is set aside to mitigate any risks.

Julia Holmes  
Senior Commercial Business Partner  
24 November 2017

## 6 **LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

### 6.1 **Legal Implications**

- 6.2 Primary responsibility for health and safety in relation to community schools and community special schools rests with the local authority that maintains those community schools and community special schools since it owns the land and buildings of the community schools and community special schools, and employs the staff of those schools. However, it should be noted that the governing bodies of community schools and community special schools have health and safety responsibilities arising from their control and use of the school premises and their management of the school staff.
- 6.3 The Schools Forum's powers here derive from the School and Early Years Finance (England) Regulations 2017 ("SEYFR"), made by the Secretary of State in exercise of powers under the School Standards and Framework Act 1998 and the Education Act 2002. The SEYFR came into force on 16 February 2017.
- 6.4 Chapter 2 of Part 2 of the SEYFR is entitled "Further Deductions and Variations to Limits Authorised by School Forums or the Secretary of State" and it contains regulation 12 of the SEYFR. Under regulation 12 of the SEYFR, on the application of a local authority the Schools Forum may authorise *the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary Schools and Secondary Schools) of Schedule 2 [to the SEYFR] from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(5) (SEYFR, regulation 12(1)(d)).* Part 6 of Schedule 2 to the SEYFR contains paragraph 45, which states:

*Expenditure on insurance in respect of liability arising in connection with schools and schools premises.*

- 6.5 Part 6 of Schedule 2 to the SEYFR contains paragraph 49, which states:-

*Expenditure on the schools' specific contingency.*

- 6.6 Therefore, provided the proposals fall within the above legislation, Nottingham City Schools Forum has the power to approve the recommendations in this report. In addition, by virtue of regulation 8 of the Schools Forums (England) Regulations 2012 only the representatives of the maintained primary schools and the maintained secondary schools have a vote on this in respect of maintained primary schools and maintained secondary schools respectively. Moreover, this power should be exercised lawfully. Provided the amounts sought through use of this power have been correctly and lawfully calculated, the exercise of this power will be lawful.

## 7 **HR ISSUES**

- 7.1 There are no people implications arising from this report.

## 8 **EQUALITY IMPACT ASSESSMENT**



Has the equality impact been assessed?

Not needed (report does not contain proposals or financial decisions)

No

Yes – Equality Impact Assessment attached

☐☐☒

Due regard should be given to the equality implications identified in the EIA.

9 **LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

9.1 None

10 **PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

Nottingham City Council Policies:

- Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties – Policy statement & Testing Procedures (October 2013 v 1.2b)

Legislation:

- The School and Early Years Finance (England) Regulations 2017
- The Health and Safety at Work etc. Act 1974 and associated legislation.

## APPENDIX D – EQUALITY IMPACT ASSESSMENT

### Name and brief description of proposal / policy / service being assessed

The purpose of this report is to ask Schools Forum representatives of maintained primary and maintained secondary schools to approve the de-delegation of the Building Maintenance funding in 2018/19

### Information used to analyse the effects on equality

	Could particularly benefit (X)	May adversely impact (X)	How different groups could be affected: Summary of impacts	Details of actions to reduce negative or increase positive impact (or why action not possible)
People from different ethnic groups	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Local Authority (LA) has a statutory duty regarding Health and Safety of maintained school sites. To ensure that the LA is able to carry out its statutory duty it has to on an annual basis request Schools Forum to approve the de-delegation of this funding.</p> <p>As the costs incurred by each school annually in relation to health and safety vary, this funding will be used to cover “peaks” and “troughs” associated with the maintenance of maintained school sites. Any unspent balances at the end of the financial year will added back into the a sinking fund which has been set up to manage the peaks and troughs of expenditure. Likewise if there is an overspend the funding will be drawn down from the sinking fund.</p> <p>By implementing this proposal it will stop the likelihood of schools incurring budget pressures caused by having to fund health and safety maintenance costs in relation to their sites. If</p>	<p>The LA are recommending this proposal to reduce the likelihood of a negative impact on the pupils of maintained primary and secondary schools.</p>
Men, women (including maternity/pregnancy impact), transgender people	<input type="checkbox"/>	<input type="checkbox"/>		
Disabled people or carers	<input type="checkbox"/>	<input type="checkbox"/>		
People from different faith groups	<input type="checkbox"/>	<input type="checkbox"/>		
Lesbian, gay or bisexual people	<input type="checkbox"/>	<input type="checkbox"/>		
Older or younger people	<input type="checkbox"/>	<input type="checkbox"/>		
Other (e.g. marriage/civil partnership, looked after children, cohesion/good relations, vulnerable children/adults)	<input type="checkbox"/>	<input type="checkbox"/>		

			<p>schools had to fund this and the costs were higher than they had budgeted it may require them to move resources from the education of their pupils to cover health and safety maintenance costs of the site.</p> <p>By retaining this funding centrally it will enable a consistent approach as to how money is spent pupils by resources not being taken away from the education of pupils in some schools and not in others.</p> <p>There are no staffing issues generated by this decision.</p>	
<b>Outcome(s) of equality impact assessment:</b> No major change needed X      Adjust the policy/proposal <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove the policy/proposal <input type="checkbox"/>				
<b>Arrangements for future monitoring of equality impact of this proposal / policy / service:</b> <b>If this proposal is approved then no equality impact monitoring will need to be undertaken. However, if the proposal is not approved and the budget is delegated to maintained schools then the schools would be responsible and the LA would have no influence over the equality impact.</b>				
Approved by: David Thompson Schools H&S Manager			Date sent to equality team for publishing:	