

## SCHOOLS FORUM - 25 JUNE 2019

<b>Title of paper:</b>	Update on the consultation with maintained schools on the revised Scheme for financing schools (Fair Funding Scheme) and the proposed changes to the scheme.
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<b>Summary</b>	
<p>The purpose of this report is to update Schools Forum (SF) on the findings of the consultation on the revised scheme for financing schools (Fair Funding Scheme) and to seek approval for the recommended changes to the Scheme as required.</p> <p>The revisions to the scheme is set out in <b>Appendix A</b> with changes aligning to “Schemes for financing schools – statutory guidance for local authorities February 2019” publication. The approval from SF, of the revisions, is a requirement of the guidance.</p>	
<b>Recommendation(s):</b>	
<b>1</b>	For <b>maintained schools</b> to approve the changes made to the Scheme for financing schools, the key changes are outlined in Section 2 and full list of the changes are detailed in <b>Appendix A</b> .

### **1 REASONS FOR RECOMMENDATIONS**

- 1.1 The scheme should outline the financial relationship between the Local Authority (LA) and maintained schools. LA’s are required to revise and publish schemes for the financing of schools in accordance with latest statutory guidance from the Department for Education (DfE).
- 1.2 The revision of the scheme will strengthen the LA’s overall responsibility for the provision of school budgets and will assist schools in managing their delegated budget share in a robust manner.

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

- 2.1 Under Section 48 of the Schools Standards and Framework Act 1998, LA’s are required to have schemes of delegation which set out the financial controls and the financial relationship between the LA and the maintained schools which it funds.

The LA's previous version (2016) is now out of date and as per "Schedule 14 of School Standards and Framework Act 1998", "as regards any proposed variation of the scheme, the authority shall first consult every governing body and head teacher whom they are obliged to consult". Any proposed revisions to the scheme must be the subject of consultation and require approval by the SF.

2.2 The consultation document was circulated to all Head Teachers of maintained primary and secondary schools and their chair of governors on 24 May 2019, the consultation was open for a 3 week period.

2.3 The closing date of the consultation was midday 13 June 2019 at midday.

2.4 Key changes proposed:

- It is possible for the Secretary of State (SoS) to make directed revisions to the schemes after consultation. Such revisions become part of the scheme from the date of the direction. The SoS has used this power and directed that all schemes must include the following:

"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 and a school subsequently converts to academy status, the SoS 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 either in full or part, to the new academy school".

- To formalise, in the scheme, that maintained schools are required to submit an outturn forecast in June of instead of July, they already do this but the scheme has been amended to reflect actual practice.
- The City Council may require additional forecasts to be produced by schools that are in financial difficulties including as a result of falling numbers.
- Schools must gain approval from the Chief Finance Officer (CFO) when wishing to take out borrowing or finance leases. If the CFO approves the application then approval must then also be sought from the SoS, unless it is an approved scheme approved by the SoS such as the Salix Scheme.

Approval for borrowing will only be granted by the SoS in exceptional circumstances.

- To align to the DfE scheme guidance and actual practice paragraph 4.8.1 has been revised to read "Where in the funding period, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, the local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from the previous funding periods) of the closing school for the funding period in which it closes".

- Monthly returns of salary, service and pensions data (not annual returns), should be submitted to the LA for schools that use payroll providers other than the LA's.
- A de-delegated contingency could be provided by maintained schools to fund new early retirements redundancies, if the maintained primary schools in SF agree, to support individual maintained schools where a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school budget share.
- Premature retirement costs will not be charged to maintained schools where charging such costs to the school's budget would prevent the school from complying with a requirement to recover a licenced deficit within the agreed timescale.

2.5 **The LA received 1 response to the consultation** from Forest Fields Primary. The points raised by the school are noted below.

"The changes proposed to paragraphs 3.2.3 and 7.1.4 will impact on school cash flow, as they will hold funds back at the local authority level.

Please do not make the changes suggested at Para 3.2.3. Simply holding back 90% of the School Budget for pay costs is an unnecessary over estimate. In our case this could be £116K of our budget held back with the authority. Please keep the current wording: "The initial estimate of pay costs will be based on the percentage of pay costs incurred against the previous year's budget share". This is much fairer to schools and keeps the allocation at school level.

The change suggested at Para 7.1.4 also delays funding being returned to school. Please keep the current wording: "The reimbursement or charge will be made within eight weeks of the schools VAT claim being submitted."

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 To not revise the Fair Funding Scheme to keep it in line with the DfEs "Schemes for financing schools – statutory guidance for local authorities February 2019", could expose the LA and schools to significant financial risk.

3.2 The LA has given consideration to the points raised by Forest Fields Primary School in 2.5 and has decided not to adopt the recommendations put forward by the school for the following reasons:

- Only 1 school has raised that the estimated pay budget percentage of 90% by the LA is an issue.

For schools that use the LA's payroll services the LA holds back 90% of the school budget share until it receives the schools budget plan in May each year. The cash given to schools is then adjusted on the June cash advance to reflect the actual forecast pay costs supplied by the school.

- The Scheme has been updated to reflect actual practice that has been occurring for several years and no objections have been raised previously by schools regarding the reimbursement of VAT claims. VAT reimbursements

are given to schools on a termly basis in line with the non-pay cash advances.

If either of the above causes schools to have significant cash-flow issues please contact the Schools Finance Support Team at [school.finance@nottinghamcity.gov.uk](mailto:school.finance@nottinghamcity.gov.uk) or telephone Trish Lockhart on 0115 8764615.

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

- 4.1 By approving the revised Scheme for financing schools, maintained schools will be required to follow the rules which are set out in the scheme. This scheme is based on the guidance set out by DfE's "Schemes for financing schools – statutory guidance for local authorities February 2019".

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

- 5.1 This report seeks approval from SF to implement an updated version of the LA's Fair Funding Scheme to ensure that the scheme conforms to the latest guidance set out in the "Schemes for financing schools – Statutory guidance for local authorities February 2019".
- 5.2 The revised scheme clearly outlines the financial responsibilities of Governing Bodies, Head Teachers and the LA and tightens up the financial controls. **Appendix A** outlines a detailed list of the proposed amendments and insertions to the revised scheme.
- 5.3 Should SF feel they cannot approve the revisions or approves them subject to modifications which are not acceptable to the LA, the LA may apply to the SoS for approval.
- 5.4 There are no direct financial implications or value for money issues arising from this report.

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

##### **6.1 Legal Implications**

- 6.1.1 Section 48(1) of the School Standards and Framework Act 1998 ("SSFA") states:-

*(1) Each local authority shall maintain a scheme dealing with such matters connected with the financing of the schools maintained by the authority or the exercise by the governing bodies of those schools of the power conferred by section 27 of the Education Act 2002 (power of governing body to provide community facilities etc.) as are required to be dealt with in the scheme by or by virtue of—*

*(a) regulations made by the Secretary of State; or*

*(b) any provision of this Part [of the SSFA].*

6.1.2 Therefore, by virtue of section 48(1) of the SSFA, Nottingham City Council (“NCC”) is required to maintain a scheme essentially dealing with the financing of its maintained schools.

6.1.3 The revision of a local authority’s scheme of delegation is provided for by Schedule 14 to the SSFA. Amongst other things, paragraph 2A of Schedule 14 to the SSFA states:-

*(1) A local authority may, in accordance with this paragraph, revise the whole or part of the scheme maintained by them under section 48(1).*

*(2) In revising the scheme, the local authority shall take into account any guidance given by the Secretary of State, whether–*

*(a) generally, or*

*(b) in relation to that authority or any class or description of local education authorities to which that authority belongs,*

*as to the provisions the Secretary of State regards as appropriate for inclusion in the scheme.*

*(3) As regards any proposed variation of the scheme, the authority–*

*(a) shall first consult the governing body and head teacher of every school maintained by the authority (within the meaning of this Chapter), and*

*(b) shall then submit a copy of their proposals to the authority's schools forum for their approval.*

6.1.4 Therefore, by virtue of Schedule 14, paragraph 2A(1), NCC has the power to revise the whole or part of its scheme of delegation. The process for this requires NCC to: take into account any guidance given the Secretary of State; consult first the governing body and head teacher of every school maintained by NCC; and then to submit a copy of NCC’s proposals for revision of the scheme of delegation to the Nottingham City Schools Forum for their approval.

6.1.5 All of the above, is what is happening here. NCC is proposing to revise its scheme of delegation to accord with the latest guidance issued by the Secretary of State entitled: *Schemes for financing local authority maintained schools* (Updated 5 February 2019); NCC has conducted consultation on these proposals with the governing body and head teacher of every school maintained by NCC from 24 May 2019 to 13 June 2019 with one response received (although part of the consultation period was during the school half-term holiday); and clearly this report entails NCC submitting a copy of its proposals to the Nottingham City Schools Forum for their approval. Therefore NCC’s proposals are generally lawful, as is the action being taken to take these proposals forwards.

6.1.6 Paragraph 2B of Schedule 14 to the SSFA states:-

(1) Regulations may make provision preventing schemes as revised from coming into force unless they are approved in accordance with the regulations by the local authority's schools forum or by the Secretary of State.

(2) The regulations may in particular—

(a) prescribe circumstances in which proposals which have been submitted to a local authority's schools forum may be submitted to the Secretary of State,

(b) enable the schools forum or the Secretary of State to approve proposals with modifications, and

(c) enable the schools forum or the Secretary of State, in giving their or his approval, to specify the date on which the scheme as revised is to come into force.

6.1.7 The current regulations are the School and Early Years Finance (England) (No.2) Regulations 2018, SI 2018/1185 ("SEYFR"). Regulation 31 of the SEYFR deals with approval by the schools forum or the Secretary of State of proposals to revise schemes. Amongst other things, regulation 31 of the SEYFR states the following:-

(1) Where a local authority submits a copy of its proposals to revise its scheme to its schools forum for approval under paragraph 2A(3)(b) of Schedule 14 to the [SSFA], the members of the schools forum who represent schools maintained by the authority may—

(a) approve the proposals;

(b) approve the proposals with modifications; or

(c) refuse to approve the proposals.

(2) Where the schools forum approves the proposals to revise the scheme, it may specify the date on which the revised scheme is to come into force.

...

(6) No revised scheme is to come into force unless approved by the schools forum or the Secretary of State in accordance with this regulation.

## **7 HR COLLEAGUE COMMENTS**

7.1 None

## **8 EQUALITY IMPACT ASSESSMENT**

8.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:

(Please explain why an EIA is not necessary)

Yes

Attached as Appendix x, and due regard will be given to any implications identified in it.

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

- 9.1 The consultation document can be view from this website:  
<http://www.nottinghamschools.org.uk/business-management-support/schools-funding/consultations/>

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

- 10.1 Schemes for financing schools – Statutory guidance for local authorities  
Published by the Department for Education – February 2019;
- Nottingham City Council “Financial regulations and contract procedure rules - version 7.17”;
- The Schools Standards and Framework Act 1998;
- The Schools and Early Years Finance (England) Regulations 2018 (2)

## APPENDIX A

### Proposed changes to the Scheme for financing schools

	Paragraph of Scheme	Reason for change	Change	Financial Impact
1	1.4.3	Addition of text to align to the DfE Scheme guidance	"It is possible for the Secretary of State to make directed revisions to the schemes after consultation. Such revisions become part of the scheme from the date of the direction".	None
2	2.1.8	Revision	Changed the requirement for first outturn forecast to be submitted to the Authority in June each year instead of July as previously included in the scheme.	None
3	2.3.10	Revision of text to align to the DfE Scheme guidance	Removed "Regardless of whether multi-year budget shares have been provided,"	None
4	2.3.11	Revision	From "In addition the City Council will specifically require forecasts to be produced by schools that are in financial difficulties including as a result of falling pupil numbers". to "The City Council may require additional forecasts to be produced by schools that are in financial difficulties including as a result of falling pupil numbers".	None
5	Throughout the document	Update	References to statement of SEN with Education Health and Care Plan (EHCP)	None
6	2.4	Revision of text to align to the DfE Scheme guidance	Title revised from "Efficiency And Value For Money" to "School Resource Management"	None
7	2.4.1	Revision of text to align to the DfE Scheme guidance	Text changed from "achieve efficiencies" to "effective management of resources".	None
8	2.10.4	Update	Schools can seek advice on a range of compliant deals via Buying for schools ( <a href="https://www.gov.uk/guidance/buying-for-schools">https://www.gov.uk/guidance/buying-for-schools</a> )	None
9	2.14.1	Revision	Updated to reflect latest references to legislation	None
10	3.2.3	Revision	From "The initial estimate of pay costs will be based on the percentage of pay costs incurred against the previous year's budget share" to "The initial estimate of pay costs will be based on 90% of the School Budget Share".	None
11	3.2.4	Revision	From "Chequebook schools that use the LA's payroll service will not have pay	None



			budgets paid into their bank accounts unless the school specifically request this” to “Chequebook schools that use the LA’s payroll service will not have pay budgets paid into their bank accounts”.	
12	3.6.1	Directed revision by the DfE – to be included by all local authorities	Update on the Secretary of State’s general position on granting approval on schools borrowing. Also, confirmed that finance leases are classed as borrowing.	None
13	4.8.1	Revision of text to align to the DfE Scheme guidance	Paragraph updated to reflect changes on balances of closing schools, as detailed under Regulation 25 (9) “Where in the funding period, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, the local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from the previous funding periods) of the closing school for the funding period in which it closes”.	None
14	4.10.1	Revision of text to align to the DfE Scheme guidance	<b>Directed revision</b> from the Secretary of State on school loan schemes.	None
15	5.1.2	Update	Paragraph updated to reflect that where land is held by a charitable trust, it will be up to the schools trustees to determine the use of any income generated by the land.	None
16	6.2.2	Revision of text to align to the DfE Scheme guidance	Changed text from , “Other expenditure incurred to secure resignations where the school had not followed authority advice” to “Other expenditure incurred to secure resignations where there is good reason to charge this to the school”	None
17	7.1.4	Revision	From “The reimbursement or charge will be made within eight weeks of the school’s VAT claim being submitted” to “The reimbursement or charge will be made by the following term of the school’s VAT claim being submitted”.	None
18	8.1.2	Update	The LA will not discriminate in its provision of services on the basis of categories of schools, except in cases where this would be allowable under the schools and early years finance regulations or the Dedicated Schools Grant (DSG) conditions of grant.	None
19	8.4.1	Revision	Updated to reflect latest references to legislation	None
20	8.4.3	Revision	Monthly returns of salary, service and pensions data not annual returns should be submitted to the Authority for schools that use payroll providers other than the Authority.	None
21	11.8.1	Revised	Corporate whistleblowing procedure for maintained schools is being reviewed and	None

			once it has been finalised it will be included as an appendix in the Scheme and schools will be notified when this has happened.	
22	11.8.4		Removed link to the corporate Whistleblowing webpage for NCC employees as school based employees have a separate Whistleblowing Policy which is currently being updated. Will add the new link once it has been finalised.	None
23	13.8.2	Revision of text to align to the DfE Scheme guidance	Revised "Criminal Records Bureau" to "Disclosure Barring Service".	None
24	Appendix A	Updated	Updated maintained establishments list to reflect maintained schools as at 1 April 2019.	None
25	Appendix B 1.2 (b) (ii)	Revision of text to align to the DfE Scheme guidance	Revised "Enter into, or terminate, any leasing arrangement(s) without the agreement of the Chief Finance Officer" to "Enter into, or terminate, any leasing arrangement(s) without the agreement of the Chief Finance Officer. If the Chief Finance Officer supports a schools application for a finance lease then approval from the Secretary of State should be sought".	
26	Appendix D	Update	Remissions: "Where the parents of a pupil are in receipt of Income Support, Family Credit, <b>or Universal Credit</b> the Governing Body will remit in full the cost of board and lodging for any residential activity the school organises for the pupil if the activity:	None
27	Appendix F (11)	Revision of text to align to the DfE Scheme guidance	Revised "Audit Commission" to "DfE's appointed auditors"	None
28	Appendix H 2.4	Revision of text to align to the DfE Scheme guidance	Update – Costs of early retirements or redundancies may only be charged to the central part of the Schools Budget where the expenditure is to be incurred as a result of decisions made before 1st April 2013. Costs may not exceed the amount budgeted in the previous financial year.	None
29	Appendix H 2.5	Revision of text to align to the DfE Scheme guidance	A de-delegated contingency could be provided, if the Schools Forum agree, to support individual schools where a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school budget share.	None
30	Appendix H 2.6	Revision of text to align to the DfE Scheme guidance	The Local Authority will discuss its policy with Schools Forum. Although each case will be considered on its own merits, this should be within an agreed framework. It	None

			may be reasonable to share costs in some cases.	
31	Appendix H 5.2 (4)	Revision of text to align to the DfE Scheme guidance	Where charging such costs to the school's budget would prevent the school from complying with the requirement to recover a licenced deficit within the agreed timescale.	None
32	Appendix H 6.1	Revision of text to align to the DfE Scheme guidance	How early retirement and redundancy costs relating to staff employed under the community facilities power will be funded.	None
33	Appendix I & J	Deleted and replaced	Deleted the Inclusive education in Nottingham City Council in Appendix I and the Confidentiality Reporting Procedure (Whistleblowing) in Appendix J as both appendices were no longer current.	None