

SCHOOLS FORUM 8 OCTOBER 2019

Title of paper:	De-delegation of Health and Safety Building Inspection funding 2020/21
Director(s)/ Corporate Director(s):	Alison Michalska, Corporate Director for Children and Adults
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Summary <p>The purpose of this report is to update Schools Forum on the statutory and legislative health and safety responsibilities of the Local Authority in relation to maintenance and testing of maintained school properties and how the funding requested to be de-delegated is used to support this.</p> <p>Last financial year, maintained primary and secondary schools approved the use of the maintained schools and health and safety buildings maintenance reserve, and to de-delegate funding for the financial years 2019/20 and 2020/21 to fund the costs of maintained schools health and safety tests up until 2022/23.</p> <p>Whilst Schools Forum agreed in principle to the de-delegation in the financial year 2020/21, the Local Authority is required to seek approval on an annual basis in accordance with the Schools and Early Years Finance Regulations 2018 (No.2). To date, the Department of Education has confirmed that de-delegation will only be available until the financial year 2020/21.</p> <p>Noted below is the proposed recommendation for the funding of schools and health and safety buildings tests and inspections for the financial years 2020/21 to 2022/23.</p> <ol style="list-style-type: none">1. To approve the de-delegation of funding in 2020/21 at a rate of £6.61 to generate sufficient funds to cover the costs for the financial years 2020/21 to 2022/23, as agreed in principle at the Schools Forum meeting on 9 October 2018.2. Use the balance on the Schools Buildings, Health and Safety Reserve which currently has a balance of £0.228m.	
Recommendation(s):	
<ol style="list-style-type: none">1. To note the statutory and legislative health and safety responsibilities of the Local Authority 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.	

2. For maintained mainstream primary schools to **approve** the de-delegation of Health and Safety Building Inspection funding in 2020/21 based on a rate of £6.61 per pupil. Total estimated funding requested to be de-delegated in 2020/21 for mainstream maintained primary schools is £73,000.

1. **REASONS FOR RECOMMENDATIONS**

- 1.1 The overall responsibility for health and safety lies with the employer. The Health and Safety Executive states that in England the Local Authority (LA) 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 to be de-delegated in this report in 2020/21 is to be used by:

- Property Maintenance to fund the tests and inspections in maintained primary 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

- 1.3 Approval of the de-delegation of 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 Approvals for de-delegations are annual regardless of the statutory nature.

- 1.5 Schools Forum on 9 October 2018 agreed in principle to de-delegate funding for the financial years 2019/20 and 2020/21 at a rate of £6.61 per pupil as well as use the schools health and safety buildings maintenance reserve to fund the cost of tests and inspections for the period up to 2022/23. When the report was taken to Schools forum on 9 October 2018 the balance on the Schools health and safety tests and inspections reserve was £0.229m. After the closure of the 2018/19 year end accounts the balance on the reserve was £0.228m, refer to 2.4 for a breakdown of the reserve.

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. Any unspent balance at the end of the financial year is transferred to a Health and Safety buildings maintenance reserve. In reverse any in year overspend would be drawn down from the Health and Safety Building Maintenance Reserve. As at the 31 March 2019 the balance on the Health and Safety Building Maintenance Reserve was £0.228m.

Table 1 shows the budget and expenditure on the schools health and safety building maintenance in the last six years since the funding was first de-delegated.

Table 1: Breakdown of Schools Health and Safety Building Maintenance				
Year	Budget £m	Outturn £m	Variance £m	Explanation
2013/14	0.273	0.231	0.042	The year-end under-spend was transferred to the Health and Safety Building Maintenance Reserve
2014/15	0.253	0.174	0.079	
2015/16	0.208	0.174	0.034	
2016/17	0.199	0.177	0.022	
2017/18	0.197	0.145	0.052	
2018/19	0.120	0.121	(0.001)	
TOTAL			0.228	

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 de-delegate 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 2019 to 2020 Policy document – July 2018" for the next two financial years (2019/20 and 2020/21) local authorities will continue to set their local funding formula to distribute their schools block funding, in consultation with schools and their School Forum.

Paragraph 5 & 6

"We are pleased to see the significant progress across the system in moving towards the national funding formula in its first year.

In light of this progress, and in order to continue to support a smooth transition,

we are confirming that local authorities will continue to determine local formulae in 2020-21”

LAs will continue to 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 Any decisions made to de-delegate in 2019 to 2020 related to that year only; new decisions will be required for any service to be de-delegated in 2020 to 2021 before the start of each financial year.
- 5.3 The current balance of the schools health and safety building maintenance reserve is £0.228m as stated 2.4.

If maintained primary schools approve to de-delegate funding to fund the cost of tests and inspections in the financial year 2020/21 at a rate per pupil of £6.61 per pupil and use the balance remaining in the schools health and safety building reserve this would ensure that there is sufficient funding to cover the costs of test and inspections for the financial years 2020/21 to 2022/23.

See **Appendix A** for a breakdown of how the forecast income and expenditure and the calculation of the rates per pupil. Building Services will provide a full financial breakdown for individual schools upon request.

Some of the contracts are due to be renewed for the financial years 2021/22 and 2022/23 therefore to be prudent a contingency has been included and is based on 4% of the forecast costs for 2021/22 and 2022/23.

- 5.4 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.

12 September 2019
Julia Holmes
Senior Commercial Business Partner

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

8.1 The equality impact has been assessed and 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 A – 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>	
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Outcome(s) of equality impact assessment:

No major change needed Adjust the policy/proposal Adverse impact but continue Stop and remove the policy/proposal

Arrangements for future monitoring of equality impact of this proposal / policy / service:

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.

Approved by: David Thompson Schools H&S Manager

Date sent to equality team for publishing: