

**REGULATORY AND OTHER COMMITTEE REPORT**

<b>NAME OF COMMITTEE:</b>	Schools' Forum
<b>DATE OF MEETING:</b>	13/10/10
<b>SUBJECT:</b>	DfE' Consultation on The School Finance (England) Regulations 2011
<b>REPORT BY:</b>	Tony Warnock Head of Finance – Children's Services
<b>NAME OF CONTACT OFFICER:</b>	Tony Warnock Head of Finance – Children's Services
<b>CONTACT OFFICER TEL NO:</b>	01522 553250
<b>CONTACT OFFICER EMAIL ADDRESS:</b>	tony.warnock@lincolnshire.gov.uk
<b>IS THE REPORT EXEMPT?</b>	No
<b>IS REPORT CONFIDENTIAL?</b>	No

**SUMMARY**

The purpose of this report is to advise the Schools Forum of the DfE' consultation on Schools Finance Regulations and to seek its views on the proposed changes.

**DISCUSSION**

On the 17 September 2010, the DfE launched a consultation on the new School Finance (England) Regulations 2011.

The covering letter stated:

*'The main changes from previous regulations relate to decisions and proposals outlined in the 2011-12 school funding consultation document issued on 26th July 2010. These include the requirement for all authorities to introduce an early years single funding formula from April 2011 and the mainstreaming of some specific grants into the Dedicated Schools Grant.'*

*Other proposals include changes to make federations more attractive, allowing penalties from the carbon reduction commitment to be passed through to the schools budget or individual schools and removing exclusions as an allowable formula factor. Information is also provided about schools being able to fund community facilities from their delegated budget.'*

The draft Statutory Instrument is 32 pages long and is not currently available on the DfE website. This can be made available by officers to Schools Forum members should they wish to see it.

The accompanying note issued by the DfE is attached at Appendix 1.

Key points which may assist the Schools Forum's consideration of this are:

- **Early Years**

The DfE requires LAs to introduce an Early Years Single Funding Formula (EYSFF) from April 2011. As reported to Schools Forum on 27 January 2010, a former Government Minister announced her decision to postpone implementation for one year. The Local Authority (LA) had been ready to implement the formula in April 2010, but decided not to proceed. The latest proposal will have funding implications for schools with early years children. The EYSFF may deliver a more consistent system of funding between private, voluntary and independent providers and schools, as intended, but it will also create turbulence and it may make financial planning more difficult for schools. The document clearly indicates though that LAs will have to introduce the formula in April 2011.

- **Grants**

As indicated in Appendix 1, a number of grants are likely to be streamlined in to the Dedicated Schools Grant (DSG). The draft regulations suggest that to avoid turbulence, LAs could seek to replicate the current funding system through a new formula factor. The LA will wish to consider this carefully. It may be possible, and perhaps both fair and sensible, to use existing formula factors to try to mirror the current distribution of School Standards Grant and Schools Standards Grant (personalisation) in to school budget shares. However, as noted in Appendix 1, the School Development Grant is an amalgamation of former grants, which were often distributed on a non-formulaic basis before becoming protected from material change, by the DfE' requirement for the minimum funding guarantee (MFG) to apply to it. It may therefore be unfair to try to mirror the current distribution of that funding mechanism. Having said that, careful consideration must be given to any major changes in the current distribution of funding and to the losses that some schools might then face. The Schools Forum may wish to support the proposal for maximum flexibility to be given to LAs when addressing this, including the opportunity to disapply the MFG regulations.

- **Ethnic Minority Achievement Service**

The opportunity to retain centrally within the DSG a budget for the Ethnic Minority Achievement Service should perhaps be welcomed, to allow LAs time to discuss with schools how such a service might best be delivered on their behalf.

- **Central Expenditure Limit**

The LA does not anticipate there being an overspend on the 2010/11 DSG, so the proposal in that respect is likely to be irrelevant in Lincolnshire.

- **Exclusions**

The LA does not currently have an additional formula factor to take account of exclusions. Instead, the LA continues to deduct for exclusions a pro-rata share of the age weighted pupil unit value for the remainder of the financial year. Whilst recognising the Government's intention to give greater power to headteachers to maintain good behaviour, it is important to recognise that the alternative solutions are much more expensive and, not only that, they are funded by the DSG. The Schools Forum may therefore take the view that LAs should remain able to implement additional charges to deter schools from excluding pupils with poor behaviour.

- **Federations**  
The proposal to allow LAs to adjust the formula to take account of savings generated by federations should perhaps be welcomed, as it offers the opportunity for the savings to be withdrawn and shared across county schools. The use of such a facility would need to be thought through carefully, however, to prevent it from becoming a barrier to federations, which are likely to become increasingly more important due to falling rolls and the number of small schools in Lincolnshire.
- **Carbon Reduction Commitment**  
The flexibility to meet any costs from either a central DSG budget or by charging individual schools should perhaps be welcomed, to allow LAs time to develop the most appropriate way forward. This is particularly the case because of the differences in the size, age and efficiency of school buildings; the capacity to improve performance, and; the efforts schools have already made to reduce their carbon footprint. Given that this is due to be implemented next year, it may be appropriate to ask the DfE to issue very quickly, much more detailed guidance to schools and LAs on this issue and how it might be implemented.
- **Service Children**  
The proposal regarding the threshold is unlikely to affect Lincolnshire schools.
- **Notification of budget shares**  
The Government's proposed introduction of the EYSFF should enable all providers to calculate their own budget shares. The formula will be simple and transparent and heavily dependent upon each provider's forecast of early years numbers – this is information which the LA will not routinely hold. Unless a detailed and costly data collection exercise takes place, any estimates given are likely to prove materially inaccurate. A more appropriate approach may be to publish the formula and allow each early years setting to calculate their own budgets based on their projected early years numbers. The DfE' proposal would increase administrative costs and it appears inconsistent with the Government's broader drive to reduce such costs.
- **Community Facilities**  
The Schools Forum may take the view that Section 4 of the 2010 Act could increase the risk of schools using their delegated budgets in a way that does indeed interfere with raising standards. However, the Schools Forum could also take the view that with the prospect of significant reductions in the funding of public services, schools should be given added freedoms to respond to the wider needs of their communities, if services currently provided by local government are reduced as a result of budget cuts.
- **Consistent Financial Reporting (CFR)**  
The Schools Forum may wish to ask the DfE to review the costs, benefits and utilisation by schools of the CFR website, not least as the wide differential in funding between LAs makes meaningful comparison beyond LA boundaries of limited value. Presently, there are limited costs to schools using SAP of completing CFR returns, as the database is populated by Mouchel, but there is a cost to prime account schools.
- **Academies and SEN**  
The intention behind this is not clear and clarification should be sought from the DfE.

Responses to the consultation need to be sent to the DfE by 10 December 2010.

<b>RECOMMENDATIONS</b>
------------------------

The Schools Forum is asked to:

- a. Note the content of the report.
- b. Comment upon the DfE's proposals for changes to the regulations.
- c. Indicate whether it wishes the LA to summarise its views and respond to the DfE by the due date.

<b>BACKGROUND PAPERS</b>			
The following reports were relied upon in the writing of this report.			
<b>PAPER TYPE</b>	<b>TITLE</b>	<b>DATE</b>	<b>ACCESSIBILITY</b>
Report	Early Years funding arrangements	27 January 2010	Committee Services, County Offices, Newland, Lincoln

<b>APPENDICES –</b>
Appendix 1 - Schools Finance Regulations 2011 Consultation

## SCHOOL FINANCE REGULATIONS 2011 CONSULTATION

1. The current school finance regulations cover the 2008-11 funding period and therefore expire at 31<sup>st</sup> March 2011. This consultation sets out draft regulations which will be effective for the 2011-12 financial year only, consistent with the proposals and announcements in the "Consultation on school funding 2011-12" published on 26<sup>th</sup> July 2010 and which runs until 18<sup>th</sup> October 2010. The school funding consultation is still open, and if there are changes to the proposals following consultation, then the regulations would change accordingly. The main changes are set out below:

### *Early Years Single Funding Formula (EYSFF)*

2. Local authorities will be required to implement an Early Years Single Funding Formula from April 2011. The proposed changes to the regulations are similar to those consulted on in 2009 and include requirements to fund mainly on numbers of actual hours, to use at least three counts during the year and to have a deprivation supplement. More detail is shown at Annex A.
3. We are looking to those local authorities which were approved as EYSFF pilots or pathfinders to share good practice with those which are still to implement. The government has announced its intention to abolish the government offices, so, LAs will need to take responsibility for organising themselves to compare formulae and experiences, where this is not already happening. We have published a brief summary of aspects of the pilot/pathfinder formulae to assist other LAs, and will shortly be publishing some case studies from pathfinders.

### *Mainstreaming of grants*

4. The school funding consultation document proposes that, subject to the spending review, some grants – which are likely to include at least the School Development Grant (SDG), School Standards Grant (SSG) and School Standards Grant (Personalisation) - should be mainstreamed into the Dedicated Schools Grant (DSG). To avoid undue turbulence at school level, LAs would if they wished be allowed to use a formula factor which replicates part or all of the previous level of grant, either as a cash amount or using the grant methodology. This is most likely to be of use for SDG, because of its history as an amalgamation of previous grants, some of which were distributed on a non-formulaic basis. The addition is at **Schedule 3 paragraph 38**.
5. The mainstreamed grants will also need to be taken into account in the calculation of the Minimum Funding Guarantee (MFG) so that the budget comparison is on a like for like basis, as they will be appearing in formula budgets in 2011-12. The best way of doing this is to permanently adjust the 2010-11 baseline to include allocations for the grants which are to be mainstreamed in 2011-12. This is reflected for primary and secondary schools in **Schedule 4 paragraph 1(e)**
6. For special schools, there are separate MFG calculations for place-led funding and the remainder of the budget. As the grant allocations are not based on places, and the level of place funding is usually based on existing assessments of need, we propose that the baseline should be adjusted for the part of the budget excluding place funding. This is shown at **Schedule 4 paragraph 5(2)**. If LAs decide to add in mainstreamed grants into place factors instead, they may need to seek a disapplication from this particular MFG requirement.

### *Central expenditure*

7. Mainstreaming grants will also affect the calculations for the central expenditure limit (CEL), so there will again need to be an adjustment to the 2010-11 baseline to ensure like for like comparisons. The total of relevant grant allocations in 2010-11 will, therefore, need to be added to the 2010-11 Schools Budget for each LA. This is given effect in **Regulation 7(2)**.
8. We do not propose a similar adjustment to any funding retained centrally from mainstreamed grants. If an LA wishes to continue to retain funding and this would breach the central expenditure limit, then schools forum would need to approve this, with the usual route of appeal to the Secretary of State if the forum disagreed with the proposal. We consider that, in any case, proposals for how grants are mainstreamed locally should be discussed with the forum.
9. As noted in paragraph 4, all decisions on mainstreaming grants are subject to the spending review. If the Ethnic Minority Achievement Grant (EMAG) is mainstreamed into DSG, then we would propose to enable LAs to retain funding centrally within DSG for services which support schools in narrowing achievement gaps for under-performing ethnic groups and in meeting the specific needs of bilingual learners. This would enable LAs to maintain existing services if they wished, including in those areas with small numbers of such pupils and where it is consequently more cost-effective to run a central service than to spread funding thinly. Again, schools forums should be involved in the decision. The revised wording is at **Schedule 2 paragraph 39**.
10. The current regulations on the central expenditure limit require LAs to obtain further approval from schools forums if the proposed central expenditure for future years exceeds the indicative budgets originally set for those years at the start of the funding review period. This does not, however, cover the position at the start of a new funding review period. We wish to ensure that, if there is a brought forward overspend on DSG, any funding of this from central DSG is properly considered by schools forum. We are therefore proposing a new regulation which would state that, where there is an overspend on central Schools Budget expenditure from the 2010-11 and which reduces the DSG available in 2011-12, then the funding of this overspend must be approved by schools forum. The wording is at **Regulation 7 (4)**.

### *Exclusions*

11. The Government is committed to giving headteachers greater powers in maintaining good behaviour. We back headteachers in excluding undisciplined pupils where necessary, and are seeking to remove barriers which limit their authority. We propose, therefore, to remove the ability to have a formula factor (**currently Schedule 3 paragraph 34**) which takes account of exclusions. LAs currently using such a factor would need to remove this from their formula from 2011-12.
12. The deductions of age-weighted pupil funding would continue (these are set out in Regulation 23). Any charges or payments resulting from local agreements outside the formula would also continue, though we are clear that these should be genuinely consensual and cannot bind schools which are in disagreement with such arrangements.

### *Federations*

13. Schools are increasingly joining together in federations as a way of achieving efficiencies and sharing costs. The savings which schools and LAs can make from schools federating will vary according to decisions on staffing structures and the nature of the local formula respectively. LAs, in consultation with their schools forums, should consider the appropriate balance between allowing the savings to accrue to the individual school as against the overall Individual Schools Budget (ISB), while ensuring that federation is still an attractive option for the schools concerned.

14. Finance regulations still require separate budgets and accounts for schools within a federation. This can act as a barrier to reducing bureaucracy because of the extra administration involved when there is usually a single head and governing body, with many costs apportioned between the schools. Primary legislation is already in place to enable this to change. We are therefore proposing a new regulation (**regulation 22**) which would allow LAs to calculate a single budget share for schools in a federation with a single governing body within section 24 of the Education Act 2002. This would mean that the data would be entered into the formula as if they were a single school.
15. We are also proposing that LAs should be able to have a formula factor for federations. This could be used to support federations, for example as a temporary pump-priming measure. Alternatively, LAs could use a negative factor, to recognise that federations achieve savings which could in part be made available for redistribution within the ISB; this would be more relevant where separate budget shares were still being issued. This is set out in **Schedule 3 paragraph 39**.

#### *Carbon Reduction Commitment*

16. We referred in last year's consultation on the regulations to the need to consider the effect of the Carbon Reduction Commitment (CRC), which is now in force. Depending on their position relative to other participating organisations in the league tables, LAs will either have to pay a penalty or will receive a bonus. Schools can typically account for half an LA's emissions, so there needs to be a mechanism for passing on the schools' share of any penalty or bonus. This could either be done at the level of the overall Schools Budget or at individual school level. In deciding what approach to take, LAs should as usual consult their schools forums and discuss with their energy officers how best to give schools incentives to reduce emissions.
17. We are proposing to allow a new class of expenditure within the central part of the Schools Budget should the LA decide to topslice the Schools Budget as a whole (**Schedule 2 paragraph 38**). There is no need to change regulations for bonuses because the Schools Budget can already be topped up from other sources.
18. We are also proposing that LAs would be allowed to have a formula factor if they wish to apportion penalties or bonuses at individual school level. The value of the formula factor would be negative if it related to penalties. (**Schedule 3 paragraph 37**).
19. Academies are included in the LA calculation for their area. Under the current funding system, their budgets would be equally affected by a DSG topslice as there would be less available to distribute through the ISB formula which is replicated for academies. Similarly, using a formula factor would ensure their funding was comparable. The extent to which any such topslice or deduction then found its way back to the LA would depend on the method of DSG recoupment and would need to be considered as part of the wider review of academies funding.

#### *Service children*

20. The school funding consultation document refers to support for schools with fluctuations in the numbers of service children. We already allow LAs to have a formula factor (**schedule 3 paragraph 27**) where armed forces movements lead to a reduction in pupil numbers of at least 20% within one year. We feel this is unduly restrictive and therefore propose to remove reference to a threshold, so that LAs can make provision as they see fit to support schools affected by this turbulence.

### *Academies*

21. We are proposing to give a clearer definition of funding for individually assigned resources (IAR) for academy pupils with special educational needs (SEN). Where these resources are delegated through formula budgets, then the allocations are not included in the General Annual Grant (GAG) calculated by the Young People's Learning Agency (YPLA) and recouped from the LA. Instead, the payments are made directly by the LA from the central part of the schools budget. The current wording in **Schedule 2 paragraph 7** only refers to expenditure which it would be "unreasonable" to be met from a school's budget share, and does not properly reflect the differences in funding of academies. We therefore propose to amend the wording to cover this.

### *Notification of budget shares*

22. There is at present no formal requirement to notify schools and early years private, voluntary and independent (PVI) providers of their budget shares, only of the overall schools budget. While there is no evidence this is not being done, it makes sense to formalise this. We, therefore, propose to add a new regulation -**regulation 10(2)**.

### *Technical changes*

23. There are various technical changes which are needed to ensure regulations are consistent with other proposals relating to school funding. References to funding periods 1, 2 and 3 will be replaced as the regulations will cover a single funding period (2011-12). The regulations for the MFG leave percentages blank as no decisions on levels can be made until after the spending review. The remainder of the MFG wording has been left broadly unchanged; this does not necessarily mean that the methodology will be unchanged though as we are still considering whether it is possible to simplify the calculation.
24. References to the Learning and Skills Council (LSC) have been removed as 2011-12 post-16 allocations will have been wholly determined by the YPLA.
25. Termination of employment costs can be charged to the schools budget if schools forum agree and provided that there is a saving to the schools budget greater than the annual costs. The previous wording did not adequately recognise that there may be ongoing costs approved in previous funding periods. Reference to a start date has, therefore, been removed. The wording has also been amended to clarify the need for schools forum approval at the time the costs are first incurred – in other words, costs cannot be charged to the schools budget retrospectively.



## **Community Facilities**

Section 4 of the Children, Schools and Families Act 2010, which was passed just before the general election, enables schools to use their delegated budgets for community facilities. Schools have had powers to provide community facilities or services since the 2002 Education Act. There were, however, restrictions in place whereby the delegated budget could only fund services which directly supported the curriculum or were of direct educational benefit to pupils at maintained schools. Services outside this definition, such as adult learning or sports activities for the local community, could only be funded by certain grants including the School Standards Grant, charges or other external income.

The relevant sub-sections of the Act take effect from 1<sup>st</sup> April 2011, so schools will be able to take into account this power in planning their budgets from 2011-12 onwards.

The Act does allow for regulations to be produced to restrict the scope of spending, but we do not intend to make any at this stage. There is already a prohibition on schools using their community facilities power if this would interfere with their primary focus of raising standards, and we feel that existing accountability mechanisms are sufficient protection. We would reconsider this if there was evidence that the core functions of the school were suffering as a result.

We will be reviewing the narratives for Consistent Financial Reporting (CFR) categories to ensure that they are consistent with the legislation, and will also amend the statutory guidance on schemes for financing schools.

## Academies Act

We have already informed LAs that, during the passage of the Academies Act, an amendment was made to the Bill in the Lords and now forms Section 2(5) of the Act. This states:

In Schedule 1 to the School Finance (England) Regulations 2008, after paragraph 8 insert—

“8A Where a child is a registered pupil at an Academy, expenditure in respect of services for making provision for pupils with low incidence special educational needs or disabilities.”

This means that where LAs incur expenditure on pupils who are in academies and have low incidence SEN or a disability, then this expenditure must be charged to the non-schools education budget and not the schools budget. The definition of “low incidence” includes severe multi-sensory impairments; severe visual impairments; severe/ profound hearing impairments; and profound and multiple learning difficulties.

This section of the Act took effect from 1 September 2010 and will apply until the current regulations expire on 31st March 2011. We have amended the terms and conditions of the Dedicated Schools Grant (DSG) for 2010-11 only so that it can be used in support of this expenditure.

The main reason for the passage of this amendment was concern over the way in which funding for SEN services is currently transferred from LAs to academies. We have committed to reviewing academy funding for the 2011-12 financial year onwards, to fairly reflect the respective responsibilities of LAs and academies, and therefore do not feel it is necessary to maintain these changes in the draft regulations for 2011-12.

## ANNEX A – Early Years Provision

**Definitions:** revised definitions of early years provision, prescribed early years provision, and relevant early years provider to bring them in line with the Childcare Act 2006.

- **Part 2, reg 5(1);** addition of sub paragraph (d) to allow the Schools Budget to cover all expenditure on early years provision not in maintained schools or other specified providers (eg non maintained special schools, pupil referral units).
- **Part 2, current reg 7 (3);** amending the wording of the calculation of the Central Expenditure Limit given that the funding for early years will now all be part of the ISB. The change does not affect the calculation of the CEL because the current regulations add the centrally retained PVI funding to the ISB as part of the calculation, but the revision to where the funding is placed (in the ISB) means this adjustment will no longer be needed.
- **Part 2, reg 9 (3):** which requires a local authority to consult their schools forum about and decide upon an EYSFF which they must use in 2011-12.
- **Part 3, reg 16** provides a replacement regulation for current regulation 17 for 2011-12. This says that LAs:
  - must provide indicative budgets for early years provision using the most recently available data;
  - must review the data during or after the year using either attendance data collected during three sample weeks (census week for example) or total actual hours of attendance;
  - must recalculate the provider's budget as appropriate;
  - and must implement the redetermination when they consider it appropriate – which may be different for different providers;
  - They must notify providers within 28 days of recalculating the budget;
  - This regulation also removes the option for local authorities to provide funding based upon places, except where there are places specifically reserved for pupils with SEN in any setting or for children in need, (although there is a later option to provide an additional formula factor in support of maintaining sufficient places for children in an area in Part 2 of Schedule 3);
  - It does allow the LA to weight the hours depending upon whether pupils have been admitted in excess of the admission number, or for SEN.
  - As with sixth forms, authorities are allowed to reduce funding to affected schools within their main formula to avoid any overlap with the new EYSFF.
- **Part 3, reg 17 (4);** allows differential funding to types of providers to reflect unavoidable costs.
- **Part 3, reg 18 (1) (2) and (3);** Specify which parts of schedule 3 may be used for respectively the school funding formula and the EYSFF. It also requires that the EYSFF must (as is currently the case for the schools funding formula) have a factor that takes the incidence of deprivation into account.
- **Schedule 2;** the schedule that specifies what may be centrally retained from the schools budget does not allow the retention of funding for the provision of early years funding for provision of the free entitlement, but does allow a contingency budget for that provision (to enable adjustments to funding to be made in year)
- **Schedule 3;** the schedule that provides the heading under which formula factors may be provided is split into two parts, part 1 applicable to all maintained schools and PVI providers and part 2 applicable to the EYSFF only. Part 2 allows factors for
  - the improvement of quality,
  - to take account of flexibility in hours of attendance the provider makes available and
  - to allow LAs to secure or sustain a sufficiency within an area

In general, we wish to give LAs flexibility in the factors used in the EYSFF, and propose to allow most factors which appear in the main school funding formula. The only exceptions would be the factors for infant class sizes and the factor protecting schools whose budget shares would otherwise be reduced by 3% or more; in the latter case the ability to have a sufficiency factor should cover this. There are other factors relevant only to schools and we would advise LAs to use these only where there is a clear justification in the cost analysis between different types of provider.