



Premature retirements

Report to: Schools Forum

Date: 4 December 2012

Subject: Premature retirements

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Purpose of the report: To update School's Forum around potential changes to the scheme for financing schools.

Recommendations: See the end of the report.

1. Background

- 1.1. Schools Forum received a report called the “Pensions Policies – Local Government and Teachers” on 28 September 2010. There was a debate around the report and **Appendix 1** is the full minutes of the discussion that took place.
- 1.2. Following that report there was guidance from the Department for Education (DfE) (**Appendix 2**) that stated that clearly that the position that Walsall Council wanted to take was the correct one.
- 1.3. This is a Schools Forum issue because Schools Forum approves the Scheme for Financing Schools. Due to unforeseen circumstances this change was too late to include in the April 2011 scheme and due to unexpected challenges was not included in the April 2012 scheme.
- 1.4. The aim is therefore to include this into the April 2013 Scheme for Financing Schools.

2. The guidance and the scheme for financing schools

- 2.1. This has been issued from the DfE in December in a paper called “Revised scheme guidance 2011-12”
- 2.2. The guidance references the Education Act (2002) and states:
 - 2.2.1. *“Costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met”*
- 2.3. The guidance then states:
 - 2.3.1. *“The default position, therefore, is that premature retirement costs must be charged to the school's delegated budget, while redundancy costs must be charged to the local authority's budget.”*
- 2.4. The scheme for financing schools¹ currently states that premature retirement, dismissal and resignation costs are held centrally and can only be charged to a school without the permission of the governing body if costs have been incurred without the Local Authorities' written agreement or if the school has not followed LA advice.
- 2.5. Therefore the current scheme says costs will only be charged to schools if they do not follow the Council's rules on reducing staff.

3. Recommendation.

- 3.1. Schools Forum to note that this change will be discussed with teacher unions and will be part of the consultation on a revised Scheme for Financing Schools.

¹ <http://www2.walsall.gov.uk/CMISWebPublic/Binary.ashx?Document=10044>

Schools Forum

Minutes of meeting held on Tuesday, 28th September, 2010 at 4.00 p.m. at Blakenall Village Centre, Thames Road, Blakenall, Walsall

Present:- Mr. M. Vlahakis
Mr. A.F. Cheminais
Mr. J. Baker
Mr. D. Brownsword
Mr. S. Flynn
Mr. G. Crowther
Dame M. Brennan
Mr. J.P. Clarke
Ms. H. Lomas
Ms. M. Cryan
Mr. A. Davies
Mr. G. Deakin
Mr. F. Hodgkinson
Mrs. M. Robinson
Mr. D. Clough
Mr. A. Basi

Observers:- Mr. A. Bowater
Councillor R. Andrew
Ms. E. Ingram
Mr. G. Thornton
Mr. J. Perrins
Mr. J. Murray

In Attendance:- Ms. A. Walton (Walsall Children's Services - Serco)
Mrs. J. Taylor (Walsall Children's Services - Serco)
Mrs. L. Hemus (Walsall MBC)
Mr. K. Reader (Walsall MBC)
Mr. M. Parrott (Walsall MBC)
Ms. D. Morris (Walsall Children's Services - Serco)
Mr. D. Mortiboys (Walsall MBC)
Mrs. S. Wedgwood (Walsall Children's Services - Serco)

		Action
1. 28.9.10	Election of Chairman and Vice-Chairman Resolved That Mr. J. Baker be appointed Chairman of the Forum for the next twelve months ending with the first Autumn meeting in 2011.	

	<p>Mr. Baker in the Chair</p> <p>Election of Vice-Chairman</p> <p>Resolved</p> <p>That Mr. S. Flynn be elected Vice-Chairman of the Forum for a period of twelve months ending with the first Autumn meeting in 2011.</p>	
<p>2. 28.9.10</p>	<p>Apologies</p> <p>Apologies for non-attendance were submitted on behalf of Ms. A. Barker and Mr. S. Onions.</p>	
<p>3. 28.9.10</p>	<p>Minutes - 15th June, 2010</p>	<p>The minutes of the meeting held on 15th June, 2010 be approved and signed as a correct record.</p>
<p>4. 28.9.10</p>	<p>Matters arising from the minutes</p> <p>There were no matters arising.</p>	
<p>5. 28.9.10</p>	<p>Local Government (Access to Information) Act, 1985 (as amended)</p> <p>The Forum was advised that there were no items for consideration in the private session.</p>	
<p>6. 28.9.10</p>	<p>Election of School Governor representations on Schools Forum</p> <p>A report was submitted.</p> <p>Resolved</p> <p>That Mrs. Silvester and Mrs. Birch be appointed as Primary Governor representatives on the Schools Forum for the period expiring 31st March, 2014.</p>	

<p>7. 28.9.10</p>	<p>Harnessing Technology Grant</p> <p>Mr. Read confirmed that the future annual costs for Broadband access would depend on the number of schools going forward.</p> <p>Schools did have the option to opt out and safeguarding children using the Internet would need to be investigated.</p> <p>Resolved</p> <p>That the Forum agree to support the allocation of funding for the replacement of Internet circuits to schools as indicated in the report.</p>	
<p>8. 28.9.10</p>	<p>Impact of the 2010-11 Emergency Budget on the Music Service</p> <p>The Forum was informed that the Primary Forum had expressed the wish to retain the music service rather than outsource it.</p> <p>It was confirmed that some £20,000 would be required for the current year and £38,000 from next year.</p> <p>Mr. Parrott confirmed that every school in Walsall had access to the music service and there was only one school not taking up the service, this was now an Academy.</p> <p>Members spoke in support of the music service.</p> <p>Members referred to the need for full information on the cost of the service and was of the view that this should form part of an annual review paper and include on-costs.</p> <p>Resolved (Unanimously)</p> <p>That financial support from the central element of the schools budget for 2010-11 and 2011-12 (up to 31st March, 2012) be approved.</p>	

<p>9. 28.9.10</p>	<p>Urgency Sub-Committee - 21st July, 2010</p> <p>The minutes of the Urgency Sub-Committee from its meeting held on 21st July, 2010 was submitted.</p> <p>Resolved</p> <p>That the Urgency Sub-Committee minutes of 21st July, 2010 be noted.</p>	
<p>10. 28.9.10</p>	<p>Transforming Learning in Walsall - Financial Update</p> <p>Members expressed concern at the late receipt of the report. Discussions with governing bodies had not been possible, although a number of colleagues contacted indicated that they were of the view that the matter would be finalised as early as possible and that funding would return to schools budgets that had made a contribution as this was urgently required prior to the end of the financial year.</p> <p>Members expressed concern that any funds returned late could create a balance control problem. Mr. Cheminais referred to the original decision to contribute funds to BSF on the basis of the model presented and on the principle that ultimately, every school in Walsall would benefit and in view of this, the money originally contributed should be returned and any other proposal for consideration should be submitted to the Forum.</p> <p>Members requested a report to the next meeting of the Forum setting out the sums spent and the percentage that schools would be receiving.</p> <p>Resolved</p> <p>That the money contributed by schools to BSF be returned to schools as soon as possible .</p>	
<p>11. 28.9.10</p>	<p>Pensions Policies - Local Government and Teachers</p> <p>Lisa Hemus outlined the contents of the report which aimed at bringing the early retirement age for teachers and Local Government staff to 55 rather</p>	

	<p>than 58 for teachers as previously agreed.</p> <p>Members were reminded that the policy had previously been approved and the discussion related to which body would be responsible for payment; consultation had taken place with the Unions.</p> <p>Members were also reminded of the redundancy policy and that costs would fall to the decision maker to cover. The opportunity was for schools to work together in order to prevent redundancy situations as far as possible. In the event of school closures, the Local Authority would cover the costs of the redundancies.</p> <p>Members considered that a 50/50 proposal for sharing the costs for a period of two or three years could be suggested with a review of this in five years.</p> <p>Resolved</p> <p>That the proposed changes to the premature retirement, dismissal and resignation costs be put out to consultation and that a Sub Group consisting of the Chairman, Vice-Chairman and Mr. Vlahakis be set up to consider the consultation paper.</p>	
<p>12. 28.9.10</p>	<p>Early Years Single Funding Formula</p> <p>Julie Taylor highlighted the main points contained in the report and confirmed that any grant left at the end of the financial year would be distributed to schools and other settings on the basis of an allocation per pupil.</p> <p>Resolved</p> <p>(1) That the current funding position and issues in respect of the pilot scheme be noted; the methodology for the distribution of the Standards Fund Grant be agreed in the sum of £600,000 as detailed in columns 2 and 3 of the Appendix to the report; that £90,000 be allocated to pilot innovative work; and that the remaining grant be allocated to schools and other settings, using actual school numbers, for the financial year;</p>	

	<p>(2) That the Early Years Funding Sub-Group be established to consider innovative work for suggestions to schools consisting of the following Members:-</p> <p style="text-align: center;">Mrs. M. Cryan, Millfields Nursery Hilary Hastings, Birchills Children's Centre Mr. C. Cheminai, Rushall JMI School Ms. J. Morgan, Charlie Caterpillars Gary Thornton, Palfrey Junior School</p>	
<p>13. 28.9.10</p>	<p>Revised Constitution</p> <p>Resolved</p> <p>That the revised Constitution be approved, subject to the following amendment:-</p> <p style="text-align: center;">The Chairman, being ex-officio of the Urgency Sub-Committee, shall have the right to move, second matters and vote.</p>	
<p>14. 28.9.10</p>	<p>Consultation on School Funding 2011-12 and introducing a Pupil Premium</p> <p>Julie Taylor drew attention to the table summarising the deprivation indicator options, together with their merits as well as the suggested responses to the consultation document.</p> <p>Mr. Flynn expressed reservations regarding the response to Question 2 as free school meals does not reflect deprivation in every school in Walsall and would, therefore, not represent a true measure of deprivation.</p> <p>Mrs. Taylor stated that the last recommendation of the consultation response used IDACI for local pupil premium; she felt that an option that demonstrated the effect of the average IDACI score of pupils educated within a Local Authority area would provide a better determination of deprivation.</p> <p>With regard to free school meals information, Members asked whether this could be included on housing benefit forms to inform schools and that a</p>	

	<p>report be submitted to a future meeting on the use of free school meals as a deprivation indicator and that it be reviewed on an annual basis as numbers fluctuate greatly each year.</p> <p>Resolved</p> <p>That the Forum endorse the attached draft consultation response to the Department for Education, subject to an amendment to the last question as follows:-</p> <p style="padding-left: 40px;">That an option that demonstrates the effect of the average IDACI score of pupils educated within a Local Authority area would provide a better determination of deprivation in a Local Authority area.</p>	
<p>15. 28.9.10</p>	<p>Review of the Special School Funding Formula</p> <p>Julie Taylor circulated “Model 6 - average percentage allocations across bands using 2008-11 total pupils” paper and highlighted the contents of the report.</p> <p>After consideration it was,</p> <p>Resolved</p> <p>That the Forum agree that the proposals detailed in the report be included in the formal school funding consultation document to be issued later in the Autumn term.</p>	
<p>16. 28.9.10</p>	<p>Proposed change to the Balance Control Mechanism and the final Balances Outturn Position as at 2010</p> <p>Julie Taylor outlined the contents of the report.</p> <p>The School Balances Working Group found that the vast majority of schools in Walsall were working well within the balance control mechanism and suggested that no change be made to the percentages contained therein and that from 1st April, 2011, a balance control mechanism standards fund grant be introduced, however, this would be incorporated in the dedicated schools grant from</p>	

	<p>April, 2011.</p> <p>Mr. Mortiboys confirmed that Grant Thornton had been looking into school balances and their report would be submitted to the Forum when it became available.</p> <p>The School Balances Working Group considered the percentages that schools were allowed to carry forward as uncommitted which at present were looked at in terms of total resources. It was felt that this should be made equal from 1st April, 2011 in order that schools were treated in the same way. This would need to go out to consultation with the two suggestions made earlier.</p> <p>Mrs. Taylor confirmed that the carrying forward of sums to cover single status would constitute properly assigned sums as this was a potential liability.</p> <p>Julie Taylor also confirmed that nurseries were included in the 8% figure.</p> <p>Resolved</p> <p>That the recommendations of the School Balances Working Group be supported and the draft consultation document attached to the report be noted.</p>	
<p>17. 28.9.10</p>	<p>Dedicated Schools Grant 2010-11 Final Settlement</p> <p>The Forum was advised that the report was for information and that there was contingency to pick up the variations.</p> <p>The Forum congratulated officers in achieving such a close projection in the number of pupils.</p> <p>Resolved</p> <p>That the dedicated schools grant 2010-11 final settlement be noted.</p>	

<p>18. 28.9.10</p>	<p>Schools Forum Annual Report 2008/09 and 2009/10</p> <p>Resolved</p> <p>That the Annual Report for 2008/09 and 2009/10 setting out the work of the Forum be noted.</p>	
<p>19. 28.9.10</p>	<p>Forward Plan</p> <p>The Forward Plan was submitted.</p> <p>Resolved</p> <p>That the Forward Plan be noted and additional items be included relating to:-</p> <p style="padding-left: 40px;">School Funding Regulations 2011 - consultation</p> <p style="padding-left: 40px;">2011/12 formula review issues</p> <p style="padding-left: 40px;">Standards Fund Grants - mainstreaming</p> <p style="padding-left: 80px;">School Development Grant</p> <p style="padding-left: 80px;">School Standard Grant</p> <p style="padding-left: 40px;">School Standard Grant Personalisation will go into DSG from 1st April, 2011, the Local Authority will give permission in their new funding Regulations to give a formula factor to provide the same cash sums that schools have received historically for those grants or could explore how these could be built into existing formula</p> <p style="padding-left: 40px;">Options Paper on distribution of funding</p> <p style="padding-left: 40px;">Carbon Reduction Scheme - funding on behalf of schools - penalties for Local Authorities</p> <p style="padding-left: 40px;">BSF</p>	

<p>20. 28.9.10</p>	<p>Correspondence</p> <p>The Chair referred to an article on Section 106 funding that had been drawn to his attention.</p> <p>Ms. Walton stated that Section 106 funding was capital money. Walsall Council had a policy on Section 106 funding and Serco was involved in negotiations with developers. Cabinet would be considering a report on Section 106 monies; it was necessary to demonstrate where resources were required. Walsall did benefit from capital funding from Section 106 agreements.</p> <p>Resolved</p> <p>That the information be noted.</p>	
<p>21. 28.9.10</p>	<p>Date and time of next meeting</p> <p>It was NOTED that the next meeting of Schools Forum would be held on Tuesday, 19th October, 2010 at 4.00 p.m. at Blakenall Village Centre, Thames Road, Blakenall, Walsall.</p>	

The meeting terminated at 5.45 p.m.

SCHEMES FOR FINANCING SCHOOLS: SECTION 48 OF THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998, AND SCHEDULE 14 TO THE ACT

Statutory guidance for local authorities: Issue 5

Revisions since Issue 4 of October 2006, apart from minor technical changes, are underlined.

Issued by the Secretary of State for Education.

The guidance takes the form of a listing of the provisions which an LA's scheme must, should or may include, with detail of provisions in normal typeface and commentary in *italics*.

Local authorities must take this guidance into account when they revise their schemes, in consultation with their schools forums. However, schemes need not follow the format used in the guidance.

DfE
December 2010

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The funding framework: main features

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THE OUTLINE SCHEME

References throughout this statutory guidance to:

“the Act” are to the School Standards and Framework Act 1998;

“the authority” means the local authority; and

“the Regulations” are to the School Finance (England) Regulations 2011 made under the Act.

The Regulations state that schemes must deal with the following matters:

1. The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools’ budget shares.
2. Amounts which may be charged against schools’ budget shares.
3. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
4. The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.
5. Terms on which services and facilities are provided by the authority for schools maintained by them.
6. The payment of interest by or to the authority.
7. The times at which amounts equal in total to the school’s budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.
8. The virement between budget heads within the delegated budget.
9. Circumstances in which a local authority may delegate to the governing body the power to spend any part of the authority’s non-schools education budget or schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act.
10. The use of delegated budgets and of sums made available to a governing body by the local authority which do not form part of delegated budgets.
11. Borrowing by governing bodies.
12. The banking arrangements that may be made by governing bodies.
13. A statement as to the personal liability of governors in respect of schools’ budget shares having regard to section 50(7) of the 1998 Act.
14. A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act.

15. The keeping of a register of any business interests of the governors and the head teacher.
16. The provision of information by and to the governing body.
17. The maintenance of inventories of assets.
18. Plans of a governing body's expenditure.
19. A statement as to the taxation of sums paid or received by a governing body.
20. Insurance.
21. The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc Act 1974.
22. The provision of legal advice to a governing body.
23. Funding for child protection issues.
24. How complaints by persons working at a school or by school governors about financial management or financial propriety at the school will be dealt with and to whom such complaints should be made.
25. Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the 2002 Act.

SECTION 1: INTRODUCTION

1.1 The Funding Framework

The scheme should have an introductory section which describes the main features of the new funding framework.

A specimen description is at Annex A. This may be amended, added to or replaced by a different version, but the scheme should aim for at least this level of detail. In particular, it should be made clear where the funding formula and details of centrally retained expenditure are set out, since these will no longer be in the scheme.

1.2 The role of the scheme

The scheme should contain a paragraph which explains the role of the scheme itself.

This should explain that the scheme sets out the financial relationship between the authority and the maintained schools which it funds. It should make it clear that the scheme contains requirements relating to financial management and associated issues, binding on both the authority and on schools.

1.2.1 Application of the scheme to the authority and maintained schools

As a description of its institutional coverage, the scheme should state that it applies in respect of all community, nursery, voluntary, foundation, community special or foundation special schools maintained by the authority. The schools which the authority will be maintaining should be listed for information in an annex to the scheme.

The scheme applies to all community, nursery, special, voluntary, foundation (including trust) and foundation special schools maintained by the authority, whether they are situated in the area of the authority or situated elsewhere. It does not apply to schools situated in the authority's area which are maintained by another authority. Nor does it apply to academies. Because PRUs are not maintained schools within the meaning of s.20(7) of the Act, the scheme does not apply to PRUs.

1.3 Publication of the scheme

The publication requirements are contained in the Regulations. They make clear that, as a minimum, the scheme must be published on a website which is accessible to the general public and that any revised version must be published by the date the revisions come into force, together with a statement that the revised scheme comes into force on that date.

1.4 Revision of the scheme

The scheme should contain a statement that any proposed revisions to the scheme will be the subject of consultation with the governing body and the head teacher of every school maintained by the authority before they are submitted to the schools forum for their approval.

All proposed revisions must be submitted to the schools forum for their approval. Where the schools forum does not approve them or approves them subject to modifications which are not acceptable to the authority, the authority may apply to the Secretary of State for approval.

1.5 Delegation of powers to the head teacher

The scheme should require the governing body to consider the extent to which it wishes to delegate its financial powers to the head teacher, and to record its decision (and any revisions) in the minutes of the governing body.

The scheme should state the responsibilities of the head teacher and governing body in respect of the annual budget plan; the first formal budget plan of each financial year must be approved by the governing body, or by a committee of the governing body.

It is open to the authority to suggest to schools what might be a desirable level of delegation to head teachers, but the scheme must not seek to impose any particular level of delegation.

1.6 Maintenance of schools

The scheme should have a provision stating:

The local authority is responsible for maintaining the schools covered by the scheme, and this includes the duty of defraying all the expenses of maintaining them (except in the case of a voluntary school where some of the expenses are, by statute, payable by the governing body). Part of the way an authority maintains schools is through the funding system put in place under sections 45 to 53 of the School Standards and Framework Act 1998

SECTION 2: FINANCIAL CONTROLS

2.1.1 Application of financial controls to schools

The scheme should contain a general provision requiring schools, in the management of their delegated budgets, to abide by the authority's requirements on financial controls and monitoring, not only those in the scheme but also those requirements contained in more detailed publications referred to in the scheme.

The authority's requirements can differ for schools with their own bank accounts (see section 3).

2.1.2 Provision of financial information and reports

The scheme should contain a provision requiring schools to provide the authority with details of anticipated and actual expenditure and income, in a form and at times determined by the authority. However, the scheme should not require submission of such details more often than once every three months except for those connected with tax or banking reconciliation - unless the authority has notified the school in writing that in its view the school's financial position requires more frequent submission or the school is in its first year of operation. The scheme should also make clear that the restriction to a minimum 3 month interval does not apply to schools which are part of an on-line financial accounting system operated by the authority.

The form determined by the authority for submission of information should so far as possible take account of the Consistent Financial Reporting framework and the desirability of compatibility with that framework.

This is different from a requirement for annual budget plans (see 2.3).

2.1.3 Payment of salaries; payment of bills

The scheme may have a provision which applies separately published administrative procedures for these. Those procedures will vary according to the position on delegation of funds and any buyback of services which is in place.

2.1.4 Control of assets

The scheme should have a provision requiring each school to maintain an inventory of

its moveable non-capital assets, in a form to be determined by the authority, and setting out the basic authorisation procedures for disposal of assets. However, schools should be free to determine their own arrangements for keeping a register of assets worth less than £1,000. They should keep a register in some form.

Although authorities can determine the form of inventory for items above the £1,000 threshold, they may instead determine simply that schools should follow guidance, rather than a rigid format.

2.1.5 Accounting Policies (including year-end procedures)

The scheme should have a provision requiring schools to abide by procedures issued by the authority for this.

2.1.6 Writing off of debts

The scheme may authorise governing bodies to write off debts up to a stipulated level, with brief details of the procedure to be followed for larger debts.

2.2 Basis of accounting

The scheme may contain a provision requiring that reports and accounts furnished to the authority be on either a cash or accruals basis; but the scheme must not seek to impose either system on schools' internal systems.

The intention behind this provision is to ensure that although authorities should be able to have reports furnished on the basis they need, they should not be able to dictate to schools how they organise their accounts. This means in particular that schools should be able to use what financial software they wish, provided they meet any costs of modification to provide output required by the authority.

2.3 Submission of budget plans

The scheme should contain a provision requiring each school to submit a plan to the authority by a stipulated date showing its intentions for expenditure in the current financial year and the assumptions underpinning the budget plan. The provision may require the submission of revised plans throughout the year.

The scheme should also contain a provision binding the authority to supply schools with all school income and expenditure data which it holds which is necessary to efficient planning by schools, and supply schools with an annual statement showing when this information will be available at times through the year.

The scheme should contain a provision which allows schools to take full account of estimated deficits/surpluses at the previous 31 March in their budget plan.

The form determined by the authority for submission of budget plans should so far as possible take account of the Consistent Financial Reporting framework and the desirability of compatibility with that.

Authorities may insert in their schemes a requirement that provisional budget plans be submitted by a certain date; but these should be differentiated from the formal budget plan which should not be required before 1 May.

The school's formal annual budget plan must be approved by the governing body or a committee of the governing body.

The stipulated date for the initial submission of the plan should not be earlier than 1 May or later than 30 June. The intervals at which revisions may be required should not be less than once every 3 months.

The format of the plan should be specified by the authority in a separate publication. Authorities may wish to give guidance to schools on assumptions likely to be the same for all schools eg on inflation

2.3.1 Submission of Financial Forecasts

The authority may require schools to submit a financial forecast covering each year of a multi-year period for which schools have been notified of budget shares beyond the current year.

Authorities should consider the extent to which such forecasts may be used for more than just confirming schools are undertaking effective financial planning or not. For instance: they could be used as evidence to support the authority's responsibility for declaring their schools' adherence to the Financial Management Standard in Schools and/or used in support of the authority's balance control mechanism. However, the requirement to submit a financial forecast should not place undue burdens on schools and should be proportionate to need. In requesting such forecasts authorities should state the purposes for which they intend to use this forecast: such a forecast may be used in conjunction with an authority's balance control mechanism.

2.4 Best value

The scheme should contain a provision that schools should seek to achieve value for money and efficiencies, taking into account the purchasing, tendering and contracting requirements outlined in section 2.10.

Given the very high proportion of local authority spending which flows through delegated budgets, the government considers it desirable that schools should demonstrate that they are following best value principles in their expenditure.

2.5 Virement

The scheme should contain a provision allowing schools to vire freely between budget heads in the expenditure of their budget shares.

2.6 Audit: General

The scheme should contain a provision which places schools within an audit regime

determined by the authority as regards internal audit, and the authority's external audit regime as determined by the Audit Commission, and requires them to co-operate with it.

Authorities should ensure that the wording of the general audit provision includes a requirement to provide access to the school's records for both internal and external auditors.

The scheme may provide for different authority audit arrangements for schools having their own bank account, compared with non-bank account schools.

2.7 Separate external audits

The scheme should contain a provision which specifically allows a governing body to spend funds from its budget share to obtain external audit certification of its accounts, separate from any authority internal or external audit process.

There is no expectation by the Secretary of State that routine annual external audit at school level of budget share expenditure should be a usual feature of the funding system; merely that schools should not be prevented from seeking an additional source of assurance at their own expense.

The authority's audit regime may include sample visits to schools by the authority's external auditors. There is no need to specifically allow for this in the scheme since the general provision at 2.6 covers it.

2.8 Audit of voluntary and private funds

A scheme should contain a provision requiring schools to provide audit certificates in respect of voluntary and private funds held by schools and of the accounts of any trading organisations controlled by the school.

The purpose of such a provision is to allow the authority to satisfy itself that public funds are not being misused. Authorities must not seek to impose through the scheme a right to audit such funds themselves or otherwise access the accounts of private funds. The Department does not believe that such access is required, or that the scheme can bestow it. A school refusing to provide audit certificates to the authority as required by the scheme is in breach of the scheme and the authority can take action on that basis. Access to the accounts of such funds by other agencies is a matter for them. Any other requirement as to audit of such funds is a matter for those making the funds available, and any Charity Commission requirements.

2.9 Register of business interests

The scheme should contain a provision which requires the governing body of each school to have a register which lists for each member of the governing body and the head teacher, any business interests they or any member of their immediate family have; to keep the register up to date with notification of changes and through annual

review of entries, and to make the register available for inspection by governors, staff and parents, and the authority.

The authority may issue more detailed guidance on the maintenance of such a register.

2.10 Purchasing, tendering and contracting requirements

The scheme should contain a provision which requires schools to abide by the authority's financial rules and standing orders in purchasing, tendering and contracting matters. This should include a requirement to assess in advance, where relevant, the health and safety competence of contractors, taking account of the authority's policies and procedures. However, the scheme should also contain a provision which has the effect of disapplying from schools any provision of those rules and/or standing orders which would require them:

- a. to do anything incompatible with any of the provisions of the scheme, or any statutory provision, or any EU Procurement Directive;
- b. to seek LA officer countersignature for any contracts for goods or services for a value below £60,000 in any one year;
- c. to select suppliers only from an approved list;

or would permit schools to seek fewer than three tenders or quotations in respect of any contract with a value exceeding £10,000 in any one year, subject to specific listed exceptions.

A scheme may invite schools to nominate suppliers for inclusion on lists of approved suppliers.

The intention is to ensure that schools do not have to be subjected to unreasonable requirements as to authority counter-signature or use of an approved list, but also ensures that they should obtain at least three tenders or quotations for orders above a certain threshold.

Authorities may issue lists of approved suppliers; but schools must not be compelled either directly or indirectly to use them. Authorities may wish to point out the advantages of using lists of approved suppliers, eg assurance on health and safety issues.

The fact that an authority contract has been let in accordance with EU procurement procedures does not in itself make it possible to bind a school into being part of that contract. For the purposes of the Procurement Directives schools are viewed as discrete units.

The countersignature requirement should be applied sensibly by authorities and schools alike, avoiding attempts to artificially aggregate or disaggregate orders to avoid or impose the requirement.

2.11 Application of contracts to schools

The scheme should contain a provision which makes clear the right of schools to opt out of authority arranged contracts

The scheme should include a provision which makes clear that although governing bodies are empowered under paragraph 3 of schedule 1 to the Education Act 2002 to enter into contracts, in most cases they do so on behalf of the authority as maintainer of the school and the owner of the funds in the budget share. (*This is the main reason for allowing authorities to require authority counter-signature of contracts exceeding a certain value*). The provision should also however make clear that other contracts may be made solely on behalf of the governing body, when the governing body has clear statutory obligations – for example, contracts made by aided or foundation schools for the employment of staff.

2.12 Central funds and earmarking

The scheme must contain a general provision authorising the authority to make sums available to schools from central funds, in the form of allocations which are additional to and separate from the schools' budget shares. The scheme should stipulate that such allocations should be subject to conditions setting out the purpose or purposes for which the funds may be used: and while these conditions need not preclude virement (except, of course, where the funding is supported by a specific grant which the authority itself is not permitted to vire), this should not be carried to the point of assimilating the allocations into the school's budget share.

Such allocations might, for example, be sums for SEN or other initiatives funded from the central expenditure of an authority's Schools Budget or other authority budget.

The scheme should contain a requirement that such earmarked funding from centrally retained funds is spent only on the purposes for which it is given, or on other budget heads for which earmarked funding is given, and is not vired into the budget share. There should be an accounting mechanism for schools to be able to demonstrate that this requirement has been complied with.

The authority may include a requirement that earmarked funds must be returned to the authority if not spent within any period stipulated by the authority over which schools are allowed to use the funding.

The scheme should include a provision barring the authority from making any deduction, in respect of interest costs to the authority, from payments to schools of devolved specific grant

2.13 Spending for the purposes of the school

Although s.50(3) allows governing bodies to spend budget shares for the purposes of the school, this is subject to regulations made by the Secretary of State and any provisions of the scheme. As well as the various standard provisions LAs may wish to propose their own restrictions on this freedom, arising from local circumstances. By virtue of section 50(3A) (which comes into force on 1st April 2011), amounts spent by

governing bodies on community facilities or services under section 27 of the Education Act 2002 will be treated as if spent for any purposes of the school.

Under s.50(3)(b) the Secretary of State may prescribe additional purposes for which expenditure of the budget share may occur. He has done so in the School Budget Shares (Prescribed Purposes)(England) Regulations 2002 (SI 2002/378), which have been amended by the School Budget Shares (Prescribed Purposes)(England)(Amendment) Regulations 2004 (SI 2004/444).These allow schools to spend their budgets on pupils who are on the roll of other maintained schools.

2.14 Capital spending from budget shares

The scheme should contain a provision specifically allowing governing bodies to use their budget shares to meet the cost of capital expenditure on the school premises. This includes expenditure by the governing body of a voluntary aided school on work which is their responsibility under paragraph 3 of Schedule 3 of the Act. However the authority may if it wishes stipulate that if there is expected capital expenditure from the budget share the governing body must notify the authority; and that it must take into account any advice from the Director of Children's Services as to the merits of the proposed expenditure if it exceeds the figure of £15,000 (or some higher sum). The scheme may specify that if the premises are owned by the authority, or the school has voluntary controlled status, then the governing body should seek the consent of the authority to the proposed works, but such consent can be withheld only on health and safety grounds.

The reason for these provisions is to help ensure compliance with the current School Premises Regulations and DfE Construction Standards, and health and safety legislation.

Where any cash values appear in schemes authorities will be able to apply in due course to vary the scheme so as to raise them if warranted by changing price levels.

These provisions would not affect expenditure from any capital allocation made available by the authority outside the delegated budget share.

2.15 Notice of concern

The scheme should include a provision that allows the authority to issue a notice of concern to any of its maintained schools. Model text is provided below but alternative wording could be used, including any additional conditions, prohibitions or limitations a local authority considers to be relevant in support of a notice of concern.

The authority may issue a notice of concern to the governing body of any school it maintains where, in the opinion of the Chief Finance Officer and the Director of Children's Services, the school has failed to comply with any provisions of the scheme, or where actions need to be taken to safeguard the financial position of the authority or the school.

Such a notice will set out the reasons and evidence for it being made and may place on the governing body restrictions, limitations or prohibitions in relation to the management of funds delegated to it.

These may include:

- insisting that relevant staff undertake appropriate training to address any identified weaknesses in the financial management of the school;
- insisting that an appropriately trained/qualified person chairs the finance committee of the governing body;
- placing more stringent restrictions or conditions on the day to day financial management of a school than the scheme requires for all schools – such as the provision of monthly accounts to the authority;
- insisting on regular financial monitoring meetings at the school attended by authority officers;
- requiring a governing body to buy into an authority's financial management systems; and
- imposing restrictions or limitations on the manner in which a school manages extended school activity funded from within its delegated budget share – for example by requiring a school to submit income projections and/or financial monitoring reports on such activities.

The notice will clearly state what these requirements are and the way in which and the time by which such requirements must be complied with in order for the notice to be withdrawn. It will also state the actions that the authority may take where the governing body does not comply with the notice.

The purpose of this provision is to enable a local authority to set out formally any concerns it has regarding the financial management of a school it maintains and require a governing body to comply with any requirements it deems necessary. The principal criterion for issuing a notice, and determining the requirements included within it, must be to safeguard the financial position of the authority or school.

It should not be used in place of withdrawal of financial delegation where that is the appropriate action to take; however, it may provide a way of making a governing body aware of the authority's concerns short of withdrawing delegation and identifying the actions a governing body should take in order to improve their financial management to avoid withdrawal.

Where an authority issues a notice of concern the scheme should provide for the notice to be withdrawn once the governing body has complied with the requirements it imposes.

In placing this provision in their scheme, an authority may wish to consider the way in which a dispute between it and the school it is issuing a notice to regarding any aspect of the notice may be resolved.

SECTION 3: INSTALMENTS OF THE BUDGET SHARE; BANKING ARRANGEMENTS

Authorities having adopted the CIPFA Code of Practice for Treasury Management in Local Authorities may wish to refer in the scheme to the fact that they have done so.

3.1 Frequency of instalments

The scheme should contain a provision which sets out the frequency with which the budget share will be made available to governing bodies. This should be at least once a term. Furthermore, the scheme should require the authority to make available budget share instalments on a monthly basis to schools which so request it; but the request should be made prior to the start of the relevant financial year.

Some authorities have asked why there should be budget share instalments for schools with no bank accounts. Section 50(2) of the Act provides that authorities shall make budget shares available at times and in such a manner as prescribed by the scheme. Some authorities do make funds available on a termly basis even if there is no bank account. If an authority wishes to provide that in effect a non-bank account school may draw on all its budget share from the start of the year (although in practice this would not happen), it should say so in the scheme. If an authority is administering payroll for a school, the authority can ask the school concerned to consider whether it actually needs to take up the option, granted under the scheme (see 3.2), of receiving funds gross of salary costs.

3.2 Proportion of budget share payable at each instalment

The scheme should make clear on what basis the proportion of the budget share will be made available to schools, both in relation to the inclusion of estimated pay costs and any weighting which means that instalments are not of equal size. Where monthly instalments are made available, the scheme should allow schools to opt for instalments of the total budget share to be made available to them by payment into a school bank account, although budget shares net of estimated pay costs can be offered monthly as well. The scheme should also set out the way in which the authority will calculate the initial estimate of pay costs. This can be different for different sizes of school or for primary and secondary schools, but may not differentiate between categories of school except where the estimate takes account of information supplied by individual schools.

Any differential weighting of termly or monthly instalments is a matter for authority discretion provided the weighting is reasonable.

Schemes may make different provisions as to frequency and proportion of instalments for schools with bank accounts and those without.

3.3 Interest clawback

The scheme may provide for the authority to deduct from budget share instalments an amount equal to the estimated interest lost by the authority in making available the budget share in advance. Where such provision is made the scheme should explain the justification for a clawback and clearly show the calculation basis of the deduction,

taking account of the frequency options offered by the scheme.

The precise methodology for clawback calculations is for the authority to determine; any reasonable basis will be approved provided it is simple to understand and does not go further than recovering lost interest. Where the whole budget share is to be paid into accounts on a monthly basis, payment at a date close to that on which salaries are due will act to reduce loss of interest.

See paragraph 2.12 above re devolved grants

3.3.1 Interest on late budget share payments

The scheme should include a provision requiring the authority to add interest to late payments of budget share instalments, where such late payment is the result of authority error. The interest rate used should be that used for clawback calculations or if no such clawback mechanism is in place, at least the current Bank of England base rate.

3.4 Budget shares for closing schools

The scheme may provide for budget shares of schools for which approval for discontinuation has been secured, to be made available until closure on a monthly basis net of estimated pay costs, even where some different basis was previously used.

3.5 Bank and building society accounts

The scheme should permit all maintained schools to have external bank accounts into which their budget share instalments (as determined by other provisions) are paid. The scheme should also provide that where schools have such accounts they shall be allowed to retain all interest payable on the account unless they choose to have an account within an authority contract which makes other provision.

Authorities may provide that schools without bank accounts cannot have one until any deficit balance is cleared; and that any school requesting a bank account at a later date shall not be able to have one until any deficit is cleared.

Schemes should include a provision stipulating that if a school opens an external bank account the authority must, if the school desires, transfer immediately to the account an amount agreed by both school and authority as the estimated surplus balance held by the authority in respect of the school's budget share, on the basis that there is then a subsequent correction when accounts for the relevant year are closed.

Schemes can require all schools to have such accounts, but there is no expectation that this would normally be the case.

Bank accounts as referred to here do not include imprest accounts, although there is nothing to prevent authorities offering imprest accounts to schools as an alternative.

3.5.1 Restrictions on accounts

The scheme should specify which banks or building societies accounts may be held with for the purpose of receiving budget share payments. The approved list should be consistent with the authority's Treasury Management policy.

The scheme should allow schools to have accounts for budget share purposes which are in the name of the school rather than the authority. However, if a school has such an account the scheme should require that the account mandate provides that the authority is the owner of the funds in the account; that it is entitled to receive statements; and that it can take control of the account if the school's right to a delegated budget is suspended by the authority.

The authority can continue to have arrangements negotiated with certain banks whereby the accounts are in the name of the authority but specific to each school, and offer such arrangements to schools.

Budget share funds paid by the authority and held in school accounts remain authority property until spent (s.49(5) of the Act)

Schemes may contain a provision restricting the signatories for bank accounts, but such provisions should allow at least authority employees and school employees to be signatories.

Such a provision should not be limited to authority employees only, because this is not practicable for foundation or aided schools. Schemes may bar governors who are not members of staff from being signatories.

The scheme should not contain provisions restricting the use of direct debits or standing orders for a bank account operated by a school, except where the account is part of an authority contract.

3.6 Borrowing by schools

The scheme should contain a provision reminding schools that governing bodies may borrow money only with the written permission of the Secretary of State.

Schemes may explicitly bar schools from using credit cards, which are regarded as borrowing. However, they should encourage the use of procurement cards by schools, as these cards can be a useful means of facilitating electronic purchase.

The restrictions do not apply to Trustees and Foundations, whose borrowing, as private bodies, makes no impact on Government accounts. These debts may not be serviced directly from the delegated budget, but schools are free to agree a charge for a service which the Trustees or Foundation are able to provide as a consequence of their own borrowing. Governing bodies do not act as agents of the authority when repaying loans.

This provision does not apply to loan schemes run by the authority (see section 4.10)

Queries on the Secretary of State's power should be directed to the Department's School Capital team, which issues periodic advice on the matter.

3.7 Other provisions

Schemes may apply separate detailed rules and guidance in respect of other aspects of banking arrangements, provided no aspect of those rules and guidance conflicts with the scheme's own requirements.

Such additional rules and guidance may relate in particular to types of account as well as operating procedures.

SECTION 4: THE TREATMENT OF SURPLUS AND DEFICIT BALANCES ARISING IN RELATION TO BUDGET SHARES

4.1 Right to carry forward surplus balances

The scheme must contain a provision which allows schools to carry forward from one financial year to the next any shortfall in expenditure relative to the school's budget share for the year plus/minus any balance brought forward from the previous year. The scheme should explain the basis on which the amount of any balance to be transferred to a school's bank account would be calculated on a provisional basis for a school having a new bank account, and the date by which the transfer would occur, pending a later reconciliation.

The amount of a surplus balance would be shown in the relevant out-turn statement published in accordance with directions given by the Secretary of State under s.251 of the Apprenticeships, Skills, Children and Learning Act 2009 (although there may be commitments against any figure shown in such a statement).

4.2 Controls on surplus balances

The scheme may contain a mechanism to clawback excess surplus balances. Any mechanism should have regard to the principle that schools should be moving towards greater autonomy, should not be constrained from making early efficiencies to support their medium-term budgeting in a tighter financial climate, and should not be burdened by bureaucracy. The mechanism should, therefore, be focused on only those schools which have built up significant excessive uncommitted balances and/or where some level of redistribution would support improved provision across a local area.

4.3 Interest on surplus balances

Schemes must contain a provision which makes it clear whether balances held by the Authority on behalf of schools will attract interest. If such balances do attract interest the scheme itself may show the basis of calculation, or there may be reference to separate guidance issued from time to time.

4.4 Obligation to carry forward deficit balances

The scheme must contain a provision which has the effect of carrying forward deficit balances, by providing for deficits to be deducted from the following year's budget share (see also 4.8)

The deficit balance would be shown on the out-turn statement published in accordance with directions given by the Secretary of State under s.251 of the Apprenticeships, Skills, Children and Learning Act 2009 (although this might be shown gross of committed expenditure and therefore appear lower than would otherwise be the case).

4.5 Planning for deficit budgets

The scheme may preclude any planning for deficits; or it may allow schools to plan for deficits only in certain approved circumstances (see 4.8)

4.6 Charging of interest on deficit balances

The scheme may contain a provision permitting the authority to charge interest on deficit balances. If so the basis on which interest is charged must be made clear in the scheme itself.

4.7 Writing off deficits

The scheme should contain a provision which makes it clear that the authority cannot write off the deficit balance of any school.

If an authority wishes to give assistance towards elimination of a deficit balance this should be through the allocation of a cash sum, from the authority's schools budget (funded from the DSG or the authority's own resource).

4.8 Balances of closing and replacement schools

The scheme should contain a provision which makes it clear that when a school closes any balance (whether surplus or deficit) reverts to the authority; it cannot be transferred as a balance to any other school, even where the school is a successor to the closing school, except that a surplus transfers to an academy where a school converts to academy status under section 4(1)(a) of the Academies Act 2010.

The requirement that surplus balances of closing schools revert to the authority is, in the Department's view, inevitable given that the Education Acts make no provision for transfer of balances between schools. The Regulations make provision for authorities, if they wish, to make allocations to new schools which have the effect of giving them the benefit of additional sums which are equal to or less than the balances of relevant closing schools. The regulations also provide for the amount of extra funding for new schools to recognise the deficit of a preceding school by being reduced; but they do not allow a sum equal to the deficit to be set against any 'normal' funding of the new school - that is, the elements of funding it would receive anyway if it was not new.

4.9 Licensed deficits

An authority may include in its scheme provision for an arrangement whereby schools are allowed to plan for a deficit budget. Such an arrangement is normally funded by the collective surplus of school balances held by the authority on behalf of schools (although it is open to an authority with no such surplus to make alternative arrangements if it can do so within the relevant local authority finance legislation). Although such a provision may refer to other guidance on the operation of the deficit arrangement, the scheme itself should specify the following:

- a. the maximum length over which schools may repay the deficit (ie reach at least a zero balance), with appropriate mechanism to ensure that the deficits are not simply extended indefinitely. The maximum length allowed should not exceed three years
- b. the purposes for which the deficit arrangement may be agreed;

- c. the maximum size of the deficits which may be agreed (this may be by reference to the size of the budget share or in cash terms or some combination);
- d. the maximum proportion of the collective balances held by the authority which will be used to back the arrangement;
- e. the role of the Director of Children's Services and the Chief Finance Officer of the Authority in agreeing any arrangements for individual schools.

It is open to a LA to extend such an arrangement by inviting schools holding balances in external bank accounts to use some or all of those balances to back the arrangement. If so the scheme should make clear the basis on which this would occur.

Balances held by a school in an external bank account remain the property of the authority (if made available by the authority initially) and therefore may legally be taken into account by the authority in assessing the total level of loans which it might wish to make to schools. However, the Secretary of State believes that it is right that schools be asked to give a view as to whether the authority should take them into account in this way, and that this provides assurance for the authority as well as schools.

Under a licensed deficit scheme the only effect on budget and out-turn statements is that in the latter, the balance goes into deficit because expenditure is at a higher level than the budget share, but this deficit reduces to zero by the end of the repayment period because the school has to constrain its expenditure to effect the repayment. No 'payment' to the school is recorded.

4.10 Loan schemes

It is open to an authority to include in its scheme a form of loan arrangement for schools which does not operate by way of a licensed deficit but rather by way of actual payments to schools or expenditure by the authority in respect of a particular school on condition that a corresponding sum is repaid from the budget share. If so, the same parameters for the arrangement should appear in the scheme as listed at 4.9 above for licensed deficits.

Again, an authority may wish to invite schools with balances in external accounts to use some or all of those balances to back a loan scheme, and the scheme should make clear on what basis this would occur.

If there is a loans scheme on this basis the authority must show in its budget statements the amount centrally retained for what would be a devolved payment to schools, and the payment should appear in the out-turn statements.

4.10.1 Credit union approach

In some areas, as an alternative if no other scheme is available, schools may wish to group together to utilise externally held balances for a credit union approach to loans. If so the authority should include provision in its scheme to require audit certification, if

the authority does not itself act as administrator of the arrangement.

SECTION 5: INCOME

The basic principle to which schemes should adhere is that schools should be able to retain income except in certain specified circumstances.

5.1 Income from lettings

The scheme should contain a provision which allows schools to retain income from lettings of the school premises which would otherwise accrue to the authority, subject to alternative provisions arising from any joint use or PFI/PPP agreements. The scheme should expressly allow schools to cross-subsidise lettings for community and voluntary use with income from other lettings, provided there is no net cost to the budget share. However, schools should be required to have regard to directions issued by the authority as to the use of school premises, as permitted under the Act for various categories of schools.

Income from lettings of school premises should not normally be payable into voluntary or private funds held by the school.

5.2 Income from fees and charges

The scheme should contain a provision allowing schools to retain income from fees and charges except where a service is provided by the authority from centrally retained funds. However, schools should be required to have regard to any policy statements on charging produced by the authority. Income from boarding charges is collected on behalf of the authority and should not exceed that needed to provide board and lodging for the pupils concerned.

5.3 Income from fund-raising activities

The scheme should contain a provision which makes it clear that schools are allowed to retain income from fund-raising activities.

5.4 Income from the sale of assets

The scheme should contain a provision which allows schools to retain the proceeds of sale of assets except in cases where the asset was purchased with non-delegated funds (in which case it should be for the authority to decide whether the school should retain the proceeds), or the asset concerned is land or buildings forming part of the school premises and is owned by the authority.

The retention of proceeds of sale for premises not owned by the authority will not be a matter for the scheme.

5.5 Administrative procedures for the collection of income

The scheme may have a provision which applies separate rules on this to schools, but

only for income which accrues to the authority (e.g. for centrally provided meals).

The authority may wish to take advice from its local VAT Business Advice Centre as to whether schools should charge VAT on lettings and on the services which lead to fees and charges, and on the VAT implications of fund raising activities and sale of assets.

5.6 Purposes for which income may be used

The scheme may have a provision that income from sale of assets purchased with delegated funds may only be spent for the purposes of the school.

SECTION 6: THE CHARGING OF SCHOOL BUDGET SHARES

6.1 General provision

The scheme should contain a provision which allows the budget share of a school to be charged by the authority without the consent of the governing body **only** in circumstances expressly permitted by the scheme, and requires authorities to consult schools as to the intention to so charge, and notify schools when it has been done. Schemes may provide for a disputes procedure for such charges.

Although the right of authorities to protect their financial position from liabilities caused by the action or inaction of governing bodies by charging budget shares is well established, the government is anxious to ensure that schools are clearly aware of the circumstances in which this may happen. Schemes must therefore list the circumstances in which such charging is permitted. The main ones are given below: authorities may add others or omit some if they consider them unnecessary. It may be useful to remind schools that the authority cannot act unreasonably in the exercise of any power given by the scheme, or it may be the subject of a direction under s.496 of the Education Act 1996.

For each of these circumstances the authority would have to be able to demonstrate that the authority had necessarily incurred the expenditure now charged to the budget share. This means that where the authority cannot incur a liability because the statutory responsibility rests elsewhere, no charging is possible. Therefore the position on charging will vary between categories of school.

In some cases the ability to charge budget shares depends on the authority having given prior advice to the governing body. Authorities need to ensure that they have taken steps that enable them to give advice whenever possible, and will wish to remind schools of this.

6.1.2 Charging of salaries at actual cost

The scheme should have a provision which requires the authority to charge salaries of school-based staff to school budget shares at actual cost.

6.2 Circumstances in which charges may be made

6.2.1 Where premature retirement costs have been incurred without the prior written agreement of the authority to bear such costs (the amount chargeable being only the excess over any amount agreed by the authority);

6.2.2 Other expenditure incurred to secure resignations where the school had not followed authority advice;

6.2.3 Awards by courts and industrial tribunals against the authority, or out of court settlements, arising from action or inaction by the governing body contrary to the authority's advice

Awards may sometimes be against the governing body directly and would fall to be met

from the budget share. Where the authority is joined with the governing body in the action and has expenditure as a result of the governing body not taking authority advice, the charging of the budget share with the authority expenditure protects the authority's position.

Authorities should ensure in framing any such advice that they have taken proper account of the role of aided school governing bodies.

6.2.4 Expenditure by the authority in carrying out health and safety work or capital expenditure for which the authority is liable where funds have been delegated to the governing body for such work, but the governing body has failed to carry out the required work;

6.2.5 Expenditure by the authority incurred in making good defects in building work funded by capital spending from budget shares, where the premises are owned by the authority or the school has voluntary controlled status;

6.2.6 Expenditure incurred by the authority in insuring its own interests in a school where funding has been delegated but the school has failed to demonstrate that it has arranged cover at least as good as that which would be arranged by the authority;

See also 10.1. The authority itself needs to consider whether it has an insurable interest in any particular case.

6.2.7 Recovery of monies due from a school for services provided to the school, where a dispute over the monies due has been referred to a disputes procedure set out in a service level agreement, and the result is that monies are owed by the school to the authority;

6.2.8 Recovery of penalties imposed on the authority by the Board of Inland Revenue, the Contributions Agency, HM Revenue and Customs, Teachers' Pensions, the Environment Agency or other regulatory authorities as a result of school negligence.

6.2.9 Correction of authority errors in calculating charges to a budget share (eg pension deductions)

Before applying any such provision the authority should consider whether it is reasonable to do so. If the error dates back several years it may be questionable whether such charging is reasonable.

6.2.10 Additional transport costs incurred by the authority arising from decisions by the governing body on the length of the school day, and failure to notify the authority of non-pupil days resulting in unnecessary transport costs.

6.2.11 Legal costs which are incurred by the authority because the governing body did not accept the advice of the authority (see also section 11).

6.2.12 Costs of necessary health and safety training for staff employed by the authority, where funding for training had been delegated but the necessary training not carried out.

6.2.13 Compensation paid to a lender where a school enters into a contract for borrowing beyond its legal powers, and the contract is of no effect.

6.2.14 Cost of work done in respect of teacher pension remittance and records for schools using non-authority payroll contractors, the charge to be the minimum needed to meet the cost of the authority's compliance with its statutory obligations;

6.2.15 Costs incurred by the authority in securing provision specified in a statement of SEN where the governing body of a school fails to secure such provision despite the delegation of funds in respect of that statement;

6.2.16 Costs incurred by the authority due to submission by the school of incorrect data;

6.2.17 Recovery of amounts spent from specific grants on ineligible purposes;

6.2.18 Costs incurred by the authority as a result of the governing body being in breach of the terms of a contract.

6.2.19 Costs incurred by the authority or another school as a result of a school withdrawing from a cluster arrangement, for example where this has funded staff providing services across the cluster.

6.3 General Teaching Council

The scheme should contain a provision which requires schools to deduct, or arrange for the deduction of, the GTC registration fee from the salaries of teachers who are registered, or who are required to register, with the GTC and have not paid the fee by other means. The standard text for this is shown below:

Fees to be deducted from teachers' salaries and remitted to the General Teaching Council for England

The General Teaching Council for England (Deduction of Fees) Regulations 2001 ("the Regulations", S.I. 2001 No. 3993) came into force on 10 January 2002. The Regulations apply to teachers at maintained schools registered with the General Teaching Council for England ("the GTC") or required to be so registered by the Teachers (Compulsory Registration) (England) Regulations 2001 (S.I. 2001 No.1266). The Regulations place a duty on the employer of such teachers to deduct and remit the GTC fee in respect of a teacher who has not already paid the fee to the GTC where the GTC has notified the employer to deduct and remit the fee of that teacher. This includes teachers who have indicated to the GTC that they wish to pay the fee by a salary deduction as well as teachers who have not indicated how they wish to pay the fee.

In order to ensure the performance of the duties to deduct and remit the fee imposed on employers by the Regulations the following conditions are imposed on the authority and governing bodies of all maintained schools covered by this Scheme in relation to their budget shares.

(1) The costs of payroll administration for teachers in the authority's maintained schools fall to be met from the budget shares which are allocated to governing bodies pursuant to section 47 of the Act, and which are delegated to them pursuant to sections 49-50. Accordingly, by virtue of Chapter IV of Part II of that Act and this Scheme, governing bodies of maintained schools are responsible for making suitable arrangements (or ensuring that such arrangements are made) for the administration of payroll services in respect of their teachers.

(2) A governing body of a community school, community special school or a voluntary controlled school, though not the employer of the teachers at such a school, shall:-

- (a) where the governing body has entered into any arrangement or agreement with the authority to provide payroll services, ensure that any such arrangement or agreement is amended to allow for the deduction and remittance of fees by the authority to the GTC. The governing body shall meet any consequential costs from the school's budget share;
- (b) where the governing body has entered into any arrangement or agreement with a person other than the authority to provide payroll services, ensure that any such arrangement or agreement is amended to allow for the deduction and remittance of fees by that person to the authority or directly to the GTC where this has been agreed between the GTC and the authority. The governing body shall meet any consequential costs from the school's budget share; and
- (c) where the governing body directly administers the payroll, deduct and remit the fees to the authority or directly to the GTC where this has been agreed between the GTC and the authority. The governing body shall meet any consequential costs from the school's budget share.

(3) A governing body of a foundation school, a foundation special school or a voluntary aided school, as the employer of its teachers, is by virtue of the Regulations under a duty to deduct (or arrange for the deduction of) the fee and to remit the fee to the GTC. Accordingly, a governing body shall:-

- (a) where the governing body has entered into any arrangement or agreement with the authority to provide payroll services, ensure that any such arrangement or agreement is amended to allow for the deduction and remittance of the fees by the authority to the GTC on the governing body's behalf. The authority shall agree to any such amendment. The governing body shall meet any consequential costs from the school's budget share;
- (b) where the governing body has entered into any arrangement or agreement with a person other than the authority to provide payroll

services, ensure that any such arrangement or agreement is amended to allow for the deduction and remittance of the fees by that person to the GTC or to the governing body for onward transmission to GTC. The governing body shall meet any consequential costs from the school's budget share; and

- (c) where the governing body directly administers the payroll, deduct and remit the fees to the GTC. The governing body shall meet any consequential costs from the school's budget share.

(4) All this shall be done whether the funding for the salary payments is paid to the authority by the school from budget share instalments which have been held by the school in an independent bank account, or the salary costs are directly charged by the authority to the school's budget share account.

Ministers are minded to abolish the General Teaching Council, but this would require primary legislation, so this provision needs to remain while current arrangements continue.

SECTION 7: TAXATION

7.1 VALUE ADDED TAX

The scheme should include a provision which summarises the procedure schools should follow in order to be able to utilise the authority's ability to reclaim VAT on expenditure relating to non-business activity. The provision should stipulate that amounts so reclaimed will be passed back to the school.

The provision would normally refer to more detailed separate guidance. Detailed guidance issued by the authority should make clear what the normal timescale for reimbursement is.

HM Revenue and Customs have agreed that VAT incurred by schools when spending any funding made available by the authority is treated as being incurred by the authority and qualifies for reclaim by the authority. This does not include expenditure by the governors of a voluntary aided school when carrying out their statutory responsibilities to maintain the external fabric of their buildings. See also section 13 – community facilities.

Authorities may find it useful to consult local VAT business advice centres on issues regarding VAT reimbursement.

7.2 CIS (Construction Industry Taxation Scheme)

The scheme should contain a provision requiring schools to abide by procedures issued by the authority in connection with CIS.

SECTION 8: THE PROVISION OF SERVICES AND FACILITIES BY THE AUTHORITY

8.1 Provision of services from centrally retained budgets

The scheme should contain a provision which makes it clear that it is for the authority to determine on what basis services from centrally retained funds will be provided to schools. The provision should be drawn in a way that clearly encompasses PRC and redundancy payments, which may not ordinarily be thought of as services.

The scheme should contain a provision barring the authority from discriminating in its provision of services on the basis of categories of schools except where (a) funding has been delegated to some schools only or (b) such discrimination is justified by differences in statutory duties.

8.2 Provision of services bought back from the authority using delegated budgets

The scheme should contain a provision limiting the term of any arrangement with a school to buy services or facilities from the authority to a maximum of three years from the date of the agreement, and periods not exceeding five years for any subsequent agreement relating to the same services. However, schemes may contain an extension to five and seven years respectively for contracts for supply of catering services.

There is no minimum period, although arrangements lasting less than two years may well be uneconomic.

The scheme should contain a provision which requires that when a service is provided for which expenditure is not retainable centrally by the authority under the Regulations made under section 45A of the Act, it should be offered at prices which are intended to generate income which is no less than the cost of providing those services. The total cost of the service should be met by the total income, even if schools are charged differentially.

This provision complements the implied requirements of the regulations on central retention of funds. It is recognised that absolute break-even or profit is not always achievable over fixed financial years: it is for the authority to show during audit tests that the charging policy can reasonably be expected to avoid central subsidy of services.

8.2.1 Packaging

The scheme should contain a provision to the effect that any service which an authority is providing on a buyback basis must be offered in a way which does not unreasonably restrict schools' freedom of choice among the services available, and where practicable, this will include provision on a service-by-service basis as well as in packages of services.

This provision would not prevent authorities offering packages of services which offer a discount for schools taking up a wider range of services; but authorities are encouraged

to offer services singly as well as in combination.

8.3 Service level agreements

The scheme should provide that service level agreements must be in place by a certain date to be effective for the following financial year, and that schools must have at least a month to consider the terms of agreements.

8.3.1 The scheme should contain a provision which stipulates that if services or facilities are provided under a service level agreement - whether free or on a buyback basis - the terms of any such agreement starting on or after the inception of the scheme will be reviewed at least every three years if the agreement lasts longer than that.

8.3.2 The scheme should explicitly provide that services, if offered at all by the authority, will be available on a basis which is not related to an extended agreement, as well as on the basis of such agreements.

Where services are provided on an ad hoc basis they may be charged for at a different rate than if provided on the basis of an extended agreement.

8.2/8.3: The scheme should specifically exclude centrally arranged premises and liability insurance from these requirements as to service supply, as the limitations envisaged may be impracticable for insurance purposes.

8.4 Teachers' Pensions

The scheme should provide that governing bodies of schools which provide payroll services should submit an annual return of salary and service to the authority. Governing bodies should also ensure that details of Additional Voluntary Contributions (AVCs) are passed to the authority within the time limit showed in the AVC scheme. The standard text for this is:

In order to ensure that the performance of the duty on the authority to supply Teachers Pensions with information under the Teachers' Pensions Regulations 1997, the following conditions are imposed on the authority and governing bodies of all maintained schools covered by this Scheme in relation to their budget shares.

The conditions only apply to governing bodies of maintained schools that have not entered into an arrangement with the authority to provide payroll services.

A governing body of any maintained school, whether or not the employer of the teachers at such a school, which has entered into any arrangement or agreement with a person other than the authority to provide payroll services, shall ensure that any such arrangement or agreement is varied to require that person to supply salary, service and pensions data to the authority which the authority requires to submit its annual return of salary and service to Teachers' Pensions and to produce its audited contributions certificate. The authority will advise schools each year of the timing, format and specification of the

information required. A governing body shall also ensure that any such arrangement or agreement is varied to require that Additional Voluntary Contributions (AVCs) are passed to the authority within the time limit specified in the AVC scheme. The governing body shall meet any consequential costs from the school's budget share.

A governing body of any maintained school which directly administers its payroll shall supply salary, service and pensions data to the authority which the authority requires to submit its annual return of salary and service to Teachers' Pensions and to produce its audited contributions certificate. The authority will advise schools each year of the timing, format and specification of the information required from each school. A governing body shall also ensure that Additional Voluntary Contributions (AVCs) are passed to the authority within the time limit specified in the AVC scheme. The governing body shall meet any consequential costs from the school's budget share.

SECTION 9: PFI/PPP

An authority may wish to insert into its scheme other provisions relating to PFI/PPP projects. Amongst other issues these might deal with the reaching of agreements with the governing bodies of schools as to the basis of such charges; and the treatment of monies withheld from contractors due to poor performance.

Among PFI/PPP provisions may be one which formally sets out the power of the authority to charge to the school's budget share amounts agreed under a PFI/PPP agreement entered into by the governing body of a school.

SECTION 10: INSURANCE

10.1 Insurance cover

The scheme should contain a provision which stipulates that if funds for insurance are delegated to any school, the authority may require the school to demonstrate that cover relevant to an authority's insurable interests, under a policy arranged by the governing body, is at least as good as the relevant minimum cover arranged by the authority if the authority makes such arrangements, either paid for from central funds or from contributions from schools' delegated budgets. The scheme must require the authority to have regard to the actual risks which might reasonably be expected to arise at the school in question in operating such a requirement, rather than applying an arbitrary minimum level of cover for all schools.

(see also 6.2.6)

SECTION 11: MISCELLANEOUS

11.1 Right of access to information

As well as specific requirements listed above, the scheme may require governing

bodies to supply all financial and other information which might reasonably be required to enable the authority to satisfy itself as to the school's management of its delegated budget share, or the use made of any central expenditure by the authority (eg earmarked funds) on the school.

This provision should not be broadened to attempt to create a general right of access to the school. Statutory guidance on that issue is contained in the Code of Practice on Local Authority/School Relations

11.2 Liability of governors

The scheme should contain a provision which points out that because the governing body is a corporate body, and because of the terms of s.50(7) of the Act, governors of maintained schools will not incur personal liability in the exercise of their power to spend the delegated budget share provided they act in good faith.

An example of behaviour which is not in good faith is the carrying out of fraudulent acts. Breaches of the scheme are not in themselves failures to act in good faith; neither is rejection of authority advice as to financial management.

11.3 Governors' expenses

The scheme should have a provision which allows the authority to delegate to the governing body of a school yet to receive a delegated budget, funds to meet governors' expenses.

Governing bodies would not normally have discretion in the amounts of such allowances, which would be set by the authority.

Under section 50(5) of the Act, only allowances in respect of purposes specified in regulations made under section 19 of the Education Act 2002 may be paid to governors from a school's delegated budget share. The scheme should contain a provision forbidding payment of any other allowances. Schools should also be barred from payment of expenses duplicating those paid by the Secretary of State to additional governors appointed by him to schools under special measures.

For schools with delegated budgets, authorities may publish (separately from the scheme) a guide to what it considers to be reasonable expenses.

11.4 Responsibility for legal costs

The scheme may contain a provision pointing out that legal costs incurred by the governing body (although the responsibility of the authority as part of the cost of maintaining the school unless they relate to the statutory responsibility of voluntary aided school governors for buildings) may be charged to the school's budget share unless the governing body acts in accordance with the advice of the authority.

See also section 6. The effect of this is that a school cannot expect to be reimbursed with the cost of legal action against the authority itself (although there is nothing to stop an authority making such reimbursement if it believes this to be desirable or necessary

in the circumstances).

The costs referred to are those of legal actions, including costs awarded against an authority; not the cost of legal advice provided.

A scheme should explain the procedure which schools should follow in obtaining legal advice where there is a conflict of interest between the authority and the governing body.

This does not mean that a special procedure should be established; but governing bodies should be made aware of the potential problems that may arise and how they may resolve these.

11.5 Health and Safety

The scheme should include a provision requiring governing bodies, in expending the school's budget share, to have due regard to duties placed on the authority in relation to health and safety, and the authority's policy on health and safety matters in the management of the budget share.

11.6 Right of attendance for Chief Finance Officer

The scheme should require governing bodies to permit the Chief Finance Officer of the authority, or any officer of the authority nominated by the Chief Finance Officer, to attend meetings of the governing body at which any agenda items are relevant to the exercise of her or his responsibilities.

The Chief Finance Officer's attendance should normally be limited to items which relate to issues of probity or overall financial management; such attendance should not be regarded as routine. The authority should give prior notice of such attendance unless this is impracticable.

11.7 Optional Delegated funding

The scheme may provide that where a school exercises an option to receive delegated or devolved funding for an item, that option may only be exercised once a year, at a stipulated date prior to the financial year in question.

This relates to optional delegation for insurance and meals funding and optional devolution of admissions funding.

11.8 Special Educational Needs

Authorities may wish to insert a provision requiring schools to use their best endeavours in spending the budget share, to secure the special educational needs of their pupils. Although this is anyway a statutory requirement, the existence of such a scheme provision would make it possible to suspend delegation where a situation is serious enough to warrant it (this would not normally relate to an individual pupil).

11.9 Interest on late payments

Interest on late payments: the terms of the scheme cannot affect statutory requirements now introduced on this matter; but authorities may wish to include a reminder in their schemes.

11.10 'Whistleblowing'

Schemes should contain a provision requiring authorities to set out in the scheme the procedure to be followed by persons working at a school or school governors who wish to complain about financial management or financial propriety at the school, and how such complaints will be dealt with.

11.11 Child Protection

The Authority should insert a provision explaining about the need to release staff to attend child protection case conferences and other related events, and whether the Authority makes any payments to schools to help meet costs.

11.12 Redundancy/early retirement costs

The 2002 Education Act sets out how premature retirement and redundancy costs should normally be funded. If the authority proposes to depart from this, then the scheme should contain a provision setting out the circumstances in which exceptions will be made. Further guidance is provided at Annex B.

SECTION 12: RESPONSIBILITY FOR REPAIRS AND MAINTENANCE

12.1 The scheme should include a statement showing the categories of work which governing bodies must expect to finance from their budget.

12.2 Authorities should delegate funding for repairs and maintenance to schools. Only capital expenditure is to be retained by authorities. For these purposes, expenditure may be treated as capital only if it fits the definition of capital used by the local authority for financial accounting purposes in line with the CIPFA Code of Practice on local authority accounting. Schemes should state any *de minimis* limit the authority intends to use for the definition of capital and revenue in assigning responsibility for types of work. Where authorities do use *de minimis* limits for what expenditure is treated as capital and what is revenue in their financial accounts, the same *de minimis* limits should be used in defining what is delegated.

Some authorities may wish to consider whether the level of the de minimis limit they use in defining the capital/revenue split provides an appropriate fit between the level of revenue funding the authority actually provides to schools for repairs and maintenance and the level of Devolved Capital the school receives.

For instance, an authority may have a relatively high de minimis limit, above a school's current allocation of one or two year's Devolved Capital. But if the authority does not supply adequate revenue funding to provide the realistic option of the school meeting large revenue repair costs, the school may, as a result have difficulty in addressing a need either through revenue (because there is not enough) or through capital (because the works are defined as revenue). This might be resolved through lowering the de minimis limit.

12.3 For voluntary aided schools, the liability of the authority for repairs and maintenance (albeit met by delegation of funds through the budget share) is the same as for other maintained schools, and no separate list of responsibilities is necessary for such schools. However, eligibility for capital grant from the Secretary of State for capital works at voluntary aided schools depends on the *de minimis* limit applied by DfE to categorise such work, not the *de minimis* limit used by the authority.

12.4 Authorities can retain monies centrally for the repair and maintenance of kitchens and kitchen equipment in schools which have not had school meals delegated.

There is no obligation on authorities to include a list of illustrative examples provided the way in which expenditure is treated as capital or non-capital is explained.

SECTION 13 COMMUNITY FACILITIES

Introduction

13.1 The scheme should contain an introductory section which describes the manner in which the scheme relates to the power to provide community facilities.

A specimen description is at Annex C. This may be amended, but the end result should be that schools are clear how and why any use of the power is subject to the scheme provisions.

13.2 The scheme may have a provision which explains that mismanagement of community facilities funds can be grounds for suspension of the right to a delegated budget.

The provision mentioned at 13.2 is discretionary because the power to suspend delegation, and the procedure to be used, arise from primary legislation, not the scheme itself.

Consultation with the authority – financial aspects

13.3 Section 28(4) of the Education Act 2002 requires that before exercising the community facilities power, governing bodies must consult the authority, and have regard to advice given to them by their authority.

13.4 The scheme should have a provision which reminds schools of the requirement to seek authority advice and sets out a procedure for doing so. That may include reasonable requirements as to timeliness and the amount of information which schools should supply in seeking authority advice.

13.5 The provision should also bind the authority itself to provide advice within a reasonable time. It may include a requirement for schools to inform authorities what action has been taken following authority advice.

Authorities should not levy a charge for advice.

See 13.6 with regard to funding agreements.

Funding agreements – authority powers

13.6 The provision of community facilities in many schools may be dependent on the conclusion of a funding agreement with a third party which will either be supplying funding or supplying funding and taking part on the provision. A very wide range of bodies and organisations are potentially involved.

13.7 The scheme should include a provision describing the authority's requirements in

relation to funding agreements with third parties (as opposed to funding agreements with the authority itself). The authority may impose a requirement that any such proposed agreement should be submitted to the authority for its comments; and may impose a time requirement for doing so to give the authority adequate notice. However, the scheme may not impose a right of veto for the authority on such agreements, either directly or through requiring a right to countersign the agreement. If the third party requires authority consent to the agreement for it to proceed, such a requirement and the method by which authority consent is to be signified is a matter for that third party, not for the scheme.

The Secretary of State does not consider that it is appropriate for authorities to have a general power of veto for these agreements. However, the scheme may remind schools that if an agreement has been or is to be concluded against the wishes of the authority, or has been concluded without informing the authority, which in the view of the authority is seriously prejudicial to the interests of the school or the authority, that may constitute grounds for suspension of the right to a delegated budget.

Other prohibitions, restrictions and limitations

13.8 Although the scheme should not give a right of veto either to funding agreements with third parties, or for other proposed uses of the community facilities power, the scheme may make provision for the authority to require that in a specific instance of use of the community facilities power by a governing body, the governing body concerned must make arrangements to protect the financial interests of the authority by either carrying out the activity concerned through the vehicle of a limited company formed for the purpose, or by obtaining indemnity insurance for risks associated with the project in question, as specified by the authority.

If the authority has such a provision in its scheme it should operate it in a reasonable fashion, imposing such a requirement only where it has good reason to believe that the proposed project carries significant financial risks.

13.9 Section 28 provides that the exercise of the community facilities power is subject to prohibitions, restrictions and limitations in the scheme for financing schools. The authority may if it wishes propose other scheme provisions of that nature which they believe necessary. The restrictions should only be in existence if they are necessary to safeguard the financial position of the authority or school, or to protect pupil welfare or education.

Such provisions should be as few in number as possible

Supply of financial information

13.10 The scheme may contain a provision requiring schools which exercise the community facilities power to provide the authority every six months with a summary statement, in a form determined by the authority, showing the income and expenditure for the school arising from the facilities in question for the previous six months and on

an estimated basis, for the next six months.

13.11 The scheme may contain a provision which allows the authority, on giving notice to the school that it believes there to be cause for concern as to the school's management of the financial consequences of the exercise of the community facilities power, to require such financial statements to be supplied every three months and, if the authority sees fit, to require the submission of a recovery plan for the activity in question.

Financial information relating to community facilities will be included in returns made by schools under the Consistent Financial Reporting (CFR) Framework, and these should be relied upon by authorities as their main source of information for the financial aspects of community facilities. However, the CFR timetable is such that authorities are likely to want supplementary information in order to ensure that schools are not at financial risk. (Schedule 15 of the Act provides that mismanagement of funds spent or received for community facilities is a basis for suspension of the right to delegation of the budget share).

These provisions do not preclude the insertion of other provisions in specific funding agreements between schools and the authority as to the financial reporting requirements arising from the funding in question.

Audit

13.12 The scheme should contain a provision which requires the school to grant access to the school's records connected with exercise of the community facilities power, in order to facilitate internal and external audit of relevant income and expenditure.

13.13 The scheme should include a provision requiring schools, in concluding funding agreements with other persons pursuant to the exercise of the community facilities power, to ensure that such agreements contain adequate provision for access by the authority to the records and other property of those persons held on the school premises, or held elsewhere insofar as they relate to the activity in question, in order for the authority to satisfy itself as to the propriety of expenditure on the facilities in question.

Treatment of income and surpluses

13.14 The scheme should contain a provision which allows schools to retain all net income derived from community facilities except where otherwise agreed with a funding provider, whether that be the authority or some other person.

13.15 The scheme should contain a provision which allows the school to carry such retained net income over from one financial year to the next as a separate community facilities surplus,

Health and safety

13.16 The scheme should contain a provision which extends any health and safety provisions of the main scheme to the community facilities power.

13.17 The scheme should contain a provision which places on the governing body responsibility for the costs of securing Criminal Records Bureau clearance for all adults involved in community activities taking place during the school day. Governing bodies would be free to pass on such costs to a funding partner as part of an agreement with that partner.

Insurance

13.18 The scheme should include a provision which makes it clear that it is the responsibility of the governing body to ensure adequate arrangements are made for insurance against risks arising from the exercise of the community facilities power, taking professional advice as necessary. The scheme may require that the school seek the authority's advice before finalising any insurance arrangement for community facilities.

In principle, the insurance issues arising from use of the community facilities power are the same as those which already arise from non-school use of school premises. However, a school proposing to provide community facilities should, as an integral part of its plans, undertake an assessment of the insurance implications and costs, seeking professional advice if necessary.

13.19 The scheme should include a provision which empowers the authority to undertake its own assessment of the insurance arrangements made by a school in respect of community facilities, and if it judges those arrangements to be inadequate, make arrangements itself and charge the resultant cost to the school.

Such a provision is necessary in order for the authority to protect itself against possible third party claims.

Taxation

13.20 The scheme should contain a provision which makes it clear that schools should seek the advice of the authority and the local VAT office on any issues relating to the possible imposition of Value Added Tax on expenditure in connection with community facilities, including the use of the local authority VAT reclaim facility.

13.21 The scheme should contain a provision reminding schools that if any member of staff employed by the school or authority in connection with community facilities at the school is paid from funds held in a school's own bank account (whether a separate account is used for community facilities or not) the school is likely to be held liable for payment of income tax and National Insurance, in line with HM Revenue and Customs rules.

13.22 The scheme should contain a provision requiring schools to follow authority advice in relation to the Construction Industry Scheme where this is relevant to the

exercise of the community facilities power.

Banking

13.23 The scheme should contain a provision setting out the requirements of the authority as to the banking arrangements which schools should make in connection with the community facilities power.

13.24 The scheme may also contain provisions relating to the banks which may be used, signing of cheques, the titles of bank accounts, the contents of bank account mandates, and similar matters. The general approach to these matters should mirror those in the main part of the scheme,

13.25 The scheme should contain a provision reminding schools that they must not borrow money without the written consent of the Secretary of State. This requirement does not extend to monies lent to schools by their maintaining authority.

ANNEX A

THE FUNDING FRAMEWORK: MAIN FEATURES

The funding framework which replaces Local Management of Schools is set out in the legislative provisions in sections 45-53 of the School Standards and Framework Act 1998.

Under this legislation, local authorities determine for themselves the size of their schools budget and their non-schools education budget – although at a minimum an authority must appropriate its entire Dedicated Schools Grant to their schools budget. The categories of expenditure which fall within the two budgets are prescribed under regulations made by the Secretary of State, but included within the two, taken together, is all expenditure, direct and indirect, on an authority's maintained schools except for capital and certain miscellaneous items. Authorities may deduct funds from their schools budget for purposes specified in regulations made by the Secretary of State under s.45A of the Act (the centrally retained expenditure). The amounts to be deducted for these purposes are decided by the authority concerned, subject to any limits or conditions (including gaining the approval of their School Forum or the Secretary of State in certain instances), as prescribed by the Secretary of State. The balance of the schools budget left after deduction of the centrally retained expenditure is termed the Individual Schools Budget (ISB). Expenditure items in the non-schools education budget must be retained centrally (although earmarked allocations may be made to schools).

Authorities must distribute the ISB amongst their maintained schools using a formula which accords with regulations made by the Secretary of State, and enables the calculation of a budget share for each maintained school. This budget share is then delegated to the governing body of the school concerned, unless the school is a new school which has not yet received a delegated budget, or the right to a delegated budget has been suspended in accordance with s.51 of the Act. The financial controls within which delegation works are set out in a scheme made by the authority in accordance with s.48 of the Act and regulations made under that section. All proposals to revise the scheme must be approved by the schools forum, though the authority may apply to the Secretary of State for approval in the event of the forum rejecting a proposal or approving it subject to modifications that are not acceptable to the authority.

Subject to any provision made by or under the scheme, governing bodies of schools may spend such amounts of their budget shares as they think fit for any purposes of their school* and for any additional purposes prescribed by the Secretary of State in regulations made under s.50 of the Act. (*Section 50 has been amended to provide that amounts spent by a governing body on providing community facilities or services under section 27 of the Education Act 2002 are treated as if they were amounts spent for the purposes of the school (s50(3A) of the Act.)

An authority may suspend a school's right to a delegated budget if the provisions of the authority's financial scheme (or rules applied by the scheme) have been substantially or

persistently breached, or if the budget share has not been managed satisfactorily. A school's right to a delegated budget share may also be suspended for other reasons (schedule 17 to the Act)

Each authority is obliged to publish each year a statement setting out details of its planned Schools Budget and other expenditure on children's services, showing the amounts to be centrally retained, the budget share for each school, the formula used to calculate those budget shares, and the detailed calculation for each school. After each financial year the authority must publish a statement showing out-turn expenditure at both central level and for each school, and the balances held in respect of each school.

The detailed publication requirements for financial statements are set out in directions issued by the Secretary of State, but each school must receive a copy of each year's budget and out-turn statements so far as they relate to that school or central expenditure.

Regulations also require a local authority to publish their scheme and any revisions to it on a website accessible to the general public, by the date that any revisions come into force, together with a statement that the revised scheme comes into force on that date.

ANNEX B

RESPONSIBILITY FOR REDUNDANCY AND EARLY RETIREMENT COSTS

This guidance note summarises the position relating to the charging of voluntary early retirement and redundancy costs. It sets out what is specified in legislation and provides some examples of when it might be appropriate to charge an individual school's budget, the central Schools Budget or the local authority's non-schools budget.

Section 37 of the 2002 Education Act says:

(4) costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met

(5) costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.

(6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).

The default position, therefore, is that premature retirement costs must be charged to the school's delegated budget, while redundancy costs must be charged to the local authority's budget. In the former case, the local authority has to agree otherwise for costs to be centrally funded, while in the latter case, there has to be a good reason for it not to be centrally funded, and that cannot include having a no redundancy policy. Ultimately, it would be for the courts to decide what was a good reason, but the examples set out below indicate the situations in which exceptions to the default position might be taken.

Charge of dismissal/resignation costs to delegated school budget

- If a school has decided to offer more generous terms than the authority's policy, then it would be reasonable to charge the excess to the school
- If a school is otherwise acting outside the local authority's policy
- Where the school is making staffing reductions which the local authority does not believe are necessary to either set a balanced budget or meet the conditions of a licensed deficit
- Where staffing reductions arise from a deficit caused by factors within the school's control
- Where the school has excess surplus balances and no agreed plan to use these
- Where a school has refused to engage with the local authority's redeployment policy

Charge of premature retirement costs to local authority non-schools budget

- Where a school has a long-term reduction in pupil numbers and charging such costs to their budget would impact on standards
- Where a school is closing, does not have sufficient balances to cover the costs and where the central Schools Budget does not have capacity to absorb the deficit
- Where charging such costs to the school's budget would prevent the school from complying with a requirement to recover a licensed deficit within the agreed timescale
- Where a school is in special measures, does not have excess balances and employment of the relevant staff is being/has been terminated as a result of local authority or government intervention to improve standards

Costs of new early retirements or redundancies can also be charged to the central part of the Schools Budget if the Schools Forum agree and the local authority can demonstrate that the "revenue savings achieved by any termination of employment are equal to or greater than the costs incurred". The Schools Forum must agree to any increase in this budget over the previous financial year. If the Schools Forum does not agree with the local authority's proposal, then the authority can appeal to the Secretary of State. The Schools Forum would also be involved if the additional expenditure resulted in a breach of the central expenditure limit, whereby central expenditure increases faster than the Schools Budget as a whole.

An example of where a charge to the central Schools Budget might be appropriate would be a school reorganisation. A reorganisation involving the closure of a number of schools would be likely to result in savings because there would be a reduced amount being allocated through the formula for factors such as flat rate amounts to all schools or floor area. If the savings in the formula exceeded the ongoing costs of the VER/redundancy then this would qualify.

It would be possible to consider savings at an individual school level as well, but this needs to be carefully managed so that there are clear ground rules in place for applications, recommendations and approval. It may be sensible to agree criteria for eligibility which are consistent with the general approach as to when costs should be centrally funded.

It is important that the local authority discusses its policy with its Schools Forum. Although each case should be considered on its merits, this should be within an agreed framework. It may be reasonable to share costs in some cases, and some authorities operate a panel to adjudicate on applications.

There are clearly difficulties in setting a budget, whether inside or outside the Schools Budget, at a point prior to the beginning of the financial year before schools have set their budgets and made staffing decisions. Local authorities can only make a best estimate of what may be needed, based on past experience, local knowledge of the financial position of individual schools and the context of that year's funding settlement. There are dangers in raising expectations that costs will be met centrally if the budget is set too high, and so an alternative would be to keep the budget tight and use

contingency or schools in financial difficulties budgets if there is an unexpected need for staffing reductions and it is not appropriate for delegated budgets to fund VER/redundancy costs. To achieve best use of resources, local authorities should also have an active redeployment policy, to match staff at risk to vacancies.

One of the permitted uses of the contingency is where “a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share” while local authorities are also allowed to retain funding for schools in financial difficulties “provided that the authority consult the schools forum on their arrangements for the implementation of such support.”

For staff employed under the community facilities power, the default position is that any costs must be met by the governing body, but not from the delegated budget. Section 37 states:

(7)Where a local education authority incur costs—

(a)in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or

(b)in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes,

they shall recover those costs from the governing body except in so far as the authority agree with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.

(8)Any amount payable by virtue of subsection (7) by the governing body of a maintained school to the local education authority shall not be met by the governing body out of the school’s budget share for any financial year.

(9)Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.

(We will review this provision in the context of the forthcoming changes which will allow other community facilities costs to be charged to delegated budgets from 1 April 2011, but this remains the legal position for the time being).

ANNEX C

APPLICATION OF SCHEMES FOR FINANCING SCHOOLS TO THE COMMUNITY FACILITIES POWER

Schools which choose to exercise the power conferred by s.27 (1) of the Education Act 2002 to provide community facilities will be subject to a range of controls. First, regulations made under s.28 (2), if made, can specify activities which may not be undertaken at all under the main enabling power. Secondly, the school is obliged to consult its authority and have regard to advice from the authority. Thirdly, the Secretary of State issues guidance to governing bodies about a range of issues connected with exercise of the power, and a school must have regard to that.

However, under s.28(1), the main limitations and restrictions on the power will be those contained in the maintaining authority's scheme for financing schools made under section 48 of the School Standards and Framework Act 1998 as amended by paragraph 2 of Schedule 3 to the Education Act 2002. This amendment extended the coverage of schemes to include the exercise of the powers of governing bodies to provide community facilities.

Schools are therefore subject to prohibitions, restrictions and limitations in the scheme for financing schools.

This part of the scheme does not extend to joint-use agreements; transfer of control agreements, or agreements between the authority and schools to secure the provision of adult and community learning.