



Department
for Education

Annex A

Clarification of local authority statutory duties relating to services relevant to the Education Services Grant

July 2014

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Local authority statutory duties relating to services relevant to the Education Services Grant

The responses to the [consultation on savings to the Education Services Grant for 2015-16](#) told us that clarification of local authorities' duties to provide education services relevant to the Education Services Grant would be welcomed and could also help with achieving savings.

The text below sets out, for each budget line relevant to the Education Services Grant:

- the section 251 guidance description of the expenditure that should be recorded;
- the statutory obligations that local authorities have for all schools;
- the statutory obligations that local authorities have for maintained schools; and
- the statutory obligations that local authorities have for academies.

When considering their duties as described below, local authorities should have regard to sections 13, 13A and 14 of the Education Act 1996 which require local authorities to: ensure that efficient primary, secondary and further education is available to meet the needs of their population; ensure that their education functions are exercised with a view to promoting high standards ensuring fair access to opportunity for education and learning, and promote the fulfilment of learning potential; and secure that sufficient schools for providing primary and secondary education are available for their area.

School improvement

Section 251 guidance description of budget line

Expenditure incurred by a local authority in respect of action to support the improvement of standards in the authority's schools, in particular expenditure incurred in connection with functions under the following sections of the Education and Inspections Act 2006:

- (a) section 60 (performance standards and safety warning notice);
- (b) section 60A (teachers' pay and conditions warning notice);
- (c) section 63 (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements);
- (d) section 64 (power of local authority to appoint additional governors);
- (e) section 65 (power of local authority to provide for governing bodies to consist of interim executive members) and Schedule 6; and
- (f) section 66 (power of local authority to suspend the right to delegated budget).

Statutory obligations of local authorities for all schools

When delivering their school improvement function, local authorities must have regard to the Schools Causing Concern statutory guidance¹. This guidance provides clarity about the role of local authorities in delivering school improvement for maintained schools and for academies.

¹ <https://www.gov.uk/government/publications/schools-causing-concern--2>

Statutory and regulatory duties

Section 251 guidance description of budget line

The full guidance on expenditure that should be captured in this budget line was set out in the consultation².

Statutory obligations of local authorities for all schools

Strategy

A local authority must:

- appoint a Director of Children's Services (section 18, Children Act 2004); and
- strategically plan for its education service (sections 13 to 15B, Education Act 1996).

Finance

A local authority must:

- prepare revenue budgets: information on income and expenditure relating to education, for incorporation into the authority's annual statement of accounts; and the external audit of grant claims and returns relating to education (Local Government Act 1972); and
- perform internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151, Local Government Act 1972.

Information

A local authority must:

- provide information to or at the request of the Secretary of State (section 29, Education Act 1996).

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298588/Annex_A.pdf

Statutory obligations of local authorities for maintained schools

Human resources

A local authority must:

- carry out suitability checks of employees or potential employees of the authority or of governing bodies of schools, or of persons otherwise engaged or to be engaged with or without remuneration to work at or for schools (School Staffing (England) Regulations 2009);
- provide advice to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school (“the school workforce”), including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such school workforce (School Staffing (England) Regulations 2009);
- appoint a teacher recommended by a governing body (or a head teacher or deputy head recommended by the governing body’s selection panel) unless the teacher or head teacher is to be appointed otherwise than under a contract of employment (regulations 15 to 16, School Staffing (England) Regulations 2009);
- terminate the employment of any person employed by it to work solely at a school if the governing body determines that he or she should cease to work there (regulation 20, School Staffing (England) Regulations 2009);
- consider whether it would be appropriate to provide prescribed information to the Secretary of State where a local authority has ceased to use a teacher’s services due to serious misconduct, or might have done so had the teacher not resigned first (section 141D, Education Act 2002). The prescribed information is set out in reg 20 of the Teachers’ Disciplinary (England) Regulations 2012;
- pay employer’s contributions to the appropriate pension fund (reg 67 and Schedule 2, Local Government Pension Scheme Regulations 2013);
- pay teachers’ pension contributions to the Secretary of State (reg 30, Teachers’ Pensions Regulations 2010);
- appoint non-teaching staff within the local authority’s conditions of service and grading system (regulation 17, School Staffing (England) Regulations 2009).

Finance

Schedule 15 to the Schools Standards and Framework Act 1998 empowers a local authority to suspend a governing body’s right to a delegated budget in certain

circumstances of failure to comply with requirements or manage the budget satisfactorily. This implies a duty on the local authority to monitor a governing body's budget management. There is a duty to review any suspension. When a governing body is suspended, the duty to manage the school budget reverts to the local authority and the School Staffing Regulations do not apply, therefore powers over staffing also revert to the local authority (Schedule 2, Education Act 2002).

A local authority must also:

- monitor compliance with the requirements of their financial scheme prepared under section 48, School Standards and Framework Act 1998, which may include advice to assist governing bodies in procuring goods and services with a view to securing continuous improvement, and any other requirements in relation to the provision of community facilities by governing bodies under section 27, Education Act 2002; and
- send to the Secretary of State any financial statement provided to the local authority by a governing body (reg 5, Consistent Financial Reporting Regulations 2012).

Health and safety

A local authority must comply with its duties under the Health and Safety at Work etc. Act 1974 and the relevant statutory provisions as defined in section 53(1) of that Act in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools.

School companies

A local authority must exercise its monitoring and reporting functions as the supervisory authority of school companies formed by governing bodies (section 12, Education Act 2002; regs 26 and 27, School Companies Regulations 2002).

Equality

A local authority must comply with the public sector equality duty (section 149, Equality Act 2010), publish information to show its compliance with the equality duty (reg 2, Equality Act 2010 (Specific Duties) Regulations 2011), and set itself specific, measurable equality objectives (reg 3, Equality Act 2010 (Specific Duties) Regulations 2011).

Religious education

A local authority must:

- set up a standing advisory council on religious education (section 390, Education Act 1996); and

- prepare an agreed syllabus of religious education in accordance with Schedule 31, Education Act (1996).

Statutory obligations of local authorities for academies

The duties that LAs hold for academies pupils are set out in the section above (statutory obligations of local authorities for all schools for statutory and regulatory duties).

Education welfare service

Section 251 guidance description of budget line

Education welfare service and other expenditure arising from the local authority's school attendance functions. Where Education Welfare Officers are directly involved in issues related to The Children Act 1989, the relevant expenditure should be charged to line 3.3.2.

Expenditure in connection with powers and duties performed under Part 2 of the Children and Young Persons Act 1933 (enforcement of, and power to make byelaws in relation to, restrictions on the employment of children).

Statutory obligations of local authorities for all schools

Attendance

A local authority must:

- make arrangements to identify children not receiving education (section 436A, Education Act 1996);
- send a written notice to a parent whose child of compulsory school age is not receiving suitable education, followed by a school attendance order if they do not comply with the notice (section 437, Education Act 1996); if exercising its power to prosecute a parent for a child's non-attendance (section 446) the local authority must consider whether to apply for an education supervision order (section 447);
- publish a code for penalty notices to address poor attendance and administer the penalty notice regime according to the Education (Penalty Notices) (England) Regulations 2007 and subsequent amendments;
- improve attendance where schools report absence to them according to the Education (Pupil Registration) (England) Regulations 2006;
- investigate the whereabouts of pupils who have poor attendance and are at risk of being deleted from the schools' admission register (Education (Pupil Registration) (England) Regulations 2006); and
- comply with all its statutory obligations under the Education (Pupil Registration) (England) Regulations 2006.

Child performance and employment

A local authority has responsibility for administering and enforcing requirements and protections for those below compulsory school leaving age taking part in employment or

performances (Part 2, Children and Young Persons Act 1933, Part 2, Children and Young Persons Act 1963, Children (Performances) Regulations 1968).

Statutory obligations of local authorities for maintained schools

In addition to the above, a local authority has the right to inspect school registers (Education (Pupil Registration) (England) Regulations 2006).

Statutory obligations of local authorities for academies

The duties that local authorities hold for academy pupils in education welfare services are covered in the above section (statutory obligations of local authorities for all schools for education welfare service).

Central support services

Section 251 guidance description of budget line

Includes expenditure on:

- pupil support: provision and administration of clothing grants where such expenditure is not supported by grant;
- music services: expenditure on the provision of music tuition or other activities which provide opportunities for pupils to enhance their experience of music;
- visual and performing arts (other than music): expenditure which enables pupils to enhance their experience of the visual, creative and performing arts other than music; and
- outdoor education including environmental and field studies (not sports): expenditure on outdoor education centres – field study and environmental studies etc. – but not including centres wholly or mainly for the provision of organised games, swimming or athletics.

Statutory obligations of local authorities for all schools

Local authorities have no statutory obligations to provide the services described in the above section (section 251 guidance on description of budget line for central support services). Local authorities are free to provide these services if they choose.

Asset management

Section 251 guidance description of budget line

Expenditure in relation to the management of the authority's capital programme, preparation and review of an asset management plan, negotiation and management of private finance transactions and contracts (including academies which have converted since the contracts were signed), landlord premises functions for relevant academy leases, health and safety and other landlord premises functions for community schools.

Statutory obligations of local authorities for all schools

Local authorities have a general landlord duty for all buildings which they let to academies (under the relevant academy lease), and for all community school buildings, and overall responsibility for capital strategy including basic need, which applies to all pupils (section 14, Education Act 1996).

Statutory obligations of local authorities for maintained schools

In its role as landlord for community schools, a local authority has a duty (section 542(2) Education Act 1996; School Premises Regulations 2012) to ensure that school buildings have:

- appropriate facilities for pupils and staff (including medical and accommodation);
- the ability to sustain appropriate loads;
- reasonable weather resistance;
- safe escape routes;
- appropriate acoustic levels;
- lighting, heating and ventilation which meets the required standards;
- adequate water supplies and drainage; and
- playing fields of the appropriate standards.

A local authority, as an employer, has a general health and safety duty for employees and others who may be affected (Health and Safety at Work etc Act 1974).

A local authority must manage the risk from asbestos in community school buildings (Control of Asbestos Regulations 2012).

Statutory obligations of local authorities for academies

Local authorities do not have any specific duties for academies, apart from those covered above (statutory obligations of local authorities for all schools for asset management).

Premature retirement costs/redundancy costs (new provisions)

Section 251 guidance description of budget line

Any budget for payments to be made by the local authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, after 1st April 2014 under section 37, Education Act 2002.

Statutory obligations of local authorities for maintained schools

A local authority must fund redundancy costs (not premature retirement costs, which are the responsibility of the school concerned) of school staff, unless there is a good reason not to fund them centrally (section 37, Education Act 2002).

Statutory obligations of local authorities for academies

Local authorities have no statutory obligations for academies regarding premature retirement and redundancy costs.

Therapies and other health-related services

Section 251 guidance description of budget line

Costs associated with the provision or purchase of speech, physiotherapy and occupational therapies should be recorded here. Include any expenditure on the provision of special medical support for individual pupils which is not met by a Primary Care Trust, National Health Service Trust or Local Health Board.

Statutory obligations of local authorities for all schools

The Children and Families Act 2014 places a statutory duty on local authorities and local health bodies to commission services jointly to support disabled children and young people and those with special educational needs, including those who need therapy support.

Monitoring national curriculum assessment

Section 251 guidance description of budget line

Expenditure on monitoring National Curriculum assessment arrangements required by orders made under section 87 of the 2002 Act.

Statutory obligations of local authorities for maintained schools

Under the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) Order 2004, a local authority must do the following:

- moderate the teacher assessments carried out at the end of key stage 1 by schools (in reading, writing and mathematics) in at least 25% of maintained schools each school year and ensure that every school will be subject to moderation at least once every four years; and
- appoint a person to complete the assessment moderations who has recent experience of provision of the National Curriculum in primary schools.

Local authorities also have equivalent duties in respect of key stage 2 and key stage 3 moderation (Education (National Curriculum) (Key Stage 2 Assessment Arrangements) Order 2003) and (Education (National Curriculum) (Key Stage 3 Assessment Arrangements) Order 2003) but, as local authorities receive funding for these duties through specific grants, they are not funded from ESG.

Statutory obligations of local authorities for academies

A local authority may provide the service set out in the section above (statutory obligations of local authorities for maintained schools for monitoring national curriculum assessment) for academies, however the duty for securing this service lies with the relevant academy trust, as set out in its funding agreement with the Secretary of State.



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Reference: DFE-00518-2014



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