

# Scheme for financing of schools

**Author:** LMS finance team

**Contact:** [ims@luton.gov.uk](mailto:ims@luton.gov.uk)

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LMS finance team

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# 1. Introduction

## 1.1 The funding framework

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

Under this legislation, local education authorities determine for themselves the size of their Schools Budget and their non-school's 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 centrally retained expenditure is termed the Individual Schools Budget (ISB). Expenditure items in the non-school's 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 agree 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 school's 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 of 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 and funding delegated to schools. After each financial year the authority must publish a statement showing outturn 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 outturn 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.

## 1.2 The role of the scheme

The scheme sets out the financial relationship between the authority and the maintained schools which it funds and contains requirements relating to financial management and associated issues which are binding on both the authority and on schools.

## 1.3 Application of the scheme to the authority and maintained schools

The scheme applies in respect of all community, nursery, voluntary, foundation (including trust), community special or foundation special schools and pupil referral units (PRUs) 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.

## 1.4 Publication of the scheme

A copy of the scheme will be made available to the head teacher and to the governing body of each school covered by the scheme and as a minimum will be published on a publicly accessible website. Any revised version will be published by the date the revisions come into force, together with a statement that the revised scheme comes into force on that date.

## 1.5 Revision of the scheme

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 school's forum for their approval. All proposed revisions must be submitted to the school's forum for approval by members of the forum representing maintained schools.

Where the school's 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. It is also possible for the Secretary of State to make direct revisions to schemes after consultation. Such revisions become part of the scheme from the date of the direction.

## 1.6 Delegation of powers to the headteacher

A Governing Body is required to consider the extent to which it wishes to delegate its financial powers to the headteacher and must record its decision (and any revisions) in the minutes of the Governing Body.

In order to ensure the effective management of resources, governing bodies are advised to delegate the responsibility for day-to-day financial management to the headteacher, subject to the establishment of appropriate arrangements for the exercise of that delegated authority.

However, the first formal budget plan of each year must be approved by the Governing Body, or by a committee of the Governing Body.

## 1.7 Maintenance of Schools

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.

## 2. Financial requirements

### 2.1 Application of financial controls to schools

Luton Council, like other major bodies and companies in both the public and private sectors, has to regulate its financial affairs in terms of formal Financial Regulations and Standing Orders. In managing their delegated budgets schools must abide by not only the requirements embodied in this scheme but also by the authority's requirements on financial controls and monitoring as set out in the following documents:

- Financial Regulations for Schools
- Local Bank Account scheme
- Purchase Card scheme
- Contract Procurement Procedures
- Cash Imprest Account scheme
- Standing Orders for Schools

### 2.2 Provision of financial information and reports

Schools must provide the authority, in a form and at times as determined by the authority, with details of anticipated and actual expenditure and income.

For schools which opt for an external bank account under the arrangements set out at paragraph 3.4 of this scheme, the authority will require the provision of tax and banking reconciliation statements in a form and at times as determined by the authority.

In addition, for all schools, the authority requires a school to submit at the end of each accounting quarter (excluding financial year end) a forecast outturn statement. The format and exact dates for the forecast outturn statement and other information and reports will be notified to schools at the beginning of each financial year.

The form determined by the authority for submission of information will so far as possibly take account of the Consistent Financial Reporting framework and be compatible with that framework.

### 2.3 Payment of salaries and bills

The school will be responsible for the correct payment of all salaries, bills and relevant taxes relating to its budget share unless the authority has agreed to perform this on behalf of the school through a separate service level agreement. Any costs including penalties, legal or administrative costs incurred by the authority as a result of a school's non or late payment of bills or salaries will be charged to the school's budget share.

### 2.4 Control of assets

Schools must maintain an inventory, in a form to be determined by the authority, of moveable non capital assets over £1,000 in value, and should also set out the basic authorisation procedures within the school for disposal of any such asset. However, schools are free to determine their own arrangements for keeping a register of assets worth less than £1,000 but should keep a register in some form. The scheme should encourage schools to register anything that is portable and attractive, such as a camera.

## 2.5 Accounting policies (including year-end procedures)

Schools must abide by the accounting policies and procedures determined by the authority.

## 2.6 Writing-off debts, stocks, stores and surplus assets

There is no financial limit placed on the amount which a Governing Body may write-off debts, stocks, stores and surplus assets. All such write-offs must be recorded, however, in the minutes of the governing body.

## 2.7 Basis of accounting

Schools may account for expenditure and income during the financial year on their internal systems using either a cash or accruals basis. Reports submitted to the authority in accordance with this scheme may take either form but must be amended, if necessary, at the year-end in order to comply with the authority's requirements.

## 2.8 Submission of budget plans

Each school will receive notification of its budget share before the commencement of the financial year. In determining the budget plan schools are allowed to take into account estimates of any surplus or deficit prior to 31st March.

Each school must, by the 31<sup>st</sup> May, provide the authority with final planned budget analysis in a format required by the authority, together with such supporting information as requested. Details of the final planned budget shall be approved and minuted by the Governing Body. The format of the plan will be specified by the authority in a format compatible with the Consistent Financial Reporting Framework.

The authority will supply schools with any information and/or data which it holds, and which is necessary/helpful in order to enhance and inform efficient planning by schools. The authority will use these plans to support the balance control mechanism.

## 2.9 Submission of financial forecasts

In addition to the requirements in paragraph 2.3 above, the authority requires schools to submit a financial forecast covering each year of a 3-year period beyond the current financial year. These forecasts are for the purposes of confirming that schools are undertaking effective planning, as evidence to support the authority's assessment of Schools Financial Value Standards and also in conjunction with the authority's balance control mechanism.

## 2.10 School resource management

Schools must seek effective management of resources and value for money, to optimise the use of their resources and to invest in teaching and learning, taking into account the Authority's purchasing, tendering and contracting requirements.

It is for heads and governors to determine at school level how to secure better value for money. There are significant variations between similar schools, and so it is important for schools to review their current expenditure, compare it to other schools and think about how to make improvements.

## 2.11 Virement

A governing body may vire freely between budget allocations made from the school's budget share but will need to ensure that appropriate control arrangements are established.

## 2.12 Audit: General

The Council and therefore, schools operate within a financial management environment which is subject to:

### 2.12.1 External Audit

Representatives of the external auditors shall, on production of suitable identification be allowed access to the accounts and records of a school and should be given co-operation to complete their work.

### 2.12.2 Internal Audit

Authorised representatives of the internal audit service shall be afforded facilities and right of access, at all times, to such documents, records and computer files as appear to the auditor to be necessary for the purpose of the Internal Audit.

Furthermore, the auditor shall be entitled to require from any governor or person employed at the school such reasonable information or reasonable explanation as the Authority's Head of Finance thinks necessary for the purpose of the Internal Audit.

The internal audit service will normally give schools two weeks notification of an internal audit and as far as possible, request such documentation necessary for the audit. An audit may be rearranged due to unforeseen or exceptional circumstances e.g. OFSTED visit.

### 2.12.3 Irregularities

Whenever a matter arises which involves, or appears to involve, any irregularity concerning cash, stores, stocks or other property held for the purposes of the school or in any other way affecting school finances or any breach of financial regulations for schools, the headteacher or any governor or other member of staff shall immediately on its discovery, report the matter to the corporate director of children and learning and the authority's head of finance or their representatives.

### 2.12.4 Separate external audits

A governing body wishing to seek an additional source of assurance may spend funds from its budget share to obtain external audit certification of its accounts, separate from any authority internal or external audit process.

### 2.12.5 Audit of voluntary and private funds

Notwithstanding the above, schools must provide annual audit certificates in respect of voluntary and private funds held by them and for the accounts of any trading organisations controlled by them. Further guidance is to be found within the authority's notes of guidance for the operation of unofficial and voluntary funds in schools (circular 98-24).

## 2.13 Register of business interests

A governing body must establish a register, which lists for each member of that governing body, the head teacher and all school staff:

- a) Any business interests which they or any member of their immediate family may have.
- b) Details of any other educational establishment that they govern.
- c) Any relationships between school staff and members of the governing body.

The register must be kept up to date with notification of changes and through annual review of entries. The register must be available for inspection by governors, staff, parents and the authority and must be published on a publicly accessible website.

## 2.14 Purchasing, tendering and contracting arrangements

Schools must abide by the requirements of the authority in purchasing, tendering and contracting matters, including leasing. This includes a requirement to assess in advance, where relevant, the health and safety competence of contractors, taking account of the authority's policies and procedures. Schools may seek advice on a range of compliant deals via Buying for schools. However, any provision of those rules and/or standing orders are disapplied if they require schools to:

- (i) do anything incompatible with any of the provisions of this scheme, or any statutory provision, or any EU Procurement Directive;
- (ii) seek countersignature from an officer of the local authority for any contracts for goods or services for a value below £60,000 in any one year.
- (iii) select suppliers only from an approved list or
- (iv) seek fewer than three tenders in respect of any contract with a value exceeding £10,000 in any one year.

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 will be applied sensibly by the authority and schools alike, avoiding attempts to artificially aggregate or disaggregate orders to avoid or impose the requirement.

The thresholds for obtaining quotations are as follows;

Minimum number of written Quotations/Tenders required	Estimated value of Contract or Official Order
Managers Approval	Up to £5,000
At least 2 quotations	Over £5,000 and under £10,000
At least 3 quotations	£10,000 and under £50,000

\*

## 2.15 Application of contracts to schools

Schools have the right to opt out of authority arranged contracts.

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. However, 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.

## 2.16 Central funds and earmarking

The local authority may make sums available to schools, from resources initially held centrally, in the form of allocations which are additional to and separate from schools' budget shares. Such allocations will be subject to specific conditions setting out the purpose or purposes for which the funds may be used. While these conditions need not prevent virement (except where the funding is supported by a special grant which the authority itself is not permitted to vire), this should not be carried to the point of assimilating the allocations into the schools' budgets. Therefore, only in exceptional cases will virement of funds allocated on an earmarked basis be allowed.

Schools should ensure that they have appropriate accounting mechanisms in order to be able to demonstrate that expenditure has been incurred only for the purpose intended. Any earmarked funds must be returned to the authority if not spent within the period stipulated by the authority over which schools are allowed to use the funding. Transfers into a school's bank account in relation to devolved or earmarked funds will not be subject to any interest deduction.

## 2.17 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. By virtue of section 50(3A) (which came into force on 1<sup>st</sup> 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. Schools are allowed to spend their budget on pupils who are on the role of other maintained schools or academies.

## 2.18 Capital spending from budget shares

A governing body may use its budget share to finance capital expenditure on the school premises. This includes expenditure incurred by a governing body of a voluntary aided school on work which is their responsibility under paragraph 3 of Schedule 3 to the School Standards and Framework Act 1998. In those instances where the local authority owns the premises, 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.

Any school seeking to incur capital expenditure from its budget share must;

a) notify the authority of its intention and take into account any advice from the Corporate Director of Children and Learning as to the merits of the proposed expenditure above £15,000 in any one financial year.

b) ensure that an application for approval of a project form (Self Help form) is completed and returned to the Capital Accountant, Children and Learning Department before any capital works commence.

## 2.19 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 local 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:

- (1) insisting that relevant staff undertake appropriate training to address any identified weaknesses in the financial management of the school.
- (2) 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 local authority;
  - insisting on regular financial monitoring meetings at the school attended by local authority officers;
  - requiring a governing body to buy into a local 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 principal criterion for issuing a notice and determining the requirements included within it are to safeguard the financial position of the local authority or the school.

Where the authority issues a notice of concern the notice will be withdrawn once the governing body has complied with the requirements it imposes.

## 2.20 Schools financial value standard (SFVS)

All local authority-maintained schools (including nursery schools and Pupil Referral Units (PRUs) that have a delegated budget) must demonstrate compliance with the Schools Financial Value Standard (SFVS) and complete the assessment form on an annual basis. It is for the school to determine at what time in the year they wish to complete the form.

Governors must demonstrate compliance through the submission of the SFVS assessment form signed by the Chair of Governors.

The form must include a summary of remedial actions with a clear timetable, ensuring that each action has a specified deadline and an agreed owner. Governors must monitor the progress of these actions to ensure that all actions are cleared within specified deadlines.

All maintained schools with a delegated budget must submit the form to the local authority before the end of the financial year.

For the financial year 2025-2026, schools should submit their SFVS to their local authority by no later than 31st March 2026.

Local authorities should submit their assurance statement to DfE within 6 weeks, by no later than 31st May 2026

## 2.21 Fraud

All schools must have a robust system of controls to safeguard themselves against fraudulent or improper use of public money and assets.

The governing body and head teacher must inform all staff of school policies and procedures related to fraud and theft, the controls in place to prevent them; and the consequences of breaching these controls. This information must also be included in induction for new school staff and governors.

## 3. Instalments of the budget share and banking arrangements

### 3.1 Frequency of instalments

#### 3.1.1 Local bank account - scheme 1

The annual sum allocated to each school's bank account will be the total of its individual school's budget. Schools will be advanced their delegated budget on a monthly basis as follows:

April 12%

May – March – 8% per month

The governing body should formulate its own profiles of cash requirements. If it becomes clear that the standard profile is significantly different from the school's forecast, and this will cause difficulties at the school the Principal Accountant for Schools will consider a change to the existing monthly profile in order to overcome any difficulty. If any change to the profile results in Luton Borough Council incurring a loss of interest, then it will be necessary to apply an interest charge in accordance with the Local Bank Account Scheme.

Schools must inform the Principal Accountant Schools in the LMS Team of the dates each month on which staff salaries are paid. Monthly instalments will normally be cleared into the school's nominated bank account three working days prior to these dates.

Top-up payments for pupils with high needs will be made monthly unless alternative arrangements have been agreed with the provider.

#### 3.1.2 Local bank account - scheme 2

Scheme 2 schools will receive their 90% of budget allocation via internal journal and 10% of the budget allocation into school's bank account in April/May in a new financial year. The schools can request cash transfer during the year if they think the cash is low in their bank account.

### 3.2 Opting for an external bank account

For the first year in which a school opts for a local bank account into which its budget share will be paid in accordance with paragraph 3.4 of this scheme:

- (i) The accumulated balance as at 31st March of the previous financial year will be paid into the external bank account on 1 April of that financial year on the basis of an estimate provided by the school.
- (ii) Any variation between the estimate provided and the final closing balance as stated in the accounts of the authority will be added to, or deducted from, the next scheduled payment to the school under the arrangements included elsewhere within paragraph 3.1
- (iii) In addition, interest on the amount calculated at (ii) above will be added to, or deducted from, the amount, which is to be added to, or deducted from, the next scheduled payment at a rate calculated at 1% below base rate, or 1% whichever is the higher.

For those schools which choose not to opt for a local bank account under arrangements set out at paragraph 3.4 of this scheme, the full amount of the budget will be held by the Authority's Head of Finance on behalf of Governing Bodies as part of the Borough Council's balances.

### 3.3 Interest clawback

#### 3.3.1 Local Bank Account - scheme 1

For those schools which opt for a local bank account, the arrangements set out at paragraph 3.1.1 of this scheme have been designed, taking all relevant factors into account, to minimise the potential for financial disadvantage to the authority in terms of cash-flow; there is no need, therefore, to "claw-back" any sums in respect of lost interest. Should the authority find it necessary, however, to introduce such a charge, then it will only do so following consultation with schools over the proposed basis for the calculation of that charge.

#### 3.3.2 Local bank account - scheme 2

To ensure that the authority does not incur a loss of interest on its balances because of the annual transfer of funds, an adjustment, calculated by the application of an objective formula, shown at Appendix A of the Local Bank Account scheme, will be made to the initial advance. This adjustment should be offset by the interest earning capacity of individual schools through the investment of funds, which are immediately surplus to requirements. Any further advance or deduction during the year will attract a similar interest adjustment.

Budget plans will be monitored at regular intervals to ensure that sufficient funds have been retained centrally to finance payroll costs.

### 3.4 Interest on late budget share payments

The scheme requires the authority to add interest to late payments of budget share instalments, where such late payment is the result of an authority error. The interest rate used will be that used for claw-back calculations, or if no such claw-back mechanism is in place, at least the current Bank of England base rate.

### 3.5 Budget shares for closing schools

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

### 3.6 Bank and building society accounts

All schools may have a local bank account into which their budget shares will be paid in accordance with the provisions contained at paragraph 3.1 of this scheme. Where schools have such an account they shall be allowed to retain all interest payable on the account.

New bank account arrangements will only normally be made at the beginning of a financial year, provided that schools notify the authority in writing of their intention to do so by no later than 31st January of the preceding year.

Where a school opens a bank account the authority will transfer an estimate of any surplus balance at the year-end, as agreed with the school. This initial transfer will be subject to adjustment following a full reconciliation of the school's final financial position at the year-end.

The authority reserves the right to refuse any application for a local bank account where a school either has or is anticipated to have an accumulated balance which is in deficit at the 31st March preceding the financial year to which the application relates.

Where a school chooses not to opt for an external bank account into which its budget share will be paid, the Authority's Head of Finance may, at the request of a governing body, make bank imprest advances to schools for the purpose of defraying petty expenses and other items.

The authority's head of finance will keep under review the amounts of imprest advances. Payments from bank imprest accounts shall be made in accordance with the procedures notified by the authority's head of finance. Schemes may also wish to permit the use of credit or charge cards. However, no interest charges should be incurred by the school, with balances fully cleared on a monthly basis.

### 3.7 Restriction on accounts

Schools wishing to open a local bank account may only do so with financial institutions included within an approved list provided by the Authority's Head of Finance in accordance with the authority's Treasury Management policy. Any school closing an account used to receive its budget share and opening another must select the new financial institution from the approved list, even if the account to be closed was not with an institution on that list.

Accounts held by schools for the purpose of receiving their budget shares can only be in the name of either the school or Luton Borough Council (but specific to each school). Money paid into an external bank account by the local authority remains the property of the local authority until it is spent (section 49(5) School Standards and Framework Act 1998).

For schools with external bank accounts, the account mandate should provide 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.

### 3.8 Payment for service level agreements

Schools will receive a schedule of Service Level Agreements they have agreed to purchase early in the financial year. There will be a period of 30 days for schools to raise any queries regarding the entries on the schedule. After this 30 day period or after the resolution of any queries if this is later, schools will pay for their SLAs by means of a direct debit arrangement on their local bank account.

### 3.9 Borrowing by schools

Governing bodies may borrow money only with the written permission of the Secretary of State. The Secretary of State's general position is that schools will only be granted permission for borrowing in exceptional circumstances. From time to time, however, the Secretary of State may introduce limited schemes in order to meet broader policy objectives. Any such scheme that the Secretary of State has said is available to schools may be used without specific approval.

Schools are explicitly barred from using credit cards, which are regarded as borrowing. However, schools are encouraged to make use of the use of procurement cards as these cards can be a useful means of facilitating electronic purchase. Details of procurement cards are contained in the authority's Purchase Card scheme.

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 delegated budgets, 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 the loan scheme run by the authority (see section 4.10)

### 3.10 Leasing and hire purchase agreements

From 1 April 2024, a new international financial reporting standard (IFRS 16 leases) is being introduced, which will change the way that local authorities recognise in their account's leases entered into by their maintained schools.

IFRS 16 leases will end the distinction between operating and finance leases for accounting purposes. Under the Education Act 2002, all leases will be classed as borrowing and will require the Secretary of State for Education's consent.

#### 3.10.1 Leased assets that require consent

Governing bodies do not need to make a specific request for consent where a lease falls under the general consent granted by the Secretary of State for Education. The types of assets granted general consent is listed in 'The IFRS16 Maintained Schools Finance Lease Class Consent 2024' document.

#### 3.10.2 Schedule of Allowed Leases

1. All existing leases in place on 1 April 2024 for items included in this list
2. Leases related to IT equipment (for example laptops, tablets, desktop computers, printers, photocopiers, servers, door entry security systems, CCTV Systems, whiteboards and touch screen boards)
3. Leases related to telephony (for example mobile phones, landline phones and telephone systems)
4. Leases related to catering and cleaning equipment (for example tills, water coolers, vending machines, dishwashers, washing machines, ovens, fridges, freezers, water boilers, small kitchen appliances, crockery and cutlery)
5. Leases related to furniture (for example desks, tables and chairs)

6. Leases related to bathroom and sanitary items (for example hand dryers, towel dispensers, sanitary bins)
  7. Leases related to gym equipment (for example treadmills, free weights and weight machines, rowing machines and exercise bikes)
  8. Leases related to groundskeeping equipment (for example lawn mowers, string trimmers, leaf blowers and salt spreaders)
  9. Leases related to LED lighting system (for example lightbulbs, control mechanisms and control panels) - consent is granted where the product has been sourced with support from the Department for Education through Get help buying for schools or from a recommended route on our Find a framework website
  10. Leases related to minibuses and other vehicles for the use of the school
  11. Leases related to temporary classrooms and equivalent structures (but not land leases they sit on, which may require separate consent – see school land transactions guidance)
- Any leased assets not included in the document will need to be submitted to the Secretary of State for Education for consent.

## 4. The treatment of surplus and deficit balances arising in relation to budget shares

### 4.1 The right to carry forward surplus balances

Schools may carry forward from one financial year to the next any shortfall in expenditure relative to the school's budget share for the year, plus or minus any balance brought forward from the previous year.

The amount of any balance to be transferred to a school's bank account will be calculated on a provisional basis for a school having a new bank account, and be adjusted during the summer term, pending a later reconciliation.

### 4.2 Reporting on and control of the use of surplus balances

Surplus balances held by schools as permitted under this scheme are subject to the following restrictions:

- a. the authority shall calculate by 31 May each year the surplus revenue balance, if any, held by each school as at the preceding 31 March. For this purpose, the balance will be the recurrent balance as defined in the Consistent Financial Reporting Framework.
- b. the authority shall deduct from the calculated balance any amounts for which the school has a prior year commitment to pay from the surplus balance and any unspent pupil premium grant for the previous financial year.
- c. the authority shall then deduct from the resulting sum any amounts which the governing body of the school has declared to be assigned for specific purposes permitted by the authority as listed below, and which the authority is satisfied are properly assigned. To count as properly assigned, amounts must not be retained beyond the period stipulated for the purpose in question, without the consent of the authority. In considering whether any sums are properly assigned the authority may also take into account any previously declared assignment of such sums but may not take any change in planned assignments to be the sole reason for considering that a sum is not properly assigned.
- d. the local authority is not currently operating a balances clawback mechanism, but this will be kept under review by the Schools Forum

Funds deriving from sources other than the authority will be included in this calculation if paid into the budget share account of the school, whether under provisions in this scheme or otherwise.

Funds held in relation to a school's exercise of powers under s.27 of the Education Act 2002 (community facilities) will not be taken into account unless added to the budget share surplus by the school as permitted by the authority.

#### 4.3 Purposes permitted by the authority

Any surpluses should be earmarked for specific future needs to ensure that pupils benefit from a planned approach to spending that does not deprive them of resources in any given year. Full details and clarification of purposes permitted by the authority are set out in the Local authority's Policy for the Challenge and Support Process for Schools with Surplus Balances, copies of which are available from the LMS Finance Team or from the finance section of the Children & Learning Grid available at [www.learning.luton.gov.uk](http://www.learning.luton.gov.uk).

#### 4.4 Interest on surplus balances

Surplus balances held by the authority on behalf of schools will not attract interest.

#### 4.5 Obligation to carry forward deficit balances

Deficit balances will be carried forward into the next financial year and will be deducted from that year's budget share (see also paragraph 4.8).

#### 4.6 Planning for deficit budgets

A governing body cannot plan for a deficit balance other than in the following circumstances:

- (i) For schools maintained by the local authority a deficit balance is allowed where a deficit recovery plan had been prepared by the school and agreed by the Corporate Director of Children and Learning and Authority's Head of Finance prior to 31st March.

Under the arrangements for licensed deficits as set out at para. 4.9 of this scheme.

#### 4.7 Charging of interest on deficit balances

Interest will be charged on deficit balances only where financial mismanagement has occurred. Interest will be calculated on the basis of the higher of the average of 1% below base rate for the year in question or 1% and applied to the average of the school's opening and closing balances for the financial year in question.

#### 4.8 Writing-off deficits

The authority cannot write-off the deficit balance of any school. If the 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 (from a centrally held budget specified for the purpose of expenditure on special schools and pupil referral units in financial difficulty, or, in respect of mainstream maintained schools, from a de-delegated contingency budget where this has been agreed by Schools Forum).

## 4.9 Balances of closing and replacement schools

Where in the funding period, a school has been established or is subject to a prescribed alternation as a result of the closure of a school, a local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.

Deficit balances of preceding schools may be recognised by reducing the amount of additional funding to a new school; but they are not allowed to be set against the budget share of the school as determined by the authority's fair funding formula.

## 4.10 Licensed deficits

Schools must submit a recovery plan to the local authority when their revenue deficit rises above 5% at 31 March of any year.

The maximum length of time over which schools may repay the deficit (i.e. reach at least a zero balance), will normally be three years. In exceptional circumstances the authority can extend the maximum period to repay the deficit in individual cases. It is for the authority to decide each case on its merits. (Exceptional circumstances may consist of a sudden and significant reduction in pupil numbers, substantial additional funding required for a school to exit from special measures or due to an unforeseen event which has a severe impact on the budget share)

Schools will need to prepare a recovery plan and progress towards the elimination of the deficit will be reviewed formally every six months.

At no stage, will the period of recovery be extended and schools will, therefore, need to adjust their plans accordingly should the financial position of the school worsen during this period;

Licensed deficits will normally only be agreed where circumstances affecting a school change in ways which could not reasonably have been foreseen and the school concerned needs a period in excess of one financial year in order to effect a reduction in its annual level of expenditure and/or an increase in its annual level of income sufficient to eliminate the budget deficit;

A licensed deficit shall not normally exceed 5% of a school's budget share;

No more than 50% of the total of schools accumulated balances held by the Authority's Head of Finance as part of the Borough Balances will be used to back these arrangements;

Schools should refer to the Licensed Deficit scheme – Responsibilities for Applying for, Receiving and Repaying a Licensed Deficit for detailed guidance on licensed deficits and their operation.

In circumstances where a school requires a budget share advance in order not to be to be overdrawn at their bank, this should be treated as a cash advance and not a loan. This will have no effect on the school's budget and outturn statements.

#### 4.11 Loans scheme

Schools, which have no deficit as at 31st March, may apply for a loan in future years, subject to the Loan scheme for Schools and in accordance with the following conditions/requirements:

The maximum length of time over which schools may repay the loan i.e. reach at least a zero balance), will be three years. Schools will need to prepare a repayment plan in accordance with the Loans scheme:

- (i) Schools must specify the purpose for which the loan is required.
- (ii) A loan will be a minimum of £5,000 with a maximum of either £100,000 or that the total loan(s) made to a school result in an annual charge for principal and interest which does not exceed 5% of their income in any financial year, whichever is the lowest.

No more than 15% of the total of schools accumulated balances held by the Authority's Head of Finance as part of the Borough's balances will be used to back these arrangements.

Loans must only be used to assist schools in spreading the cost over more than one year of large one-off individual items of a capital nature that have a benefit to the school lasting more than one financial or academic year.

Loans will not be used as a means of funding a deficit that has arisen because a school's recurrent costs exceed its current income. If loans are made to fund a deficit and a school subsequently converts to academy status, the Secretary of State will consider using the power under paragraph 13(4)(d) of Schedule to the Academies Act 2010 to make a direction to the effect that such a loan does not transfer, either in full or part, to the new Academy school.

#### 4.12 Credit union approach

Schools may wish to group together to utilise externally held balances for a credit union approach to loans. If schools decide to operate in such a way, then they must provide the authority with audit certificates.

#### 4.13 Gifts, hospitality and staff wellbeing

Schools are expected to have gifts, hospitality and staff Wellbeing policy. Schools will follow a general framework to ensure transparency and maintain integrity.

The policy will cover:

1. Declaration of gifts and hospitality– Staff, governors and senior leadership must declare any gifts or hospitality offered over a certain value, often set a limit between £25 and £50.
2. Register of gift and hospitality – Schools should maintain a register to record any gifts and hospitality, whether accepted, declined or given. This register may be reviewed periodically by school governors or the LA for accountability.

3. Restrictions on accepting gifts – The policy typically restricts acceptance of substantial gifts from suppliers, contractors or parties who may have a vested interest in schools decision making to avoid conflicts of Interest.
4. Staff wellbeing – Schools may allocate limited funds for initiatives that support staff wellbeing or morale (e.g. small tokens of appreciation, team activities, refreshments at training).
5. Approved requirements – In some cases, gifts, hospitality and staff wellbeing threshold may require prior approval from the headteacher or the governing body.

LA will set up new codes to record these items. Schools will be able to add budgets into their 2026-27 budget.

## 5. Income

### 5.1 Income from lettings

Schools may retain income from lettings of the school premises, which would otherwise accrue to the authority unless a clause in a specific joint use or private finance initiative contract precludes this. Schools may cross-subsidise lettings for community and voluntary use with income from other lettings, provided the governing body is satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school view a view to promoting high standards of educational achievement.

Schools must, however, have regard to directions issued separately by the local authority as to the use of school premises, as permitted under the School Standards and Framework Act 1998 for various categories of schools. Income from lettings of school premises should not normally be payable into voluntary, or private funds, held by schools. However, where land is held by a charitable trust, it will be for the school's trustees to determine the use of any income generated by the land.

### 5.2 Income from fees and charges

Schools may retain income from fees and charges except where a service is provided by the local authority from centrally retained funds. Schools must, however, have regard to any policy statements on charging issued separately by the local authority.

### 5.3 Income from fund raising activities

Schools may retain income generated by fund raising activities. Income generated in connection with bids for funding must be used for the purpose(s) intended.

### 5.4 Income from the sale of assets

Schools may retain the proceeds from sales of assets except in cases where the asset was purchased with non-delegated funds (in which case it is for the local 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 local authority.

### 5.5 Administrative procedures for the collection of income

All income received by the school must be banked promptly and, in its entirety, in accordance with procedures set out in the Financial Regulations and Standing Orders. Income should not normally be payable into a voluntary or private fund held by the school.

Procedures should be approved by the Governing Body which ensure adequate monitoring and reconciliation of all income due and received. Income due to the school must identify VAT, where appropriate. All VAT income received must be itemised correctly for HM Revenue and Customs purposes.

## 5.6 Purposes for which income may be used

Income from the sale of assets purchased with delegated funds may only be spent for the purposes of the school.

## 6. Charging school budget shares

### 6.1 General

School budget shares may be charged by the authority without the consent of the governing body only in circumstances expressly permitted by this scheme. The authority will consult a school as to its intention to make such a charge and will notify a school when the charge has been made.

The local authority cannot act unreasonably in exercising this power and cannot make a charge where the statutory responsibility, and therefore any liability, rests elsewhere; the position on charging will vary between categories of school. Where a school opts for an external bank account into which its budget share is paid in accordance with the arrangements set out at section 3 of this scheme, any charge for non-payroll costs made by the authority will normally be affected by issuing an invoice to the school.

The authority may de-delegate funding for permitted services without the express permission of the governing body, provided this has been approved by the appropriate phase representatives of the Schools Forum.

### 6.2 Circumstances in which charges may be made

#### 6.2.1 Charging of salaries at actual cost

In the case of payroll costs the authority is required to charge salaries of school-based staff to school budget shares at actual cost.

#### 6.2.2 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 previously agreed in writing by the authority). Local authority will not be responsible for any staffing reductions arise from a deficit caused by factors within school's control.

#### 6.2.3 Other expenditure incurred to secure resignations

Where there is good reason to charge this to the school (see Annex B).

#### 6.2.4 Court and Industrial Tribunal Costs

Awards by courts and industrial tribunals against the local authority, or out of court settlements arising from action or inaction by the governing body contrary to the local authority's advice. Awards may sometimes be against the governing body directly and would fall to be met from the budget share.

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

### 6.2.5 Health and Safety

Expenditure by the local authority in carrying out health and safety work or capital expenditure for which the local 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.

### 6.2.6 Defects

Expenditure by the local authority incurred in making good defects in building work funded by capital spending from budget shares, where the local authority owns the premises, or the school has voluntary controlled status.

### 6.2.7 Insurance

Expenditure incurred by the local authority in ensuring 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.

The local authority itself will consider whether it has an insurable interest in any particular case.

### 6.2.8 Services Provided

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 local authority.

### 6.2.9 Penalties imposed by regulatory authorities

Recovery of penalties imposed on the authority by the board of Inland Revenue, the Contributions Agency, HM customs and Excise, Teachers Pensions, the environmental agency or regulatory authorities as a result of school negligence.

### 6.2.10 Correction of local authority errors in calculating charges of budget shares

(e.g. pension deductions). Before applying any such provision, the authority will consider whether it is reasonable to do so.

### 6.2.11 Additional Transport Costs

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 local authority of non-pupil days resulting in unnecessary transport costs.

### 6.2.12 Legal Costs

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

### 6.2.13 Other Miscellaneous Costs

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.

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.

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.

Costs incurred by the authority in securing provision specified in an Education, Health and Care Plan (EHCP) where the governing body of a school fails to secure such provision despite the delegation of funds in respect of low-cost high incidence SEN and/or specific funding for a pupil with High Needs.

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

Recovery of amounts spent from specific grants on ineligible purposes.

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

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.

## 7. Taxation

### 7.1 Value added tax

The authority will issue to schools procedures setting out how schools may utilise the authority's ability to re-claim VAT on expenditure relating to non-business activity. Amounts payable to and from HM Customs and Excise will be passed back to schools within a month of receiving the original claim.

### 7.2 CIS (construction industry taxation scheme)

Schools must abide by procedures, which will be issued separately by the authority in connection with CIS.

## 8. The provision of services and facilities by the authority

### 8.1 Provision of services from centrally retained budgets

It is for the authority to determine on what basis services and payments, including Premature Retirement Costs (PRC) and redundancy payments, funded from centrally retained budgets will be provided to schools. The authority cannot, however, discriminate in its provision of services on the basis of categories of schools except in cases where this would be allowable under the school and early years finance regulations or the dedicated schools grant (DSG) conditions of grant.

### 8.2 Timescales for the provision of services bought back from the local education authority using delegated budgets

Contractual periods for services or facilities offered to schools by the local authority shall not exceed:

- (i) a period of three years from the date of the agreement, and
- (ii) period of five years for any subsequent agreement relating to the same service or services.
- (iii) Contract periods for the supply of catering services may be extended by five and seven years respectively.

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 must 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 must be met by the total income, even if schools are charged differentially.

### 8.3 Packaging of services

Where the funding for a service has been delegated to schools and the authority is offering the service on a buy-back basis, the authority must offer that service in a way which does not unreasonably restricts 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.

### 8.4 Service level agreements

Service Level Agreements must be in place by 28<sup>th</sup> February, and schools have at least a month to consider the terms of agreements. Schools will receive a schedule of Service Level Agreements in April and have 30 days to raise any queries. At the end of the 30-day period, schools will pay for their SLAs by means of a direct debit on their local bank account.

- 8.4.1 If services or facilities are provided by the authority under a service level agreement, whether that agreement is on a free or buy-back basis, the terms of such an agreement starting on or after the inception of this scheme will be reviewed at least every three years if the agreement extends beyond that timescale.

Where a service or facility is offered by the authority under a service level agreement, the authority may also offer the service or facility on an ad hoc basis; a differential rate may be charged for services or facilities provided on an ad hoc basis.

- 8.4.2 Centrally arranged premises and liability insurance are excluded from these requirements as to service supply, as the limitations envisaged may be impracticable for insurance purposes.

## 8.5 Supply of information relating to teacher's pensions

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 and come into effect on 1 November 2002.

- 8.5.1 The conditions only apply to governing bodies of maintained schools who, have not entered into an arrangement with the authority to provide payroll services.
- 8.5.2 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 monthly return of salary and service to Teachers' Pensions and to produce its audited contributions certificate.
- 8.5.3 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.

## 9. Private finance initiative/ public private partnership (PFI/PPP)

- 9.1 The authority shall have the power to issue regulations from time to time relating to PFI/PPP projects. Amongst other issues these may deal with the reaching of agreements with the governing bodies of schools as to the basis of charges relating to such schemes; and the treatment of monies withheld from contractors due to poor performance.
- 9.2 The authority has the power to charge to the school's budget share amounts agreed under a PFI/PPP agreement entered into by the governing body of a school.

## 10. Insurance

- 10.1 The authority will require a school to demonstrate by no later than 1 April each year that cover relevant to the 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 local authority if the local authority makes such arrangements, either paid for from central funds or from contributions from schools' delegated budgets.
- 10.2 The authority must 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.
- 10.3 The evidence required to demonstrate the parity of cover should be reasonable, not place an undue burden upon the school, nor act as a barrier to the school exercising their choice of supplier.

## 11. Miscellaneous

### 11.1 Right of access to information

Governing bodies must 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 budget share, or the use made of any central expenditure by the authority (e.g. earmarked funds) on the school.

### 11.2 Liability of governors

As the governing body is a corporate body, and because of the terms of s.50(7) of the School Standards and Framework Act 1998, governors of maintained schools will not incur personal liability in the exercise of their power to spend the delegated budget provided they act in good faith.

### 11.3 Governors' expenses

The authority may delegate to the governing body of a school yet to receive a delegated budget, funds to meet governors' expenses.

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 budget share. The payment of any other allowances is not permitted under this scheme. Schools are also barred from payment of expenses duplicating those paid by the Secretary of State to additional governors appointed by her/him to schools under special measures.

### 11.4 Responsibility for legal costs

Costs of legal action 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 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.

Where there is a conflict of interest between the authority and the governing body the governing body should seek legal advice from an appropriate external provider.

### 11.5 Health and safety

In expending the school's budget share, governing bodies should have due regard to duties placed on the local 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 authority's head of finance

Governing bodies must permit the Authority's Head of Finance, or any officer of the authority nominated by the Authority's Head of Finance, to attend meetings of the governing body at which any agenda items are relevant to the exercise of her or his responsibilities. The authority will give prior notice of such attendance unless it is impracticable to do so.

## 11.7 Special educational needs

Schools are required 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 this provision makes it possible to suspend delegation where a situation is serious enough to warrant it (this would not normally relate to an individual pupil).

## 11.8 Interest on late payments

Schools covered by the Scheme must act in accordance with the statutory requirements of the Late Payment of Commercial Debts (Interest) Act 1998.

## 11.9 Whistleblowing

Persons working at a school or school governors who are concerned about financial management or financial propriety are able to report those concerns in a way that will not be seen as being disloyal to their colleagues or to the school and in a way that will avoid the fear of harassment or victimisation.

All concerns will be treated in confidence and be investigated by the Corporate Director of Children and Learning or his representative. Depending upon the nature of the concern an investigation may be carried out by the Internal Audit Department.

All concerns raised will be acknowledged, indicating how the authority proposes to deal with the matter and giving information about any initial inquiries, which have been made. At the end of the process information will be supplied about the outcome of any investigation.

Further information can be obtained by reference to the Council's Whistle-blowing Procedure for Workers in Schools in the Personnel Handbook for schools.

## 11.10 Child protection

There is a need for staff in schools to be released to attend child protection case conferences and other related events. The authority does not make any payment to schools to help meet these costs as these are expected to be met from individual schools' budgets.

## 11.11 Redundancy/early retirement costs

The 2002 Education Act sets out how premature retirement and redundancy costs should normally be funded. Further guidance is provided at Annex B.

If the authority proposes to make local arrangements in accordance with the act, then the scheme should contain a provision setting out how this will work.

## 12. Responsibility for repairs and maintenance

- 12.1 The local authority will delegate all revenue funding for repairs and maintenance to schools; only capital expenditure will be retained.
- 12.2 For these purposes, expenditure will 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. In particular, where, in line with the Code of Practice the local authority uses de minimis limits for defining what expenditure is treated as capital and what is revenue in their financial accounts, the same de minimis limits will be used in defining what is delegated.

The de minimis level for Luton Borough Council is currently £15,000 and this will be subject to revision on an annual basis by reference to a building inflation index.

- 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.

## 13. Community facilities

### 13.1 Introduction

Schools which choose to exercise the power conferred by s.27 (1), of the Education Act 2002 to provide such community facilities will be subject to a range of controls.

Firstly, regulations made under s.28 (2), if any, can specify activities which may not be undertaken at all under the main enabling power. Thirdly, the Secretary of State issues guidance to governing bodies about a range of issues connected with exercise of the power, to which a school must have regard.

However, under s.28 (1), the main limitations and restrictions on the power will be

- a. Those contained in schools' own instruments of government, if any; and
- b. In Luton Borough Council'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 the prohibitions, restrictions and limitations in the scheme for Financing Schools.

This section 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.

Mismanagement of community facilities funds can be grounds for suspension of the right to a delegated budget.

### 13.2 Consultation with the authority – financial aspects

Section 28(4) of the Education Act 2002 requires that before exercising the community facilities power, governing bodies must consult Luton Borough Council and have regard to any advice given to them.

Schools are likely to benefit from informal contacts and advice from officers with the relevant professional expertise well before the formal consultation commences. Formal consultation with Luton Borough Council will commence when the full consultation material has been submitted in writing and the response period will begin upon receipt of the full consultation material.

Luton Borough Council will provide formal advice in writing within six weeks of receipt. Subsequently, the governing body should inform Luton Borough Council of the action taken, or proposed to take, in response to this advice.

The consultation document should contain:

- A full business plan for the provision of the proposed community facilities or services covering the first three years of operation.
- In the case of capital projects which affect the existing buildings on the school site and/or the construction of new buildings the full plans and costing of the works proposed.
- Details of any planning and environmental considerations and evidence of discussions with relevant regulatory agencies.
- Expressions of support from potential user groups, local community groups, neighbouring schools, business representatives etc as appropriate.
- Details of how the facility will be managed and how this relates to the management of the school.
- A statement that the proposed activities will not interfere with the overriding purpose of the school in achieving higher standards for pupils.
- Details of any proposed funding agreements with third parties.
- The insurance arrangements proposed.

### 13.3 Funding Agreements – authority powers

The provision of community facilities in many schools will 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 in the provision. A very wide range of bodies and organisations are potentially involved.

Any funding agreements with third parties (as opposed to funding agreements with Luton Borough Council itself) should be submitted to Luton Borough Council for its comments and advice. Such draft agreements should form part of the consultation with Luton Borough Council and schools must have regard to any advice given.

If an agreement has been or is to be concluded against the wishes of Luton Borough Council, or has been concluded without informing Luton Borough Council, which in the view of Luton Borough Council is seriously prejudicial to the interests of the school or the Borough Council, that may constitute grounds for suspension of the right to a delegated budget.

### 13.4 Supply of Financial Information

Schools which exercise the community facilities power must provide Luton Borough Council every six months with a summary statement 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.

If Luton Borough Council 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, then the school will be required, after having received notice from Luton Borough Council, to supply financial statements every three months and, if appropriate, submit a recovery plan for the activity in question.

Financial information relating to community facilities must also be included in returns made by schools under the Consistent Financial Reporting Framework (CFR).

### 13.5 Audit

Schools are required 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.

In concluding funding arrangements with third parties in the exercise of the community facilities power, schools are required to ensure that such agreements contain adequate provision for access by the Borough Council 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 Luton Borough Council to satisfy itself as to the propriety of expenditure on the facilities in question.

### 13.6 Treatment of income and surpluses

Schools may retain all net income derived from community facilities except where otherwise agreed with a funding provider, whether that be Luton Borough Council or a third party.

Where a surplus has been accumulated then this may be carried over from one financial year to the next as a separate community facilities surplus, or subject to the agreement of the Borough Council at the end of each financial year, transferred wholly or in part to the budget share balance.

The school's formula allocation will not include the rates allocations relating to the community facilities.

When a community school or community special school ceases to be maintained by the Borough Council, any accumulated retained income obtained from exercise of the community facilities power reverts to Luton Borough council unless otherwise agreed with a funding provider.

### 13.7 Health and Safety Matters

Any health and safety provisions of the main scheme for financing of schools are extended to the community facilities power.

The governing body is responsible for the costs of securing Disclosure Barring Service clearance for all adults involved in community activities taking place during the school day. Governing Bodies are free to pass on such costs to a funding partner as part of an agreement with that partner.

### 13.8 Insurance

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. Details of these arrangements should be included in the formal consultation material submitted to the Borough Council. Such insurance must not be funded from the school budget share

As an integral part of its plans, a school should undertake an assessment of the insurance implications and costs, seeking professional advice if necessary. The school should seek the advice of Luton Borough Council before finalising any insurance arrangement for community facilities.

Luton Borough Council may 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 costs could not be charged to the school's budget share. This provision is to protect Luton Borough Council against possible third-party claims.

### 13.9 Taxation

Schools should seek the advice of Luton Borough Council's VAT officer 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.

If any members of staff are employed by the school or authority in connection with community facilities then schools must be mindful of their liability for the payment of income tax and National Insurance, in line with HMRC rules. Payments to staff for hours worked, travel, subsistence etc should not be made directly to individuals, but should be made via a school's payroll provider.

Schools should follow the authority's advice in relation to the Construction Industry scheme where this is relevant to the exercise of the community facilities power.

### 13.10 Banking

Provisions relating to the banking arrangements for monies relating to community facilities mirror those contained in the main part of this scheme (Section 3).

Schools are reminded that they may not borrow money without the written consent of the Secretary of State, though this does not apply to monies lent to schools by Luton Borough Council under the Loans scheme for Schools.

# Annex A

## The funding framework's main features

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

Under this legislation, local authorities determine for themselves the size of their school's budget and their non-school's education budget, although at a minimum an authority must appropriate its entire dedicated schools grant to its schools' budget.

The categories of expenditure which fall within the 2 budgets are prescribed under regulations made by the Secretary of State, but included within the 2, 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 school's budget for purposes specified in regulations made by the Secretary of State under section 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 schools' forum or the Secretary of State in certain instances, as prescribed by the Secretary of State.

The balance of the school's budget left after deduction of the centrally retained expenditure is termed the individual school's budget (ISB). Expenditure items in the non-school's 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 section 51 of the Act.

The financial controls within which delegation works are set out in a scheme made by the authority in accordance with section 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 section 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 (section 50(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, under 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 and funding delegated to schools; after each financial year the authority must publish a statement showing outturn expenditure.

The detailed publication requirements for financial statements are set out in directions issued by the Secretary of State.

A copy of each year's budget and outturn statement should be made easily accessible to all schools.

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 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 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 a good reason was, 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-school's 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 early retirements or redundancies may only be charged to the central schools' services block of the Schools Budget, as a historic commitment, where the expenditure is to be incurred. As a result of decisions made before 01 April 2013, costs may not exceed the amount budgeted in the previous financial year.

The local authority can retain a central budget within the schools' budget to fund the costs of new early retirements or redundancies by a deduction from maintained school budgets (excluding nursery schools) only, where the relevant maintained school members of the school's forum agree.

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.

A de-delegated contingency could be provided, if Schools Forum agrees, to support individual schools where "a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school's budget share".

For staff employed under the community facilities power, the default position is that any costs must be met by the governing body, and can be funded from the school's delegated budget if the governing body is satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school with a view to promoting high standards of educational achievement.

Section 37 now states:

(7) Where a local education authority incurs 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 agrees with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.

(7A) Any amount payable by virtue of subsection (7) by the governing body of a maintained school in England to the local authority may be met by the governing body out of the school's budget share for any funding period if and to the extent that the condition in subsection (7B) is met.

(7B) The condition is that the governing body are satisfied that meeting the amount out of the school's budget share will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.

(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.

## Annex C

### Application of schemes for financing schools to the community facilities power

Schools which choose to exercise the power conferred by section 27 (1) of the Education Act 2002 to provide community facilities will be subject to controls. Regulations made under section 28 (2), if made, can specify activities which may not be undertaken at all under the main enabling power.

Section 88 of the Children and Families Act 2014, has removed the requirements in section 28(4) and section 28(5) of the Education Act 2002 for maintained schools in England.

Under section 28(4) a school was obliged to consult its authority and under section 28(5) a school must have regard to advice or guidance from the Secretary of State or their local authority when offering this type of provision.

Under section 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.

## List of maintained schools

List of maintained schools	School Type
Lealands High School	Foundation School
Queen Elizabeth School	Foundation School
Avenue Centre for Education	Maintained School
Beech Hill Primary	Maintained School
Beechwood Primary	Maintained School
Bramingham Primary	Maintained School
Bushmead Primary	Maintained School
Chapel Street Nursery	Maintained School
Crawley Green Infant School	Foundation School
Denbigh Primary	Maintained School
Downside Primary	Maintained School
Foxdell Primary	Maintained School
Gill Blowers Nursery	Maintained School
Grasmere Nursery	Maintained School
Hart Hill Nursery	Maintained School
Hillborough Infant	Maintained School
Hillborough Junior	Maintained School
Icknield Primary	Maintained School
Lady Zia Wernher	Maintained School
Leagrave Primary School	Foundation School
Maidenhall Primary	Maintained School
Norton Road Primary	Maintained School
ParkLea Primary	Maintained School
Pastures Way Nursery	Maintained School
Pirton Hill Primary	Maintained School

Putteridge Primary	Maintained School
Ramridge Primary	Maintained School
Richmond Hill	Maintained School
Rothesay Nursery	Maintained School
Somerles Infant	Maintained School
Somerles Junior	Maintained School
St Joseph's Catholic Primary School	Voluntary Aided School
St. Matthew's Primary	Maintained School
Stopsley Primary	Maintained School
Surrey Street Primary	Maintained School
The Meads Primary	Maintained School
Warden Hill Junior	Maintained School
Waulud Primary	Maintained School
Wigmore Primary	Maintained School
William Austin Infant	Maintained School
William Austin Junior	Maintained School
Woodlands	Maintained School