

*Draft Order laid before Parliament under section 4(2) of the Regulatory Reform Act 2001 for approval by resolution of each House of Parliament.*

---

DRAFT STATUTORY INSTRUMENTS

---

**2002 No.**

**EDUCATION, ENGLAND  
REGULATORY REFORM, ENGLAND**

**The Regulatory Reform (Voluntary Aided Schools  
Liabilities and Funding) (England) Order 2002**

<i>Made</i>	- - - -	2002
<i>Coming into force</i>	- -	2002

Whereas:

- (a) the Secretary of State for Education and Skills (“the Secretary of State”) is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (b) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretary of State is of the opinion that the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and that the extent to which this Order removes or reduces burdens or has other beneficial effects for persons affected by the burdens imposed by the existing law makes it desirable for this Order to be made;
- (c) the Secretary of State has consulted such organisations as appear to the Secretary of State to be representative of interests substantially affected by the proposals for this Order or of statutory bodies whose functions relate to the proposals and such other persons as the Secretary of State considers appropriate;
- (d) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (e) a document setting out the Secretary of State’s proposals has been laid before Parliament as required by section 6 of the Regulatory Reform Act 2001(1) and the period for Parliamentary consideration under section 8 of the 2001 Act has expired;
- (f) the Secretary of State has had regard to the representations made during that period;
- (g) a draft of this Order has been laid before Parliament with a statement giving details of those representations and the changes to the Secretary of State’s proposals in the light of them; and

(h) a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Education and Skills, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001, hereby makes the following Order:

### **Citation, commencement, and interpretation**

**1.**—(1) This Order may be cited as the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002 and shall come into force on 1st April following the date on which this Order is made.

(2) In this Order:

“the 1998 Act” means the School Standards and Framework Act 1998(2);

“the 2001 Act” means the Regulatory Reform Act 2001;

“the commencement date” means the date on which this Order comes into force.

### **Application**

**2.** This Order applies only in relation to England.

### **Amendment to Section 22 of the 1998 Act**

**3.** In section 22(5)(a) of the 1998 Act for “expenses that by virtue of paragraph 3 of Schedule 3 are payable” there shall be substituted “expenditure that by virtue of paragraph 3 of Schedule 3 is to be met”.

### **Amendment to Section 49(6)(b) of the 1998 Act**

**4.** In section 49(6)(b) of the 1998 Act for “expenses payable by the governing body under paragraph 3(1) or (2) of Schedule 3” there shall be substituted “expenditure payable by the governing body under paragraph 3(1) of Schedule 3”.

### **New paragraph 3 of Schedule 3 to the 1998 Act**

**5.** For Paragraph 3 of Schedule 3 to the 1998 Act there shall be substituted the following paragraph—

“**3.**—(1) In the case of a voluntary aided school, the governing body of the school are responsible for meeting all capital expenditure in relation to the school premises subject to sub-paragraph (2) below.

(2) The duty in sub-paragraph (1) does not extend—

- (a) to capital expenditure in relation to playing fields or any building or other structure erected thereon in connection with the use of playing fields, but does extend to capital expenditure in relation to boundary walls and fences;
- (b) to capital expenditure necessary in consequence of the use of the school premises, in pursuance of a direction or requirement of the local education authority, for purposes other than those of the school;

(c) to capital expenditure on the provision of any new site which the local education authority is to provide by virtue of paragraph 4 of this Schedule.

(3) For the purposes of this Schedule “capital expenditure” has the meaning given by Article 13 of The Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, as it has effect from time to time.”.

### **Additional Amendments to Schedule 3 to the 1998 Act**

6. In paragraph 4(7) of Schedule 3 to the 1998 Act for “school buildings” there shall be substituted “school premises”.

7. In paragraph 5 of that Schedule—

(a) in sub-paragraph (1)(a) and (b) for “qualifying expenditure incurred” there shall be substituted “capital expenditure incurred or to be incurred”;

(b) sub-paragraph (2) shall be omitted;

(c) for sub-paragraph (3)(a) there shall be substituted—

“(a) shall not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, shall not exceed 100 per cent of the expenditure, and”;

(d) for sub-paragraph (5) there shall be substituted—

“(5) Without prejudice to any other duty of his, the Secretary of State shall, in performing functions relating to the exercise of the power under this paragraph to make grants in respect of expenditure on school premises, give priority to paying grants in respect of expenditure which is necessary to make such alterations as may be required by the local education authority for the purpose of securing that the school premises conform to the standards prescribed under section 542 of the Education Act 1996(3) or as may be required for the purpose of securing that the school premises conform to standards specified by or under any other enactment relating to health and safety; and the amount of any grant paid in the exercise of that power in respect of such expenditure on school premises shall be at least 90 per cent of the expenditure.”;

(e) in sub-paragraph (12) the definition of “repair” shall be omitted.

8. In paragraph 6 of that Schedule—

(a) in sub-paragraph (1) after “incurred” in each place where it occurs there shall be inserted “or to be incurred”;

(b) in sub-paragraph (2) after “incurred” there shall be inserted “or to be incurred”;

(c) in sub-paragraph (2) for “school buildings” there shall be substituted “used for the purposes of the school”;

(d) in sub-paragraph (4)(a) for “school buildings” there shall be substituted “used for the purposes of the school”;

(e) for sub-paragraph (5) there shall be substituted—

“(5) A grant under sub-paragraph (1) or (2) shall not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, shall not exceed 100 per cent of the expenditure, in respect of which it is paid.”.

9. In the cross-heading preceding paragraph 7 of that Schedule, for “expenses” there shall be substituted “expenditure”.

**10.** In paragraph 7 of that Schedule—

- (a) in sub-paragraph (1)(a) for “initial expenses” there shall be substituted “initial expenditure”;
- (b) in sub-paragraph (1)(b) for “expenditure” there shall be substituted “capital expenditure”;
- (c) in sub-paragraph (3) for ““initial expenses” are expenses” there shall be substituted ““initial expenditure” is expenditure”, and for “expenses” there shall be substituted “expenditure”;
- (d) in sub-paragraph (3)(a) and (b) the word “school” shall be omitted in the first place where it occurs;
- (e) in sub-paragraph (4)—
  - (i) for “initial expenses” there shall be substituted “initial expenditure”; and
  - (ii) for “expenses” there shall be substituted “expenditure”;
- (f) in sub-paragraph (5) for “expenses” there shall be substituted “expenditure” in each place where it occurs.

**Amendments to Schedule 6 to the 1998 Act****11.** In paragraph 14 of Schedule 6 to the 1998 Act—

- (a) in sub-paragraphs (2) and (3) for “relevant premises” there shall be substituted “playing fields”;
- (b) sub-paragraph (4) shall be omitted;
- (c) in sub-paragraph (5) for “such premises” there shall be substituted “such playing fields”; and
- (d) in sub-paragraph (5)(b) for “those premises” there shall be substituted “those playing fields —”.

**Amendments to Schedule 22 to the 1998 Act****12.** After paragraph 10 of Schedule 22 to the 1998 Act there shall be inserted—**“PART IV****DISPOSAL OF LAND OF A VOLUNTARY AIDED  
SCHOOL BY THE LOCAL EDUCATION AUTHORITY****11.—(1)** In this paragraph—

- (a) “capital expenditure” has the meaning given by Article 13 of the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, as it has effect from time to time;
- (b) “commencement date” means the date on which that Order comes into force;
- (c) “relevant body” means—
  - (i) the governing body of a voluntary aided school; or
  - (ii) if the school has been discontinued and the governing body dissolved, the trustees;
- (d) “relevant land” means—
  - (i) any caretaker’s dwelling; or

(ii) other buildings which are not school buildings;

which form part of the premises of a voluntary aided school.

(2) This paragraph applies to any disposal by the local education authority of relevant land enhanced in value wholly or partly by means of capital expenditure incurred by the governing body after the commencement date.

(3) But this paragraph shall not apply unless the relevant body gives to the local education authority no later than 12 months after the expenditure is incurred a statement—

- (a) setting out the amount of expenditure; and
- (b) stating that it is capital expenditure.

(4) Where this paragraph applies, the local education authority shall notify the relevant body that the provision applies to them and they shall pay to the relevant body so much of the proceeds of disposal as may be determined to be just, either by agreement between them and the relevant body or, in default of agreement, by the Secretary of State.

(5) In making the determination under sub-paragraph (4), the relevant body and the local education authority, or the Secretary of State, as the case may be, shall have regard in particular to any enhancement in value of the relevant land attributable to expenditure by or on behalf of the governing body.

(6) If the local education authority permit relevant land to be used for purposes not connected with the school—

- (a) they shall be treated for the purposes of this paragraph as having disposed of the land; and
- (b) sub-paragraph (4) shall have effect as if the reference to proceeds of disposal were a reference to the value of the land.”

### **Meaning of Capital Expenditure**

**13.**—(1) For the purposes of Schedule 3 and Schedule 22 to the 1998 Act “capital expenditure” means expenditure on:

- (a) the acquisition, reclamation, enhancement or laying out of any land;
- (b) the acquisition, construction, preparation, enhancement, replacement or demolition of any building or part of a building (including any fixtures and fittings affixed to a building), wall, fence or other structure, or any playground or other hard-standing;
- (c) the acquisition, installation or replacement of any movable or immovable, plant, machinery, apparatus or furniture;

used or intended to be used for the purposes of the school.

(2) For the purposes of paragraph (1), “enhancement”, in relation to any asset, means the carrying out of works which are intended—

- (a) to lengthen substantially the useful life of the asset; or
- (b) to increase substantially the open market value of the asset; or
- (c) to increase substantially the extent to which the asset can or will be used for the purposes of or in connection with the school concerned;

but expenditure on the enhancement of an asset shall not be regarded as capital expenditure unless it should be so regarded in accordance with proper practices.

(3) In paragraph (2) “proper practices” are those accounting practices—

- (a) which the governing body or their maintaining local education authority are required to follow by virtue of any enactment, or

- (b) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned,

but in the event of any conflict in any respect between the practices falling within sub-paragraph (a) above and those falling within sub-paragraph (b) above, only those falling within sub-paragraph (a) above are to be regarded as proper practices.

(4) Despite the other provisions of this article, any expenditure of an amount less than £2,000 does not constitute “capital expenditure” for the purposes of this article.

(5) Paragraphs (1) to (4) above are subordinate provisions for the purposes of section 4 of the 2001 Act and a subordinate provisions order (within the meaning of section 4(4) of that Act) made in respect of those provisions shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Transitional Provisions**

**14.**—(1) Where within the period of five years beginning on the commencement date the Secretary of State notifies the governing body of her decision to pay grant under Schedule 3 to the 1998 Act in respect of relevant capital expenditure, paragraphs 5(3)(a) and 6 shall have effect in respect of the expenditure to which the decision relates as if for the words “shall not exceed 85 per cent” were substituted the words “shall not exceed 100 per cent”.

(2) In paragraph (1) “relevant capital expenditure” means capital expenditure on any building or part of a building of a voluntary aided school used only—

- (a) as a caretaker’s dwelling,
- (b) to afford facilities for enabling the Secretary of State facilities to carry out her functions under sections 5(1) or (1A) of, and Schedule 1 to, the National Health Service Act 1977<sup>(4)</sup> (which relate to the provision of medical and dental services for pupils), or
- (c) to afford facilities for providing milk, meals or other refreshments for pupils in attendance at the school,
- (d) as a swimming pool.

**15.**—(1) The following provisions have effect despite the provisions of this Order—

(2) The local education authority are responsible for meeting all expenses incurred in effecting any works such as are described in paragraph 3(3) of Schedule 3 to the 1998 Act as originally enacted where a supplementary credit approval under section 54 of the Local Government and Housing Act 1989<sup>(5)</sup> has been issued by the Secretary of State before the commencement date in respect of expenditure on those works.

(3) The governing body are responsible for meeting all expenses in effecting any works such as are described in paragraph 3(2) of Schedule 3 to the 1998 Act as originally enacted which form part of the same project for which a supplementary credit approval has been issued in respect of works under paragraph (2) and—

- (a) where the Secretary of State has three years preceding the commencement date or earlier notified the governing body of her decision to pay grant under paragraph 5 of Schedule 3 in respect of such expenses, paragraph 5 of Schedule 3 to the 1998 Act as originally enacted shall continue to apply.
- (b) where the Secretary of State has within three years preceding the commencement date so notified the governing body and subject to paragraph (8), paragraph 5(3)(a) of Schedule 3

---

(4) 1977 c. 49 section 5(1A) was inserted by the Health and Medicines Act 1988 c. 49 section 25, Schedule 3.

(5) 1989 c. 42.

to the 1998 Act as amended by this Order shall apply in relation to such expenses as it applies to capital expenditure.

(4) The local education authority are responsible for meeting all expenses incurred in effecting any works such as are described in paragraph 3(3) of Schedule 3 to the 1998 Act as originally enacted where they have been paid grant under section 484 of the Education Act 1996 before the commencement date in respect of expenditure on those works.

(5) The governing body are responsible for meeting all expenses in effecting any works such as are described in paragraph 3(2) of Schedule 3 to the 1998 Act as originally enacted which form part of the same project for which grant under section 484 of the Education Act 1996 has been paid in respect of those works under paragraph (4) and, subject to paragraph (8), paragraph 5(3)(a) of Schedule 3 to the 1998 Act as amended by this Order shall apply in relation to such expenses as it applies in relation to capital expenditure.

(6) The local authority are responsible for meeting all expenses incurred in effecting any works such as are described in paragraph 3(3) of Schedule 3 to the 1998 Act as originally enacted, where such works are included in a programme known as the local authority co-ordinated voluntary aided programme which had effect in relation to that authority before the commencement date.

(7) The governing body are responsible for meeting all expenses incurred in effecting any works such as are described in paragraph 3(2) of Schedule 3 to the 1998 Act as originally enacted, which relate to the local authority co-ordinated voluntary aided programme referred to in paragraph (6), and

- (a) subject to paragraph (8), where such works were commenced within one year preceding the commencement date, paragraph 5(3)(a) of Schedule 3 to the 1998 Act as amended by this Order shall apply in relation to such expenses as it applies in relation to capital expenditure, and
- (b) where such works were commenced one year preceding the commencement date or earlier paragraph 5 of Schedule 3 to the 1998 Act as originally enacted shall apply accordingly.

(8) In relation to expenses under paragraphs (3)(b), (5) or (7)(a) where all grant which the Secretary of State has notified to the governing body is to be paid under paragraph 5 of Schedule 3 to the 1998 Act, has been paid before the commencement date, paragraph 5 of Schedule 3 to the 1998 Act as originally enacted shall apply accordingly.

---

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 1 of the Regulatory Reform Act 2001. It amends sections 22 and 49, paragraphs 3, 4, 5, 6 and 7 of Schedule 3, paragraph 14 of Schedule 6 and Schedule 22 of the School Standards and Framework Act 1998, so as to reform the liabilities and funding arrangements for premises-related work of voluntary aided schools, which impose burdens on governing bodies and local education authorities carrying out certain activities, with a view to reducing the overall burdens on them.

The funding liabilities are set out in section 22(5) of the 1998 Act, which provides that the local education authority are responsible for defraying all expenses of maintaining the school, except any expenses set out in paragraph 3 of Schedule 3, which are payable by the governing body. Paragraph 3 of Schedule 3 has been amended. This provides that governing bodies are responsible for all capital expenditure in relation to the school premises including boundary walls and fences, with the exception of playing fields and buildings thereon used in connection with the playing fields. There is a proviso that capital expenditure will not include expenditure under £2,000. Capital expenditure in consequence of the use of school premises for non school purposes following a direction by the local education authority will remain the liability of the authority. The definition of capital expenditure has been made a free standing provision at Article 13 of the Order and paragraphs (1)-(4) of Article 13 have been made subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001, which enables the Secretary of State to change the provisions by way of a subordinate provisions order subject to negative resolution procedure.

Paragraphs 5(3) and 6(5) of Schedule 3 have been amended to enable the Secretary of State to make grants to governing bodies at up to 90 per cent. of their expenditure, and in exceptional circumstances, at up to 100 per cent. By virtue of paragraphs 5(1), 6(1) and 6(2) the Secretary of State may make grants in respect of expenditure “incurred” by the governing body, or promoters. The Order amends this provision to include expenditure “to be incurred”, which will enable the grant to be made for expenditure which has not been discharged by the governing body, or promoters.

By virtue of paragraph 5(5), there is a duty on the Secretary of State to give priority to paying grants, at 85 per cent., for expenditure which is necessary to ensure that the school premises conform to standards prescribed under section 542 of the Education Act 1996. The Order amends this provision to provide for grant to be paid at no less than 90 per cent. and to include expenditure necessary to comply with any enactment relating to health and safety.

By virtue of paragraph 14 of Schedule 6 the local education authority are responsible for the implementation of proposals under section 28 of the 1998 Act to establish or alter a school insofar as relating to the provision of “relevant premises”, which includes playing fields and buildings other than school buildings which includes caretakers' dwellings, medical and dental rooms, kitchens and dining halls. The Order omits the definition of “relevant premises”, and amends sub-paragraphs (2) and (3) of paragraph 14, so as to provide that the local authority will be responsible only for the implementation of proposals insofar as relating to playing fields.

By virtue of paragraph 7 of Schedule 3, the Secretary of State may make loans to governing bodies for capital expenditure in respect of school buildings incurred in alterations to a school, the transfer to a new site, or the establishment of a new school. The Order amends this provision to include all buildings within the school premises.

Schedule 22 has been amended by the insertion of Part IV. This provides that, upon a disposal by the local education authority of a building other than a school building, the authority must, if the



value of the land has been enhanced by capital expenditure incurred by the governing body, pay an amount to the governing body of the proceeds of disposal as is agreed between them or, in default of agreement, as is determined by the Secretary of State.

The transitional provisions of the Order provide that the Secretary of State may pay grant at up to 100 per cent. in respect of capital expenditure on such buildings as referred to in article 14 of this Order for a period of 5 years from the date of the Order.

The Order also provides for the transitional arrangements of existing projects. Where, before the commencement date, a supplementary credit approval has been issued under section 54 of the Local Government and Housing Act 1989, the existing arrangements in respect of division of liabilities will continue in respect of that project. The new rate of grant will apply only where the governing body were notified to receive grant under paragraph 5 of Schedule 3 within three years preceding commencement of the Order and such grant has not been paid in full before the commencement date.

Where, before the commencement date, grant has been paid under Section 484 of the Education Act 1996 the existing arrangements in respect of division of liabilities will continue in respect of that project. The new rate of grant will apply only where grant to be paid to the governing body under paragraph 5 of Schedule 3 has not been paid in full before the commencement date.

Where, before the commencement date, a project under the local authority co-ordinated voluntary aided programme has begun, the existing arrangements in respect of division of liabilities will continue in respect of that project. The new rate of grant will apply only to such a project which began within one year of the commencement of the Order and where grant to be paid to the governing body under paragraph 5 of Schedule 3 has not been paid in full before the commencement date.