



Education Act 1996

1996 CHAPTER 56

PART II

SCHOOLS MAINTAINED BY LOCAL EDUCATION AUTHORITIES

CHAPTER V

FINANCIAL DELEGATION TO GOVERNING BODIES OF COUNTY, VOLUNTARY AND MAINTAINED SPECIAL SCHOOLS

Introductory

101 Local education authority schemes for financing schools

- (1) In this Part “scheme” means a scheme made by a local education authority under section 103 (including one that is to be treated as so made by virtue of section 104(6)) as from time to time revised under sections 111 to 114.
- (2) In this Part “the local education authority”, in relation to a scheme, means the local education authority who made (or are to be treated as having made) the scheme.
- (3) For the purposes of this Part—
 - (a) a local education authority’s “general schools budget” for a financial year is the amount appropriated by the authority for meeting expenditure in the year in respect of all schools required to be covered in the year by any scheme made by the authority (other than non-qualifying expenditure);
 - (b) a local education authority’s “aggregated budget” for a financial year under a scheme is the part (determined as mentioned in section 105) of the authority’s general schools budget for the year which is available for allocation to individual schools under the scheme; and
 - (c) a school’s “budget share” for a financial year under a scheme is the share of the local education authority’s aggregated budget for the year which is to be appropriated for the school under the scheme.

- (4) In subsection (3)(a) “non-qualifying expenditure” means expenditure in respect of the provision of—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
 - (b) full-time education suitable to the requirements of persons who have attained the age of 19.
- (5) In relation to any scheme any reference in subsection (3) to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme.
- (6) In this Part references to a school’s budget share for a financial year include references to that share as from time to time revised in accordance with the scheme under which it is determined.

102 Schools required to be covered by a scheme

For the purposes of this Part a school is required to be covered by a scheme in any financial year if either—

- (a) immediately before the beginning of that year it is maintained by the local education authority as a county or voluntary school, or
- (b) at any time during that year it becomes so maintained (whether by virtue of being newly established as a county or voluntary school or by virtue of becoming a county or voluntary school where it was not, immediately before it became so, a school of either description).

Schemes for purposes of Chapter V

103 Local education authority required to have scheme for purposes of Chapter V

- (1) Each local education authority shall have a scheme prepared in accordance with this Chapter and submitted for the approval of the Secretary of State in accordance with section 104.
- (2) The scheme shall provide for—
 - (a) the determination, in respect of each financial year of the local education authority, of the budget share of each school required to be covered by the scheme in the year, and
 - (b) the delegation by the authority of the management of a school’s budget share for a financial year to the school’s governing body, where such delegation is required or permitted by or under the scheme.

104 Preparation and imposition of schemes

- (1) A scheme prepared by a local education authority under section 103 shall be submitted to the Secretary of State on or before such date as he may by order direct, either—
 - (a) generally; or
 - (b) in relation to any local education authority, or any class or description of such authorities, specified in the order.
- (2) In preparing a scheme under that section a local education authority shall take into account any guidance given by the Secretary of State, whether—

- (a) generally, or
 - (b) in relation to that authority or to any class or description of local education authorities to which that authority belongs,
- as to the provisions he regards as appropriate for inclusion in the scheme.
- (3) Before preparing such a scheme the local education authority shall consult—
- (a) the governing body and the head teacher of every county, voluntary or special school maintained by the authority;
 - (b) the governing body of every grant-maintained school in the area of the authority; and
 - (c) the governing body of every grant-maintained special school which—
 - (i) is established under section 339 in the authority’s area, or
 - (ii) before becoming a grant-maintained school was a special school maintained by the authority;
 but the Secretary of State may, by notice in writing to the authority, dispense with the duty imposed by paragraphs (b) and (c) above in respect of such schools, or such class or description of schools, as are specified in the notice.
- (4) Such a scheme shall not come into force until it has been approved by the Secretary of State or until such date as he may, in giving his approval, specify; and the Secretary of State may approve such a scheme—
- (a) either without modifications or with such modifications as he thinks fit after consulting the authority concerned; and
 - (b) subject to such conditions as he may specify in giving his approval.
- (5) If in the case of any local education authority either—
- (a) the authority fail to submit a scheme as required by subsection (1), or
 - (b) it appears to the Secretary of State that a scheme submitted by the authority as required by that subsection does not accord with any guidance given by him for the purposes of this section and cannot be made to do so merely by modifying it,
- he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision of a description required to be made by a scheme under section 103 in relation to the financing by the authority of county and voluntary schools as he considers appropriate.
- (6) A scheme imposed by the Secretary of State by virtue of subsection (5)—
- (a) shall be treated as if made under 103 by the local education authority concerned; and
 - (b) shall come into force on such date as may be specified by the scheme.

Provision by a scheme for determination of budget shares

105 Calculation of local education authority’s aggregated budget

- (1) The part of a local education authority’s general schools budget for a financial year which is available for allocation to individual schools under a scheme (and as such constitutes the authority’s “aggregated budget” for the year under the scheme) is the amount remaining after deducting from the amount of the authority’s general schools budget for the year—

- (a) the amount of any expenditure of the authority in the year on excepted heads or items of expenditure; and
 - (b) any other amounts which fall in accordance with the scheme to be deducted in determining the authority's aggregated budget for the year.
- (2) In subsection (1) "amount" means an amount determined (and from time to time revised) in accordance with the scheme.
- (3) In subsection (1) "excepted heads or items of expenditure" means the following heads or items of expenditure (so far as taken into account in determining the authority's general schools budget for the year)—
- (a) all expenditure treated by the authority as expenditure of a capital nature;
 - (b) all expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any loan raised to meet expenditure falling within paragraph (a);
 - (c) expenditure falling to be taken into account in determining central government grants of any prescribed description; and
 - (d) such other items of expenditure as may be prescribed.

106 Application of the allocation formula

- (1) The provision to be included in a scheme for determining the budget share for a financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of the allocation formula under the scheme.
- (2) For the purposes of this Part the "allocation formula" under a scheme is a formula laid down by the scheme for the purpose of dividing among all schools required to be covered by the scheme in any financial year the local education authority's aggregated budget for the year.
- (3) In subsection (2) "formula" includes methods, principles and rules of any description, however expressed.
- (4) The allocation formula under a scheme—
- (a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of registered pupils at that school on such date or dates as may be determined by or under the scheme in relation to that year, and
 - (b) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).
- (5) The allocation formula shall, however, not include provision for taking into account persons provided with—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
 - (b) full-time education suitable to the requirements of persons who have attained the age of 19.

- (6) A scheme shall provide for all amounts relevant to the determination of a school's budget share under the scheme for a financial year to be determined initially before the beginning of that year.

Provision by a scheme for financial delegation

107 The delegation requirement

- (1) A scheme shall include provision for requiring, in the case of each school required to be covered by the scheme in any financial year, the delegation by the local education authority to the governing body of the management of the school's budget share for that year.
- (2) Any provision included in a scheme by virtue of subsection (1) is referred to in this Part as the “delegation requirement” under the scheme.

108 Optional delegation

A scheme may provide for the management of a school's budget share for any financial year to be delegated by the local education authority to the governing body of the school in a case where the delegation requirement under the scheme does not apply to the school in respect of that year.

109 Conditions as to delegation

- (1) Any delegation under a scheme of the management of a school's budget share shall be subject to such conditions as may be imposed by or under the scheme.
- (2) Conditions so imposed may, in particular, relate to—
- (a) the arrangements to be made for management of the expenditure of any sum made available to a school's governing body in accordance with the scheme (and in particular for authorising expenditure, or transactions involving commitments to expenditure, to be met from any such sum);
 - (b) the keeping and audit of accounts and records with respect to such expenditure, and the keeping of records with respect to such transactions;
 - (c) the provision to the local education authority by the governing body of copies of accounts and records required to be kept by any condition imposed under paragraph (b); and
 - (d) the provision to the local education authority by the governing body of such other documents and information relating to the application of any sum falling within paragraph (a) as the authority may from time to time require.
- (3) In subsection (1) “delegation” means delegation under any provision made by virtue of section 107 or 108.

110 Initial implementation of the delegation requirement

- (1) If a school comes within a scheme in a financial year falling within the scheme's initial period, the delegation requirement under the scheme shall not apply to the school until a date specified in the scheme.

- (2) For the purposes of this section a scheme’s “initial period” (subject to any order made under subsection (4)) is the period of three years beginning with the date of the coming into force of the scheme.
- (3) Different dates may be specified under subsection (1) in relation to different schools or categories of school and in relation to schools coming within the scheme in different financial years or at different times within the same financial year; but—
- (a) each date specified must coincide with the beginning of a financial year, and
 - (b) no date may be specified which falls after the beginning of the financial year next following the end of the scheme’s initial period.
- (4) The Secretary of State may by order—
- (a) substitute a date specified in the order for any date specified in a scheme under subsection (1) (including one specified by virtue of a previous order under this subsection), and
 - (b) extend any scheme’s initial period until a date specified in the order.
- (5) For the purposes of this section a school—
- (a) comes within a scheme in any financial year if that financial year is the first financial year in which the school is required to be covered by the scheme, and
 - (b) comes within the scheme—
 - (i) at the beginning of that year, if it is then a school required to be so covered, and
 - (ii) otherwise at the time falling within that year when it first becomes such a school.

Revision of schemes

111 Revision of scheme by LEA: general

- (1) Subject to subsection (2) and to sections 112 and 113, the local education authority may revise the whole or any part of a scheme.
- (2) Section 104(2) shall apply in relation to the preparation by the authority of any revision under this section as it applies in relation to the preparation by the authority of a scheme.

112 Revision of scheme by LEA: significant variations

- (1) This section applies where the local education authority propose, in revising a scheme under section 111, to make a significant variation of the scheme.
- (2) In such a case the authority—
 - (a) shall first consult every governing body and head teacher whom they are obliged to consult under section 104(3), and
 - (b) shall then submit a copy of their proposals to the Secretary of State for his approval.
- (3) Where the proposals are so submitted, section 104(4) shall apply to the scheme as revised as it applies to a scheme prepared under section 103.

- (4) The Secretary of State may by order specify what descriptions of variation are to be regarded as significant for the purposes of this section.

113 Revision of scheme by LEA: minor revisions

- (1) This section applies where the local education authority propose to revise a scheme under section 111 and the revision is in their opinion a minor revision.
- (2) In such a case the authority shall give the Secretary of State notice in writing of their proposal, giving brief particulars of the nature of the revision proposed to be made.
- (3) If so required by the Secretary of State before the end of the period of two months beginning with the date on which he receives notice under subsection (2) of the authority's proposal, the authority shall send to him a copy of the scheme as proposed to be revised.
- (4) It shall be for the Secretary of State to determine whether or not any revision is a minor revision.
- (5) In this section "minor revision" means a revision which does not make what would be a significant variation for the purposes of section 112.

114 Revision of schemes by Secretary of State

- (1) The Secretary of State may by a direction revise the whole or any part of any scheme as from such date as may be specified in the direction.
- (2) Before giving such a direction the Secretary of State shall consult the local education authority and such other persons as he thinks fit.

Financial delegation under a scheme

115 Financial delegation: introductory

In the following provisions of this Part—

- (a) references to a school in respect of which financial delegation is required for a financial year under a scheme are to a school conducted by a governing body to whom the local education authority are for the time being required by or under the scheme to delegate the management of the school's budget share for the year (and the governing body of such a school are said to have a right to a delegated budget for the year), and
- (b) references to a school which has a delegated budget are to a school conducted by a governing body to whom a local education authority have for the time being delegated the management of the school's budget share for a financial year in pursuance of a scheme (whether that delegation is required by the scheme or not).

116 Effect of financial delegation

- (1) This section applies where a local education authority's financial provision for county and voluntary schools is subject to regulation by a scheme.

- (2) In the case of any county or voluntary school maintained by the authority in respect of which financial delegation is required for a financial year under the scheme, the authority shall put at the disposal of the governing body in respect of the year a sum equal to the school's budget share for the year, to be spent for the purposes of the school.
- (3) The times at which, and the manner in which, any such sum is put at the disposal of the governing body shall be such as may be provided by or under the scheme.
- (4) Subject to section 125 (financial delegation apart from schemes) and section 489(2) (grants for education support and training), the authority may not delegate to the governing body of any school required to be covered by the scheme in a financial year the power to spend any appropriated amount otherwise than as required or permitted under the scheme; and for this purpose "appropriated amount" means a sum appropriated by the authority for the purposes of the school in that year.
- (5) The governing body of a school which has a delegated budget—
 - (a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to them in respect of the school's budget share for a financial year as they think fit for the purposes of the school, and
 - (b) may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their power under paragraph (a) in relation to any part of that sum.
- (6) In subsection (5) "the purposes of the school" does not include purposes wholly referable to the provision of—
 - (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
 - (b) full-time education suitable to the requirements of persons who have attained the age of 19.
- (7) The governing body of a school which has a delegated budget shall not exercise their powers under subsection (5) to pay to governors any allowances other than travelling and subsistence allowances.
- (8) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under subsection (5).

Suspension of financial delegation

117 Suspension of financial delegation for mismanagement etc

- (1) Where it appears to the local education authority that the governing body of a school in respect of which financial delegation is required for the current financial year under a scheme—
 - (a) have been guilty of a substantial or persistent failure to comply with any requirements applicable under the scheme, or
 - (b) are not managing the appropriation or expenditure of the sum put at their disposal for the purposes of the school in a satisfactory manner,
 the authority may suspend the governing body's right to a delegated budget by giving them not less than one month's notice of the suspension.

- (2) The notice shall specify the grounds for the proposed suspension, giving particulars—
 - (a) of any alleged failure on the part of the governing body to comply with any requirements applicable under the scheme; and
 - (b) of any alleged mismanagement on their part.
- (3) A copy of the notice shall be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (4) Where the authority have given a notice under subsection (1) to a governing body, they may suspend the governing body's right to a delegated budget before the expiry of the period of notice if it appears to them to be necessary to do so by reason of any gross incompetence or mismanagement on the part of the governing body or other emergency.
- (5) If the authority exercise their power under subsection (4), they shall immediately give to the Secretary of State written notification of their action and the reasons for it.
- (6) During any period when a governing body's right to a delegated budget is suspended under this section, the authority's duty under section 116(2) shall not apply in relation to that governing body.

118 Review of suspension

- (1) The local education authority concerned shall review before the beginning of every financial year any suspension under section 117 which is for the time being in force.
- (2) For the purposes of the review the authority—
 - (a) shall give the governing body and the head teacher of the school an opportunity of making representations with respect to the suspension, and
 - (b) shall have regard to any representations made by the governing body or head teacher.
- (3) If on the review the authority consider it appropriate to do so, they shall revoke the suspension.
- (4) The authority shall give the governing body and the head teacher written notification of their decision on the review.
- (5) The revocation of a suspension on a review under this section shall take effect from the beginning of the financial year next following the review.

119 Appeal against suspension or refusal to revoke it

- (1) A governing body may appeal to the Secretary of State against—
 - (a) the imposition of any suspension under section 117; or
 - (b) any refusal of a local education authority to revoke any such suspension on a review under section 118.
- (2) On an appeal under this section, the Secretary of State—
 - (a) may allow or reject the appeal; and
 - (b) shall have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuing or recurring.

Extension of schemes

120 Application of schemes to maintained special schools

- (1) The Secretary of State may by regulations require or authorise schemes to cover maintained special schools.
- (2) Sections 107(1), 108 and 110 shall not apply to schools required to be covered by a scheme by virtue of regulations under subsection (1).
- (3) Regulations under subsection (1) may require or authorise schemes to include provision for requiring the local education authority concerned to delegate to the governing body of a maintained special school the management of the school's budget share for the year—
 - (a) in the case of all schools required to be covered by a scheme in any financial year by virtue of the regulations; or
 - (b) in the case of such schools required to be covered by a scheme in any financial year by virtue of the regulations as the Secretary of State may direct.
- (4) The Secretary of State may by regulations—
 - (a) make in any of the following, namely—
 - (i) any provisions of this Chapter, and
 - (ii) sections 136 to 141, Schedule 14 and paragraphs 2 and 18 to 24 of Schedule 19 (which make provision in relation to the staffing of schools with delegated budgets etc.),
 such amendments as appear to him to be required in consequence of any provision made in regulations under subsection (1); and
 - (b) provide that any scheme shall have effect with such modifications as appear to him to be appropriate in consequence of any provision so made.

Information

121 Publication of schemes

A scheme shall be published in such manner as may be prescribed—

- (a) on its coming into force, and
- (b) on such subsequent occasions as may be prescribed.

122 Financial statements

- (1) This section applies where a local education authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) Before the beginning of each financial year, the authority shall prepare a statement of the financial provision they plan to make in that year for county and voluntary schools maintained by them.
- (3) Part I of Schedule 11 has effect in relation to the contents of a statement under subsection (2).
- (4) After the end of each financial year, the authority shall prepare a statement containing such information with respect to the following matters as may be prescribed—

- (a) the planned financial provision in that year specified in the statement prepared by the authority under subsection (2);
 - (b) expenditure actually incurred in the year for the purposes of all schools required to be covered by the scheme; and
 - (c) expenditure actually incurred in the year which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school.
- (5) A statement under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (6) The authority shall furnish—
- (a) the governing body of each school required to be covered by the scheme in any financial year, and
 - (b) the governing bodies of—
 - (i) such grant-maintained schools in the authority's area, and
 - (ii) such grant-maintained special schools mentioned in section 104(3)(c),
 as may be prescribed,
- with a copy of each statement prepared by the authority under this section in relation to that year or, in such circumstances as may be prescribed, with such part or parts of it as may be prescribed.
- (7) A governing body provided with a statement under subsection (6) shall secure that a copy of it is available for inspection (at all reasonable times and free of charge) at the school.

123 Certification of statements by Audit Commission

- (1) This section applies where a local education authority's financial provision for county and voluntary schools is subject to regulation by a scheme.
- (2) The authority shall, if directed to do so by the Secretary of State, require the Audit Commission for Local Authorities and the National Health Service in England and Wales to make arrangements in accordance with section 29(1)(d) of the Local Government Finance Act 1982 for certifying such statement or statements prepared by the authority under section 122 of this Act as may be specified in the directions; and for the purposes of section 29(1)(d) of that Act any statement under section 122 of this Act shall be treated as a return by the authority.
- (3) The arrangements made by the Audit Commission in pursuance of subsection (2) shall include arrangements for sending a copy of any such statement or statements as so certified to the Secretary of State.
- (4) Directions given under subsection (2) may relate to any local education authority or to local education authorities generally or to any class or description of such authorities.

124 Financial statements in respect of special schools not covered by statements under section 122

- (1) A local education authority shall prepare, in respect of each financial year during the whole or any part of which they maintain one or more relevant special schools, a statement of the financial provision initially planned by them in respect of the year for that school or those schools.

- (2) For the purposes of this section a “relevant special school” is any special school other than one in relation to which (by virtue of any provision made by regulations having effect under section 120) information is required to be included in a statement prepared by the authority in respect of the year under section 122.
- (3) Part II of Schedule 11 has effect in relation to the contents of a statement under subsection (1).
- (4) After the end of each financial year in respect of which a local education authority are required to prepare a statement under subsection (1), they shall prepare a statement containing such information in respect of—
 - (a) expenditure actually incurred in the year for the purposes of all the schools required to be covered by the statement under subsection (1), and
 - (b) expenditure actually incurred in the year which was incurred, or is treated by the authority as having been incurred, for the purposes of each such school, as may be prescribed.
- (5) Where only one school is required to be covered by the statement under subsection (1), the reference in subsection (4)(a) to all the schools is a reference to that school and subsection (4)(b) does not apply.
- (6) A statement prepared under this section shall be prepared in such form, and published in such manner and at such times, as may be prescribed.
- (7) The authority shall provide the governing body of any school required to be covered by a statement under subsection (1) in respect of a financial year with a copy of each statement prepared by the authority under this section in relation to that year.
- (8) A governing body provided with a statement under subsection (7) shall secure that a copy of it is available for inspection (at all reasonable times and free of charge) at the school.

Financial delegation apart from schemes

125 Required financial delegation apart from schemes

- (1) In respect of any period during which a county, voluntary or maintained special school does not have a delegated budget, the local education authority shall make available a sum of money which (subject to subsection (2)) the governing body of the school are to be entitled to spend at their discretion during that period—
 - (a) on books, equipment and stationery; and
 - (b) on such other heads of expenditure (if any) as the authority may specify or as may be prescribed.
- (2) In spending that sum the governing body shall comply with such reasonable conditions as the authority think fit to impose.
- (3) The governing body may, to such extent as they may specify, delegate their powers in relation to that sum to the head teacher.
- (4) Before making any regulations for the purposes of subsection (1), the Secretary of State shall consult—
 - (a) such associations of local authorities as appear to him to be concerned; and

- (b) any local authority with whom consultation appears to him to be desirable.

Financial delegation and new schools

126 Financial delegation and new schools

Schedule 12 has effect for the purpose of applying the other provisions of this Chapter in relation to new schools.