

EXPLANATORY MEMORANDUM TO
THE CHARGES FOR MUSIC TUITION (ENGLAND)
REGULATIONS 2007

2007 No. 2239

- 1.** This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 Section 451(2) of the Education Act 1996 contains the general prohibition on charging for education provided at a maintained school during school hours. These Regulations, made under section 451(3), provide that a charge may be made in respect of tuition in singing or in playing a musical instrument, if it is provided at the request of a pupil's parent and is provided to individual pupils or to groups of two or more pupils. No charge may be made in respect of a pupil who is a looked after child within the meaning of section 22(1) of the Children Act 1989.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 451(2) of the Education Act 1996 contains the general prohibition on charging for education provided at a maintained school during school hours. Section 451(3), as enacted, provided that sub-section (2) did not apply in relation to tuition in playing a musical instrument, where that tuition was provided to individuals or groups of not more than four pupils, unless it was required as part of the syllabus for a prescribed public examination, or was required to be provided in pursuance of the National Curriculum.

4.2 Section 56 of The Education and Inspections Act 2006 substituted a new sub-section (3), which provides that Regulations may prescribe circumstances in which subsection (2) does not apply in relation to tuition in singing or in playing a musical instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The new charging regulations for music tuition during the school day provide the possibility of tuition in groups of any appropriate size and allow charging for vocal tuition. This does not include music tuition which takes place as part of the National Curriculum or as part of the first time in which the whole class engages with the KS2 programme of Instrumental and Vocal Tuition or Wider Opportunities.

7.2 A number of instrumental learning activities – such as steel drumming – make little sense in groups of four or less and moving too soon from a whole class instrumental experience to a small group or individual one may not always be appropriate. Freeing up the group size for which charges may be made will allow instrumental and vocal teachers to make sensible choices about group size based on pedagogy rather than economics.

7.3 The desired outcome is genuine equality of access and affordable tuition for all pupils who wish to continue to receive specialist tuition as part of enrichment activities. Enabling any appropriately sized group of pupils to be taught will also go some way towards addressing the shortfall in the number of specialist music teachers needed to achieve the Government's pledge of instrumental and vocal tuition for any primary school pupil who wants to learn and, where appropriate, allow more pupils to be taught at less cost per head. The instrument is being made to address anomalies in present legislation which hamper progress in giving more children opportunities for music education in schools.

7.4 The instrument ensures that looked after children will not be charged for specialist music tuition which takes place during the school day.

7.5 This instrument builds upon the Government's pledge that over time every child at Key Stage 2, who wants to, should have the opportunity to learn to sing or play a musical instrument. This is known as the KS2 programme of Instrumental and Vocal Tuition or Wider Opportunities. Once children have had this opportunity many will develop an enthusiasm for music and want to continue tuition with a specialist teacher. By removing the restrictions on charging for specialist vocal and instrumental tuition which takes place during the school day, more children will be able to access specialist music tuition. The instrument does not allow charging for the first time in which the whole class engages with the KS2 programme of Instrumental and Vocal Tuition (Wider Opportunities) or music tuition as part of the National Curriculum.

7.6 The instrument also complements the additional resources which the Government has put into music education in schools in recent years. Over 2006-2008 the Government provided £30 million to support the KS2 Programme of Instrumental and Vocal Tuition. This included £2m for a national professional development programme for those involved in teaching music in primary schools and £2m for a national instrument purchase and repair fund.

7.7 Not to make these changes would have run the risk of not being able to ensure that the Government pledge that, in time, all primary school children who want to should have the opportunity to learn a musical instrument. Cost considerations and the availability of specialist teaching staff are barriers to meeting the demand for this tuition.

7.8 There were 26 responses to the consultation which have broadly welcomed the amendment. Media attention has been limited.

7.9 The change is politically important in terms of increasing access to specialist music tuition.

7.10 In the debate in the House of Lords on 30 October 2006 (Hansard column 130), a number of undertakings were made in respect of this instrument. Governing bodies and local authorities are required to have remissions policies in place for any charging policies, and it will be made clear in our guidance that this should apply to those children whose families genuinely find it difficult to afford specialist music tuition. In our guidance we are asking governing bodies and local authorities to ensure that no child currently receiving specialist tuition is disadvantaged by the introduction of new charging structures.

Consultation

7.11 A consultation was set up on the Department's consultation website from 28 March 2006 to 20 June 2006. Respondents included music services, parents, local authorities and teachers. 52% of respondents agreed that the proposed amendment met the Department's aim to ensure genuine equality of access and affordable tuition for all pupils who wish to receive specialist music tuition.

7.12 67% of respondents thought that children who are currently receiving free specialist music tuition under the current legislation should continue to do so once the new regulations come into force. However, comments made by respondents suggested that allowing local flexibility on this matter would be a more appropriate option. Guidance to accompany the regulations will set out ways in which local authorities and governing bodies might want to deal with these situations such as the phasing in of charges and ensuring that those who should be covered by a remissions policy are.

7.13 Overwhelmingly, respondents thought that issues such as group size, lesson length, cost and provision for gifted and talented children and those with special educational needs should be dealt with flexibly on a local basis.

Guidance

7.14 Guidance on this instrument and what it means for schools, local authorities and parents will be available. The changes will be publicised through Teachernet, the Federation of Music Services, the DCSF website and the Music Manifesto website as well as relevant music subject associations.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector .

9. Contact

Charlotte O'Connor at the Department for Children, Schools and Families Tel: 020 7925 8317 or e-mail: charlotte.o'connor@DCSF.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

Charges for Music Tuition

Proposal

Regulation making power for charges for music tuition

Objective

To set out in regulations the circumstances in which charges can be made for instrumental and vocal charging

Rationale

To address anomalies in charges for music education and to widen access to specialist tuition.

Costs

Believed to be cost neutral – charges to pupils will be expected to reflect the actual costs of providing tuition. The cost of providing free tuition for children in care is likely to be £3.4m per year based on 70% of children in care at KS2 going on to learn an instrument in a one to one 30min lesson at a cost of £27 per hour.

Benefits

Allowing charges for vocal tuition will open opportunities for specialist tuition which currently do not exist. Removing the restriction on group sizes will increase access and reduce the cost per head for instrumental lessons.

PURPOSE AND INTENDED EFFECT

Objective

To provide a regulation making power through which the circumstances in which charges can be made for music tuition.

Background

1. Current legislation does not allow for charges to be made for any vocal tuition or for instrumental tuition in groups of over four pupils.
2. A restriction to groups of four pupils affects the overall numbers of pupils that can benefit from instrumental tuition.
3. Demand has grown for singing lessons to be provided in exactly the same way as ones for other instruments – in large and small groups, pairs and for individuals but these cannot be

provided because of the inability to charge. Seeing the voice as anything other than another instrument is inappropriate.

Rationale for government intervention

4. Regulations would allow charges to be made for pupils receiving vocal or instrumental tuition, individually or in any size group only where a pupil, after an initial introduction to an instrument or singing, chooses to take their learning further (i.e. no charge to be made for the whole class singing or instrumental activity that many schools now provide as a taster of learning music).

5. Providing the possibility of tuition in larger groups and allowing charging for vocal tuition will provide greater access for pupils to pursue vocal or instrumental tuition. The change would also allow more pupils to be taught and at less cost per head. Larger groups enable the cost per head to reduce

- Enabling larger groups to be taught will go some way towards addressing the shortfall in the number of specialist music teachers needed to achieve the Government's pledge of instrumental and vocal tuition for any primary school pupil who wants to learn. If, as experience shows, 70% of children want to take learning further after first exposure to and instrument around 2000 extra teachers would be needed to meet the demand of just one year group continuing after their first year.
- A number of instrumental learning activities – such as steel drumming – make no sense in groups of only up to four pupils. Freeing up the group size for which charges may be made will allow instrumental and vocal teachers to make sensible choices as to group size based on pedagogy rather than economics.

CONSULTATION

Public Consultation

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- We undertook a formal public consultation through the DfES consultation website. 26 responses were received and the majority were broadly supportive of the proposed amendment. Respondents included music services, parents, local authorities and teachers – the key constituents for this amendment.
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- The majority of respondents thought that children who were receiving free tuition before 1 September 2007 should be able to continue learning under the same conditions after the regulations come into force. However, from the comments made by respondents requesting further legislation and guidance on this matter, the result was that this would not be included in the regulations but would be dealt with in the guidance. The consultation result clarified that other issues such as specifying group size, lesson length and cost should be decided at a local level. Respondents were concerned about the

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OPTIONS

Not to legislate runs the risk of not being able to ensure that the Government pledge that, in time, all primary school children who want to should have the opportunity to learn a musical instrument. Cost considerations and the availability of specialist teaching staff are barriers to meeting the demand for this tuition.

A change could have been made to the Primary legislation to enable charges for vocal tuition and groups of all sizes, but opting for a regulation making power enables a flexibility for the future where changes can be made more easily through secondary legislation if issues arise that suggest changes need to be made.

COSTS AND BENEFITS

Sectors and groups affected

The legislation will affect all providers of specialist music tuition be that schools, Local Authority Music Services or individual professionals. It will also affect the parents of pupils who wish to take up specialist vocal or instrumental tuition.

Benefits

It will help to ensure that the current supply of music specialists can meet the demands of a larger number of pupils wishing to learn instruments (including voice) and that the costs of that tuition are more manageable for parents.

Costs

This legislation is thought to be largely cost-neutral. It is expected that the costs to pupils will reflect the actual costs of providing the tuition. The only element of the legislation which may have cost implications for local authorities and schools is that which relates to the provision of free tuition for children in care. The most significant cost implication will be at Key stage 2 following the first experience of whole class instrumental and vocal tuition as part of the KS2 Instrumental and Vocal Tuition Programme or Wider Opportunities.

Of the 60,000 children in care at any one time the number of children who are also at KS2 results in a target group of around 12,000. Experience has shown that, having received an introduction through whole-class tuition, around 70% of children wish to continue their learning to a higher level. Assuming that this holds true for children in care we would be looking at providing tuition for around 8,400 children – increasing each year as new learners come on stream. This will take the form of group or one to one lessons. According to the 2005 survey of music services only 24% of children and young people taught through the music services are taught one to one. There are pedagogical reasons as well as financial ones as to why this is so. It appears (from a recent Music Industries Association study) that around the same number of children who learn through school learn through private tuition – which is more likely to be one to one.

If we were to pursue the possibility of all KS2 children in care for more than a year who want to learn a musical instrument receiving one to one private tuition this would be likely to cost around £3.4m per year for the lessons. $[8,400 \times 30\text{mins} \times 30 \text{ lessons} \times £27 \text{ per hour}]$ This equates to £405 per child per year.

However, it is likely that some local authorities and schools will already have remissions policies in place for children in care and therefore there will be no additional cost implication for those children. In addition, some children in care who want to continue instrumental or vocal tuition will do so in a group lesson and therefore the cost should be less than £27 per hour.

ENFORCEMENT, SANCTIONS AND MONITORING

Implementation of the charging regulations will be for local determination taking account of the needs of the children and young people in the local area. The Department will monitor the

effects of charging policies through the bi-annual survey of Music Services and the subject inspections by Ofsted. If there is evidence that the ability to charge for vocal and instrumental tuition is being used inappropriately then the Department will consider amending the regulations to tighten up on the circumstances in which charges can be made.

IMPLEMENTATION AND DELIVERY PLAN

Regulations and guidance will be drafted, consulted on and finalised by the Summer term 2007. The regulations will come into force in September 2007 and it will be for local determination how to introduce charges or changes to current charging policies.

POST-IMPLEMENTATION REVIEW

The Government will review how the new charging regulations are being implemented through its bi-annual survey of Music Services and through Ofsted subject inspections on music.