



Department
for Education

Clarifying the Specific Grant and Ring-fenced Status of the Dedicated Schools Grant (DSG)

Government Consultation Response

January 2020

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Introduction

The Department for Education consulted on changing the conditions of grant and regulations applying to the Dedicated Schools Grant (DSG), in order to clarify that the DSG is a ring-fenced specific grant separate from the general funding of local authorities, and that any deficit an authority may have on its DSG account is expected to be carried forward to the next year's schools budget and does not require to be covered by the authority's general reserves.

The public consultation exercise sought views on making such changes relating to the DSG and allowed respondents to express comments, views or concerns.

Who this was for

The following stakeholders were identified:

- Local Authorities (LAs) in England
- Schools Forums
- Those who audit LAs in England
- Other interested parties

Consultation period

The consultation took place from 11 October 2019 to 15 November 2019. It was conducted online using the government's consultation software, or alternatively, respondents were able to email or send a response form.

About the consultation

Context

Since 2006 the Department for Education has funded local authorities for their current expenditure on schools, early years and children and young people with high needs through a specific grant known as the Dedicated Schools Grant (DSG), made under section 14 of the Education Act 2002. This specific grant must be spent on the local authority's Schools Budget, which is defined in regulations (currently the School and Early Years Finance (England) (No 2) Regulations 2018).

At the end of each financial year, a local authority may have underspent or overspent its DSG allocation. The conditions of grant for the DSG provide that any underspend must be carried forward to the next year's Schools Budget. To date, the conditions of grant have provided three options for dealing with an overspend:

- the local authority may decide not to fund any of the overspend from its general resources in the year in question, and to carry forward all the overspend to the schools budget in future years
- the local authority may decide to fund part of the overspend from its general resources in the year in question, and carry forward part to the schools budget in future years
- the local authority may decide to fund all of the overspend from its general resources in the year in question

Carrying forward an overspend to the schools budget in future years requires the consent of the local schools forum, or if that is not forthcoming the authorisation of the Secretary of State. In practice, schools forums have almost always approved the carrying forward of an overspend.

Until the last few years, few local authorities were recording DSG overspends, and those overspends were small. However, pressures on the high needs budget have led to more and larger overspends in recent years. Local authorities' budget data for 2019-20 recorded that at the end of 2018-19, about half of all authorities experienced an overspend, amounting to over £250m in all, while others were still carrying forward surpluses. The national net position was an overspend of £40m, and authorities were forecasting that there would be a net overspend of £230m at the end of 2019-20.

The Government announced at the end of August 2019 that funding for schools and high needs will rise by £2.6bn for 2020-21, £4.8bn for 2021-22, and £7.1bn for 2022-23, compared to 2019-20. This includes £780m extra for high needs in 2020-21: the division of funding between schools and high needs for 2021-22 and 2022-23 has yet to be determined. This additional funding will help many local authorities to bring their DSG

accounts into balance, but a number of authorities will already have substantial deficits at the end of 2019-20 and will not be able to recover them immediately.

The DSG is a specific grant, and the conditions of grant make clear that it can only be spent on the Schools Budget, and not on other aspects of local government expenditure. But where there is an overspend on the DSG, local authorities may currently decide to fund that from general resources. This has led some local authority Chief Finance Officers (often referred to as section 151 officers, with reference to section 151 of the Local Government Finance Act 1972) to conclude that if their DSG account is in deficit, they need to be able to cover the deficit from the authority's general reserves. We know that a similar view is held by organisations that audit local authority accounts. Given the size of some authorities' DSG deficits, and the other pressures on authorities' reserves, there is a risk that covering DSG deficits from general funds may lead authorities to make spending reductions in other services that they would not otherwise make.

The Government's intention is that DSG deficits should not be covered from general funds but that over time they should be recovered from DSG income. No timescale has been set for the length of this process.

The Department held discussions with the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Ministry of Housing, Communities and Local Government (MHCLG) about changes that we might make to the DSG conditions of grant and the regulations in order to create certainty that local authorities will not have to pay for DSG deficits out of their general funds. The proposals that we made in the consultation following these discussions are described below, and were intended for implementation from the start of the financial year 2020-21, so that local authorities would take them into account in setting budgets for 2020-21.

Proposals

We proposed to change the conditions of grant for the DSG with effect from the end of the financial year 2019-20 (ie, any overspend at the end of 2019-20 will fall under the new arrangements). This was therefore expected to inform and affect budget setting processes for 2020-21, as well as the presentation of reserves in the annual accounts for 2019-20. Subject to the outcome of consultation, we proposed that future arrangements for dealing with overspends would be worded as follows:

- the local authority must carry forward the whole of the overspend to the schools budget in future years;
- the local authority may not fund any part of the overspend from its general resources, unless it applies for and receives permission from the Secretary of State to do so.

The main reason for including the second bullet was that some local authorities have traditionally made small contributions from their general fund to some elements of the schools budget, unconnected to considerations relating to DSG deficits, and we would not wish to prevent this in future.

On this we asked:

Question 1: Do you agree that we should change the conditions of grant so that future arrangements for dealing with DSG overspends are worded as follows:

- the local authority must carry forward the whole of the overspend to the schools budget in future years;
- the local authority may not fund any part of the overspend from its general resources, unless it applies for and receives permission from the Secretary of State to do so.

As noted in the context section, carrying forward an overspend to the schools budget in future years currently requires the consent of the local schools forum, or if that is not forthcoming the authorisation of the Secretary of State. This is set out in [regulations 8\(6\) and 8\(10\) of the School and Early Years Finance \(England\) \(No 2\) Regulations 2018](#). If the conditions of grant are changed so that the local authority must carry forward the whole of any DSG overspend to the schools budget in future years, it would no longer make sense to require the schools forum to agree such a carry forward. We therefore proposed to delete regulations 8(6) and 8(10) from the new regulations for the financial year 2020-21. On this we asked:

Question 2: Do you agree that we should delete regulations 8(6) and 8(10) from the new School and Early Years Finance (England) Regulations for the financial year 2020-21, so that local authorities are able to carry forward any DSG overspend to the schools budget in future years as the new conditions of grant will require?

The purpose of making these changes to the conditions of grant and to the regulations was to establish clearly that local authorities would not be required to cover any DSG deficit from general funds, and therefore do not need to have free general reserves available to match the deficit. On this we asked:

Question 3: Do you agree that the proposed new conditions of grant and regulations will establish clearly that local authorities will not be required to cover any DSG deficit from general funds?

Summary of responses received

This section summarises the responses that we received to the consultation. It is followed by a more detailed account of responses to Question 1, 2 and 3.

In total there were 153 responses to the consultation, though one respondent did not answer any of the three questions.

A list of the organisations that have responded can be found at Annex A, other than those who asked for their response to be kept confidential. 91 of the responses were from LAs, 8 from schools forums and 52 from other bodies. “Other” respondents included maintained schools, academies, parents and SEND campaigning organisations. One LA auditor responded – Grant Thornton.

There was a substantial majority among all respondents in favour of all three proposals, ranging from 73% on Question 2 to 59% on Question 3. The majority in favour among LAs was even bigger, ranging from 91% on Question 2 to 65% on Question 3.

The most common reasons for opposing the first proposal were that it would reduce local authority autonomy and a concern that it might prevent local authorities from meeting the needs of pupils with special education needs and disabilities (SEND). Opposition to proposal 2 came mostly from schools. A number of local authorities supported proposal 1 but said this was subject to comments they had made under Question 3 about the need to strengthen the proposed arrangements to satisfy Chief Finance Officers and auditors.

Question analysis

Question 1

Do you agree that we should change the conditions of grant so that future arrangements for dealing with DSG overspends are worded as follows:

- the local authority must carry forward the whole of the overspend to the schools budget in future years;*
- the local authority may not fund any part of the overspend from its general resources, unless it applies for and receives permission from the Secretary of State to do so.*

Response	Number	%	Local authority	Schools forum	Other
Yes	102	67	76	3	23
No	39	25	7	5	27
Not sure	11	7	7	0	4
Not answered	1	1	1	0	0

Respondents who agreed with the proposal felt that this change would provide clarity about the treatment of overspends in Local Authority accounts.

The revised conditions of grant would help LAs, schools and the schools forum to have clarity about the funding available. This would facilitate discussion with schools forums and schools to ensure appropriate mechanisms are in place to minimise the risk of future DSG pressures and increasing DSG deficits. This would be particularly important with regard to the High Needs Block where many LAs are experiencing significant pressures.

Several respondents called for the Department to issue guidance on expected actions by LAs, schools and schools forums in terms of managing the length of time deficits are held for, actions required, and monitoring of progress.

Many respondents who agreed with the proposal and some who were not sure said that the proposal needed to be strengthened, so that it was clearer both that the requirement to carry a deficit forward from year to year was statutory and that the Department would if necessary assist LAs who were unable to clear a historic deficit from their future DSG income.

The majority of respondents who disagreed with the proposal were bodies other than

LAs and schools forums. One concern was that mainstream schools would ultimately suffer if an LA continues to carry a DSG deficit, and would need to contribute to eliminating the deficit. Another was that LAs would not be able to carry out their high needs duties if they were unable to draw on general funds.

Some respondents requested that reforms to the management of overspends on the DSG should be postponed until the Department has completed the SEND review.

Some LAs considered that the proposal was taking away their autonomy to manage their own budgets and opposed the principle of doing that.

Question 2

Do you agree that we should delete regulations 8(6) and 8(10) from the new School and Early Years Finance (England) Regulations for the financial year 2020-21, so that local authorities are able to carry forward any DSG overspend to the schools budget in future years as the new conditions of grant will require?

Response	Number	%	Local authority	Schools forum	Other
Yes	111	73	83	4	24
No	33	22	4	4	25
Not sure	8	5	3	0	5
Not answered	1	1	1	0	0

Respondents who agreed with the proposal commented that it made sense that if DSG overspends had to be carried forward, it should not be within the power of the local schools forum to block the carry forward. The change would provide clarity and all LAs and school forums would work on the same basis.

Respondents who disagreed with the proposal did so mostly on the basis that the LA should not be prevented from using general funds to cover overspends in the schools budget. Some also commented that the schools forum should still have a role in this process so that there is adequate governance for DSG spending, or that local checks and balances through the schools forum were important.

Question 3

Do you agree that the proposed new conditions of grant and regulations will establish clearly that local authorities will not be required to cover any DSG deficit from general funds?

Response	Number	%	Local authority	Schools forum	Other
Yes	90	59	59	5	26
No	40	26	20	2	15
Not sure	21	14	11	1	9
Not answered	2	1	1	0	1

The majority of the respondents answered yes to this question, but there were additional comments such as:

- it is important that the overall DSG High Needs funding allocation is sufficient.
- the consequences for all residents including vulnerable children and adults of enforcing conditions that pass liability onto the LA would be very serious - if local authorities were required to fund DSG overspends from the General Fund, it is not inconceivable that this could lead the S151 officer to issue a S114 notice (a S114 notice is a declaration that an LA's expenditure in a financial year is likely to exceed the resources available to it to meet that expenditure).
- if DSG deficits can therefore only be recovered from future DSG income it will be crucial that timescales for this recovery are set by the LA (in consultation with the schools forum) and submitted for approval by the DfE.

Many of those who answered no to the question said that the proposals would need to be amended, in particular to strengthen the statutory backing for the ring-fence. A few bodies other than LAs or schools forums claimed that the proposals could prevent LAs from carrying out their legal duty to fund SEN provision.

Government response

The overall response to the consultation was positive, especially on the part of LAs. Consequently the Government intends to proceed with implementing the proposals.

It was however clear from the views of key stakeholders that the proposals needed strengthening in two respects: giving statutory backing to the new ring-fence arrangements, and clarifying that, where LAs were otherwise unable to clear their DSG deficits, the Department would agree a plan of action with them to enable these LAs to pay off their deficit over time.

We are achieving this strengthening through three changes.

Statutory backing

Instead of making changes only to the conditions of grant as we had proposed in the consultation, to clarify the ring-fenced status of DSG and how DSG deficits must be handled, we are now putting provisions into the School and Early Years Finance (England) Regulations 2020 which will come into force in February 2020. We will as proposed delete regulations 8(6) and 8(10) which required schools forum approval for the carrying forward of deficits, but we will replace them with new provisions as follows:

“Schedule 2, insert new part 8 under the heading “Deficit from previous funding period”.

Expenditure in relation to any deficit in respect of the local authority’s schools budget from the previous funding period.

Insert at an appropriate place in regulation 8 new paragraphs as follows:

(x) Where a local authority has expenditure falling within Part 8 of Schedule 2, it must –

(i) deduct all of that expenditure from its schools budget

(ii) deduct such part of that expenditure as the authority may determine and carry forward the remaining part to the next funding period; or

(iii) carry forward all of that expenditure to the next funding period.

(y) A local authority may apply to the Secretary of State for authorisation under regulation 31(1) to disregard the requirements in paragraph (x)”

The impact of these statutory provisions will be that an LA with a DSG deficit from the previous year must either:

- (i) carry the whole of the deficit forward to be dealt with in the schools budget for the new financial year (deducting all of it under (x)(i) from the money available for that financial year);
- (ii) carry part of it forward into the new financial year and the rest of it into the following financial year (using (x)(ii));
- (iii) carry all of it into the following financial year (using (x)(iii)); or
- (iv) apply to the Secretary of State under (y) for authorisation to disregard the requirements in (x) if it wishes to fund any part of the deficit from a source other than the DSG.

This will make it entirely clear on a statutory basis that a DSG deficit must be carried forward to be dealt with from future DSG income, unless the Secretary of State authorises the LA not to do this.

We will still make corresponding changes to the conditions of grant to bring them into line with the regulations.

So under the new arrangements set out in the School and Early Years Finance (England) Regulations 2020 and in the DSG conditions of grant for 2020-21, LAs will have either to carry forward any cumulative deficit in their schools budget to set against DSG in the next funding period (Y+1); or carry forward some or all of the deficit to the funding period after that (Y+2), in order to determine how much resource is available to be spent during the funding period (Y+1). These arrangements will begin to operate from budget setting for the financial year 2020-21 and will therefore affect any deficits held at the end of 2019-20 (we will amend the conditions of grant to make this entirely clear). The same provisions will appear in future regulations so that LAs can continue to carry deficits forward from year to year.

The effect of these provisions is that LAs will not be permitted to fund any part of the deficit from sources other than the DSG (and any specific grants whose conditions allow them to be applied to the schools budget) without the authorisation of the Secretary of State. If a LA wishes to use other sources, it must apply to the Secretary of State for authorisation to disregard the new arrangements. We would not wish to place barriers in the way of LAs that have used other sources to supplement the DSG for particular reasons such as PFI costs; or of LAs who want voluntarily to use small annual sums in support of their high needs budgets.

Clarification of financial support for LAs

In the financial year 2020-21 the total allocated to the high needs block within the DSG is rising by 12%. Overall funding for schools and high needs, compared with 2019-20, is increasing by £4.8bn in 2021-22 and £7.1bn in 2022-23, and will need to be split between schools and high needs. In making that decision we will be mindful of the pressures on high needs.

The SEND review (see <https://www.gov.uk/government/news/major-review-into-support-for-children-with-special-educational-needs>) will also report during 2020, and has been tasked with looking at how to arrive at a fair and sustainable system of high needs support for the future.

In the context of rising high needs funding over the next few years, the Department expects that most of those LAs with a DSG deficit will be able to bring their high needs budget into in-year balance, and go on to recover the deficit by managing their expenditure within the larger DSG total. The Department will work with LAs to help them do this.

The Department recognises that this process will be difficult for some LAs. As we have previously said, we intend to review the funding formula for high needs over the next year or two, and in doing so will take account of the patterns of expenditure that LAs' deficits, alongside other evidence, will help to identify; and what they tell us about LAs' need to spend. As part of the review, we will identify any changes needed to the current formula so that it reflects LAs' need to spend.

Nonetheless, we recognise also that there may well be some LAs which, even if they can stabilise their in-year expenditure on high needs, will still not be able to pay off their historic deficit within a reasonable time. The Department will set criteria and will need convincing evidence from LAs that this is the case. Where the criteria are met, the Department will agree a plan of action with the LA to enable it to pay off its deficit over time. The plan will include appropriate additional conditions of grant designed to secure the most efficient use of resources. These would depend on the situation and context, but could include – for example – changes to local SEND policy or practice, management change or sign off of budget plans by the Department.

Dealing with cashflow problems

The new arrangements set out in this document will clarify the procedures for LAs to carry DSG deficits forward from year to year. The Department recognises, however, that LAs could experience cashflow difficulties in actually financing in-year spending. If an LA is able to prove that it has such cashflow problems, the Department will be willing to consider bringing forward funding which would then be subtracted from future years' allocations. Again, this would be subject to appropriate additional conditions of grant to secure the most efficient use of resources.

Responses on other points

Some respondents said that the proposals would reduce the autonomy of LAs. That is to a degree true, but only where the LA has a DSG deficit. We judge that this reduction of autonomy is justified in order to clarify the ring-fenced status of DSG.

Some respondents said that the schools forum should still have a role in deciding whether DSG deficits should be carried forward. We do not think that this is a practical arrangement once the carry forward becomes mandatory. LAs should however work closely with their schools forums on their plans for managing DSG deficits: we are adding that to the DSG conditions of grant.

Some respondents requested that the proposals should be postponed until after the SEND review has been completed. However, we believe that the changes will bring positive impact for local authorities in 2020-21 and should therefore be implemented now.

Some respondents argued that the burden of bringing DSG expenditure into line with resources over time would fall on mainstream schools. The Government has already set limits on the amount of resource that can be moved out of the DSG Schools Block, and intends to move further towards a hard formula, where mainstream schools are guaranteed to receive their allocations under the National Funding Formula.

Finally, some respondents argued that the changes would prevent LAs from carrying out their legal duties to fund SEND. The Department does not accept that. The duty to fund SEND under the 2014 Children and Families Act is unaffected, and the only change is that the cost must in the end be met from successive years' DSG allocations, unless the Secretary of State authorises that the LA can meet some of it from other funds.

Public sector equality duty

In making decisions on the consultation Ministers have had regard to the public sector equality duty under section 149 of the Equality Act 2010. The protected characteristic most obviously relevant to this consultation is disability. If the proposals in the consultation are not implemented, LAs are likely to come under pressure to reduce their spending, and may look particularly at making short term and unplanned reductions to spending on those with SEND. Implementing the proposals is therefore likely to be beneficial to this group. We do not believe that implementation will have a significant detrimental effect on those that share any other protected characteristic.

Next steps

The School and Early Years Finance (England) Regulations 2020 will come into force in February 2020. The Department will amend the DSG conditions of grant for both 2019-20 and 2020-21 to bring them into line with the new end-year arrangements for carrying forward DSG deficits.

CIPFA, MHCLG and the Department are working on issuing guidance about the changes.

The Department will remain in contact with those LAs who have significant DSG deficits in order to offer advice and help on their future handling: we are providing for these arrangements in the DSG conditions of grant.

Annex A: List of organisations that responded to the consultation

Local Authorities:

- Barnsley Metropolitan Borough Council
- Bath and North East Somerset Council
- Blackburn with Darwen Borough Council
- Bournemouth, Christchurch and Poole Council
- Bracknell Forest Council
- Brighter Futures for Children (on behalf of Reading Borough Council)
- Brighton & Hove City Council
- Bristol City Council
- Buckinghamshire County Council
- Calderdale Metropolitan Borough Council
- Cambridgeshire County Council
- Central Bedfordshire Council
- Cheshire East Council
- Cumbria County Council
- Devon County Council
- Doncaster Metropolitan Borough Council
- Durham County Council
- East Riding of Yorkshire Council
- East Sussex County Council
- Essex County Council
- Halton Metropolitan Borough Council
- Hampshire County Council
- Hartlepool Borough Council
- Herefordshire Council
- Hertfordshire County Council
- Isle of Wight Council
- Kent County Council
- Kirklees Council
- Lancashire County Council
- Leeds City Council
- Leicester City Council
- Leicestershire County Council
- Lincolnshire County Council
- Liverpool City Council
- London Borough of Barking & Dagenham
- London Borough of Bromley
- London Borough of Hackney
- London Borough of Havering
- London Borough of Lewisham
- London Borough of Newham
- London Borough of Richmond upon Thames
- London Borough of Sutton

- London Borough of Tower Hamlets
- London Borough of Waltham Forest
- London Borough of Wandsworth
- Manchester City Council
- Medway Council
- Milton Keynes Council
- Newcastle City Council
- Norfolk County Council
- North Somerset Council
- North Tyneside Council
- Nottingham City Council
- Nottinghamshire County Council
- Oldham Metropolitan Borough Council
- Oxfordshire County Council
- Plymouth City Council
- Redcar and Cleveland Borough Council
- Rotherham Metropolitan Borough Council
- Royal Borough of Kensington & Chelsea
- Royal Borough of Kingston upon Thames
- Rutland County Council
- Salford City Council
- Sefton Council
- Slough Borough Council
- Solihull Metropolitan Borough Council
- Somerset County Council
- South Gloucestershire Council
- South Tyneside Council
- Southend on Sea Borough Council
- St Helens Council
- Stockton-on-Tees Borough Council
- Suffolk County Council
- Surrey County Council
- Swindon Borough Council
- Thurrock Council
- Trafford Council
- Wakefield Metropolitan Borough Council
- Warrington Borough Council
- Warwickshire County Council
- Westminster City Council
- Wigan Council
- Wiltshire County Council
- Worcestershire County Council

School Forums

- Birmingham Schools Forum
- Oxfordshire Schools Forum
- Wiltshire Schools Forum
- Warwickshire Local Authority Schools Forum x2

Other Interested Parties

- Ambitious about Autism
- Buttsbury Infant School
- Buttsbury Junior School
- Castletown Primary School
- Catholic Education Service
- Central Learning Partnership Trust
- Christ Church C.E. Primary School
- Downs View School
- Effervesce
- Grant Thornton UK LLP
- Hackney Special Education Crisis
- Inclusion East, Hertfordshire
- Kemnal Academies Trust
- MFG Academies Trust
- National Deaf Children's Society
- North Worcestershire Autism Parents Support Group
- Reading local family forum
- Send National Crisis
- Send National Crisis - Hammersmith and Fulham
- Society of County Treasurers
- Society of London Treasurers
- St Catherine's Primary School
- Weald of Kent Grammar School
- Woodlands Academy School
- Wentworth Nursery School
- Wildern Academy Trust
- Valance School



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