

## Appendix C

### Consultation on the basis for the decision on the appropriate amount of Academies Funding Transfer for 2011-12 and 2012-13

#### Response of the Local Government Association

1. This is the response of the Local Government Association (LGA) to the consultation issued on 19 July 2011 on the basis for the decision of the appropriate amount of funding transfers from local authorities for 2011-12 and 2012-13 to reflect the creation of Academies. A funding transfer of £148m was incorporated in the Local Government Finance Settlement for 2011-12 and a transfer of £265m is incorporated in the provisional Settlement for 2012-13 that the government has already published.
2. The LGA understands that the government's reconsideration of the funding transfer amounts has followed legal action taken by a number of local authorities in relation to the amount included in the 2011-12 Local Government Finance Settlement.
3. The LGA notes that the consultation is stated to have as its purpose: "to set out the evidence the Secretary of State will use to consider the appropriate level of transfer and the proposed basis for calculation of the transfer"<sup>1</sup>. It is therefore extremely surprising, and a cause of the most serious concern to the LGA and its member authorities, that the consultation document:
  - a. whilst acknowledging that the government does not hold the objective data required to make a proper assessment of savings resulting from the transfer of maintained schools to Academy status, continues to assert that the cost of providing LACSEG – the Local Authorities Central Services Equivalent Grant – represents a suitable proxy measure, in the face of overwhelming evidence that this is not the case;
  - b. fails to acknowledge or take into account the significant one-off costs that local authorities incur when maintained schools transfer to Academy status;
  - c. whilst purporting to recognise the need to provide certainty and stability for local authorities about their levels of funding, discusses this issue only in relation to the allocation of the overall funding transfer amounts between authorities, and fails to mention an assurance given in writing to the LGA by the Secretary of State for Education, that "if the number of new academies is higher or lower than we predicted we will not seek to renegotiate the amount transferred because that would create more instability in the funding arrangements"<sup>2</sup>.

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<sup>1</sup> Paragraph 3 of the consultation document

<sup>2</sup> Letter dated 31 January 2011 from Rt Hon Michael Gove MP to Baroness Shireen Ritchie

4. The LGA considers that, unless these serious failings are corrected, the decision on the funding transfer taken following consultation will result in significant additional costs falling on council tax payers and will breach local authorities' legitimate expectation that, in the light of the government's New Burdens Doctrine<sup>3</sup>, funding transfers should reflect only genuine savings in local authorities' costs.
5. The LGA notes that the Department for Education has taken a provisional view that the reconsidered decision on the funding transfer is unlikely to have equalities implications. The Department's view is considered to be misplaced, and this response provides appropriate supporting evidence.
6. The LGA and its member authorities are concerned at the short time scale for the consultation, particularly as the Department for Education has now acknowledged that it does not hold sufficient objective data to make a properly considered estimate of savings that are likely to be realised by local authorities as a result of schools converting to Academy status. The limited timescale allowed has meant that a large number of member authorities' opportunities to respond to the consultation has been restricted. The consultation has taken place during the school holidays so it has not been possible to involve schools, and in many authorities key members of staff with expert knowledge of local schools finance issues have, entirely understandably, been absent.
7. The LGA considers that the appropriate basis for the calculation of the funding transfer should be an independently verified assessment of savings realisable by local authorities, net of the additional costs related to transfers of schools to Academy status. In this response we propose different ways in which this basis could be applied in relation to decisions about local authority funding. In the short time available for consultation it has not been possible for a fully considered assessment of savings to be prepared. However, it is clear that the LACSEG-based figures of £360m-£375m for 2011-12 and £580m-£680m for 2012-13 set out in paragraphs 51 and 53 of the consultation paper would represent massive over-estimates of the appropriate funding transfers.
8. Our response is structured as follows:
  - a. The evidence that is required to be taken into account to ensure that the funding transfer is calculated in accordance with the legitimate expectation set by the New Burdens Doctrine.
  - b. The inappropriateness of the Department for Education's use of s.251 returns to arrive at a LACSEG-based proxy measure of savings.
  - c. Alternative ways of working out the transfer which the LGA thinks could reasonably estimate the correct savings net of costs.
  - d. Equalities implications.
  - e. The way forward, including implications for local authority funding in 2011-12 and 2012-13 and the manner in which assurances already given in relation to stability of funding should be taken into account.

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<sup>3</sup> <http://www.communities.gov.uk/publications/localgovernment/newburdens2011>

- f. Other issues, including splitting of pensions deficits.

### **The funding transfers and the New Burdens Doctrine**

9. Paragraph 2.1 of the New Burdens Doctrine states that “To ensure that the pressure on council tax is kept down, the net additional cost of all new burdens placed on local authorities...by Central Government must be assessed and fully and properly funded”. It is made clear that “Savings from reduced burdens should be discussed with the local authority associations and agreed ... in the same way as the costs associated with new burdens”<sup>4</sup>. The Doctrine states that general efficiency savings within local authorities are not an appropriate source of funding for new burdens<sup>5</sup>, and that transfers of funding from local government in respect of savings should not exceed a proper measure of the net savings to local authorities<sup>6</sup>. It also emphasises the importance of providing adequate time for likely costs/savings to be properly assessed<sup>7</sup>, and the desirability of independent corroboration of estimates of costs/savings<sup>8</sup>.
10. The new policies introduced by the Academies Act 2010 represented, as the consultation document notes, a significant change. It might therefore be reasonably expected that there would, in accordance with the New Burdens Doctrine, be timely and full consultation with local authorities and their representative association. It would also be reasonable to expect that, given the amounts of the funding transfers originally proposed, the Department for Education would have taken steps to obtain objective data to allow for an assessment of savings that would stand up to independent scrutiny and validation. Neither the original nor this second consultation has met those reasonable expectations. In the opinion of the LGA, the New Burdens Doctrine needs to be properly applied in order to assess the estimated savings, and additional costs of the Government’s academies policy. It is unreasonable and irrational to proceed on any other basis.
11. The premise of the consultation document is that the services for which LACSEG is being paid are double funded<sup>9</sup>. The LGA considers, on the basis of evidence that it has obtained from its member authorities, that there is no direct correlation between the cost to the Government of providing LACSEG and the savings that authorities actually make. Even if there is some saving, that does not amount to ‘double funding’. The consultation document goes on to assert that the cost to the DfE of the so-called ‘double funding’ is £151m per annum. It may well be that the academies programme is costing more money, but this is a reflection of the new government policy and there is no basis for an assumption that local authorities’ costs have as a result been reduced by the same amount.

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<sup>4</sup> Paragraph 5.23 of the New Burdens Doctrine

<sup>5</sup> Paragraph 5.24 of the New Burdens Doctrine

<sup>6</sup> Paragraph 5.28 of the New Burdens Doctrine

<sup>7</sup> Paragraph 5.20 of the New Burdens Doctrine

<sup>8</sup> Paragraph 5.22 of the New Burdens Doctrine

<sup>9</sup> Paragraph 14 of the consultation document

12. The consultation document refers<sup>10</sup> to the original estimation in the Impact Assessment of 26 May 2010 of the impact of the Academies Bill 2010 on the savings that local authorities could make. At that time it was stated that “as the marginal cost of providing support to an additional school will be close to zero for the vast majority of local authorities...therefore we assume that the saving to the local authorities will be negligible.” Although the Department now states that the figures in this estimate are understatements it does not refer to any evidence and does not provide a way of reconciling its previous statement to Parliament in the 2010 Impact Assessment and the provisional view now taken in the consultation document<sup>11</sup>, that ‘it is reasonable to conclude that local authorities should be able to make savings which are ... commensurate with the cost to DfE of providing LACSEG’. The conclusion that the Department now draws is considered by the LGA to be completely unsupported by evidence, and irrational.
13. The consultation document states<sup>12</sup> that “the cost of LACSEG to DfE ... **will inform** the Secretary of State’s estimate of the appropriate reduction to local government funding” (emphasis added). A critique of the Department’s calculation of LACSEG per pupil figures is provided below. However, the apparent preconception on the part of the Secretary of State that the cost of LACSEG to DfE should have relevance as measure of the funding transfer, as opposed to a reasonable estimate of the savings to local authorities, is contrary to the New Burdens Doctrine. This is a matter of great concern to the LGA.
14. It is of equal concern that, in various other places, the consultation document either purports to play down the importance of the New Burdens Doctrine or misapplies the Doctrine. Paragraph 27 of the consultation document states, that “although the main focus of the New Burdens Doctrine is on transfers from central to local government it also makes clear that when a function is transferred from local authorities to central government a financial transfer may be made to the relevant Department”. This is misleading. It is clear that the New Burdens Doctrine applies to savings from transfers of function away from local government just as it does to transfers of functions to local government. The focus of the New Burdens Doctrine is on the avoidance of additional pressure on council tax levels as a result of government policy change, not on one particular kind of policy change resulting in transfers of responsibilities to local government.
15. Paragraph 28 goes on to state that the government will take account of the extent to which the costs to Academies who have to undertake the transferred functions without support to local authorities are analogous to the savings which can be made to local government through no longer having to provide functions to Academies, and the income which can be generated by local authorities through selling their services to Academies; this is also referred to in paragraph 32. This approach does not accord

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<sup>10</sup> Paragraph 17 of the consultation document

<sup>11</sup> Paragraph 34 of the consultation document

<sup>12</sup> Paragraph 25 of the consultation document

with the New Burdens Doctrine as the question of how academies are remunerated for additional functions is a separate matter, and an irrelevant one in the absence of a clearly evidenced connection with savings to local authorities.

16. Paragraphs 28 and 32 also refer to income which can be generated by local authorities through selling their services to Academies. The Department states that it proposes to “take into consideration the opportunity for additional income when estimating the savings which local authorities will make ...”. This approach is not in accordance with the New Burdens Doctrine as, firstly, whether Academies will purchase services from local authorities is largely outside authorities’ control and in any event:
  - a. costs may be incurred in setting up a buy-back service, and administering it, which will have to be borne by the authority; and
  - b. experience has shown that this only happens for a limited number of services; for example school improvement.
17. Paragraphs 29-31 of the consultation document discuss the basis on which local authorities are funded for education services. It is noted that funding is predominantly on a per pupil basis. Paragraph 30 states that there is little evidence of a direct link between pupil numbers and spend per pupil, going on to state that the size of a local authority explains only 3% or 1% of the variance in spend per pupil respectively. This indicates, the document asserts, that there are not necessarily economies of scale in practice as pupil numbers fall and that a local authority can be expected to reduce its own spend on central services.
18. The data behind this statistical assertion are not stated, and it is therefore not possible to test its robustness. However, figures for Local Authority budget LACSEG per pupil for the academic year 2010-11 have been published<sup>13</sup> and analysis of this data indicates a statistically significant inverse correlation between the Local Authority LACSEG per pupil amount and the number of pupils in the authority, at both primary and secondary levels. In other words, an authority with larger numbers of pupils is more likely to report a relatively lower Local Authority LACSEG per pupil amount. This contradicts the view expressed in paragraph 30 of the consultation document that there are not necessarily diseconomies of scale as pupil numbers fall. In fact, on this alternative analysis, the potential diseconomies of scale are substantial, particularly for larger authorities<sup>14</sup>. However the LGA would argue that the extent to which there are economies of scale is an empirical question to be determined by measuring the evidence of how local authorities deal with reductions in

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<sup>13</sup> Details at

<http://media.education.gov.uk/assets/files/xls/l/lacseg%20numbers%20for%20local%20authorities.xls>

<sup>14</sup> As an example, an authority with 40,000 secondary school pupils might be expected to report 2010-11 Local Authority LACSEG per pupil of £260.86 (based on 2009-10 budget data). If 1,000 pupils moved to an academy school, the implied **maximum** saving per pupil is only £171.16. Given the practical issues discussed elsewhere in this paper, the actual saving immediately realisable would be expected to be considerably less.

pupil numbers. This is an integral part of the correct application of the New Burdens Doctrine.

19. On the basis of its analysis in paragraphs 25-32 of the consultation document, and after noting that central government does not hold sufficient appropriate objective data from which it could straightforwardly estimate savings for local authorities, the Department takes a provisional view that local authorities should be able to make savings which are commensurate with the reduction in responsibilities which a transfer of schools to academy status entails and which is commensurate with the cost to the DfE of providing LACSEG. Therefore the Secretary of State proposes to calculate the appropriate reduction in local authority funding on the basis that it should reflect the cost to the DfE of providing LACSEG.
20. As the comments above have demonstrated, the analysis by which the Department reaches this view is fundamentally flawed. It fails to pay proper regard to local authorities' legitimate expectation that the funding transfer will be assessed with proper regard to the New Burdens Doctrine and it reaches conclusions on diseconomies of scale that do not accord with reasonable analysis of the available evidence. In summary, the LGA disagrees with the conclusions drawn because:
  - a. The DfE has not presented any objectively justifiable evidence that local authorities should be able to make savings as a result of no longer having to provide some services to academy schools;
  - b. Further, if there are any savings, the DfE has not presented any evidence (nor reasonable justification) for its conclusion that the savings are commensurate with the reduction in the responsibilities and the cost to the DfE of providing the LACSEG; and
  - c. The conclusion is merely an assertion, relying on flawed statistical analysis, that the Academies Funding Transfer should reflect the cost of LACSEG to the DfE without any consideration being given to the fairness and reasonableness of the approach.
21. Even if the Department's conclusion was a reasonable one, it would not represent a satisfactory basis for derivation of the appropriate funding transfer because it fails to take account of a number of evidential factors, raised by our member authorities, that would imply lower realisable levels of savings. These factors include the following:
  - a. Evidenced diseconomies of scale.
  - b. Evidence that maintained schools which are now becoming or applying to become academies are usually higher performing than the average schools in the area; therefore these schools may have less need for central services. This reflects both the policy to allow good and outstanding schools to convert first and experience that, in practice, schools with higher levels of need are more reluctant to leave the support of the local authority. In short, converting schools tend to carry a lower than average share of central costs.
  - c. Local authorities may have entered into contracts with third parties for the provision of some of the services concerned and the terms of

those contracts may not allow for the contractual price payable to be reduced, or reduced on a proportionate basis, where it is no longer necessary to supply the services to a particular school.

- d. Significant one-off costs associated with Academy conversions.

### **Inappropriateness of the proposed LACSEG based measure of savings**

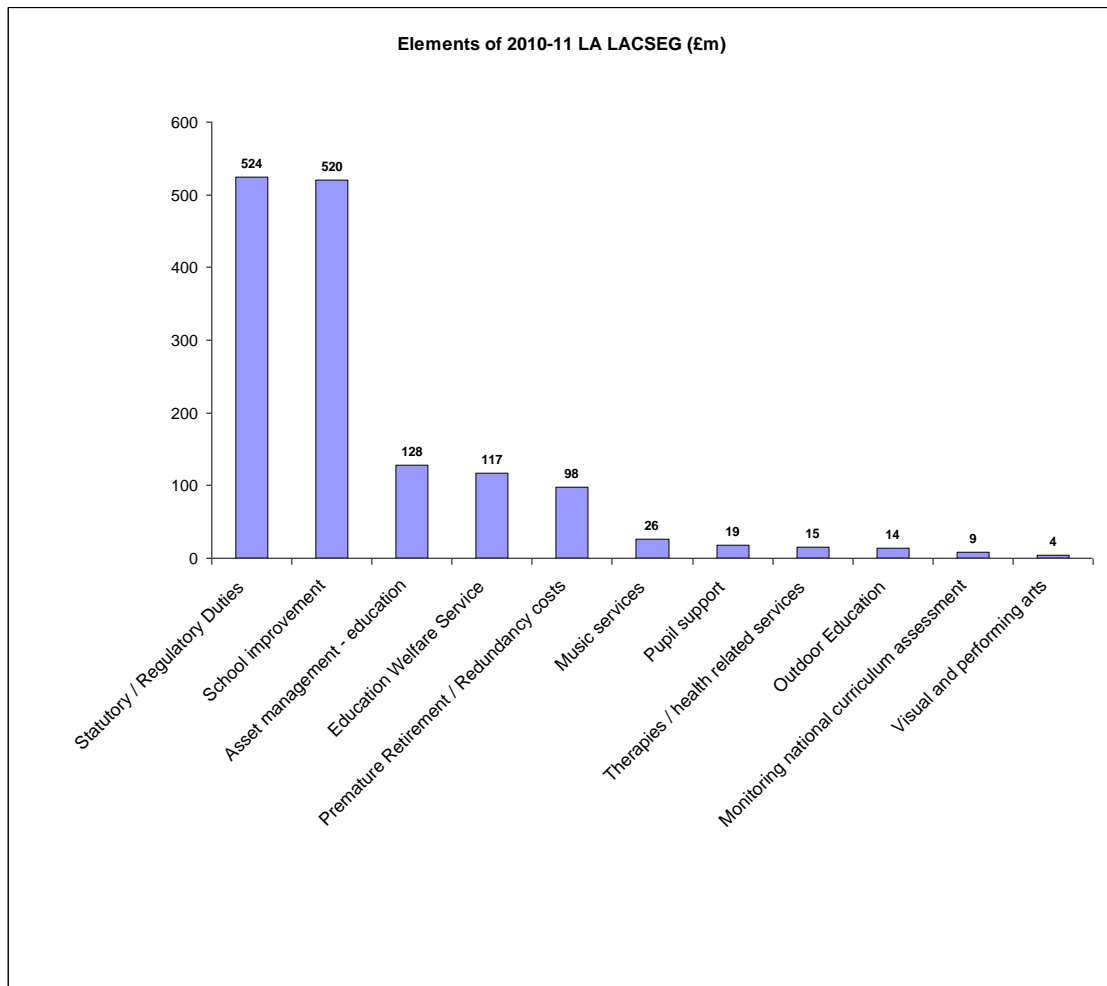
22. In the following section we explain why the proposed LACSEG based method of estimating savings is inappropriate for the purposes of applying the New Burdens Doctrine.
23. The Department's estimate of LA LACSEG per pupil is derived using a complex calculation that takes into account certain budgeted spend figures from an itemised return of budgeted local authority spend on schools services (the S251 return). Annex A of the Department's consultation paper sets out the various elements of the S251 return. Those taken into account for LA LACSEG are marked "Y" in the "LACSEG Relevant" column of Annex A and are marked "LA" in the column that distinguishes between items funded through the ring-fenced schools grant and items funded by local authorities through their general resources. In certain cases the calculation uses the authority's estimate of its gross expenditure. In other cases the authority's estimate of expenditure net of related income is used. For all lines of expenditure relevant to LA LACSEG, only 90% of the reported total is used for LACSEG purposes.
24. DfE perform these calculations of LACSEG amounts for the purpose of determining funding to be allocated to academies. So far as the LGA is aware, there is no independent research that establishes whether, on a line-by-line basis, the estimated amounts correctly fund, inadequately fund or over-fund academies. The figures are estimated by authorities on the basis of their overall costs but are not subject to detailed audit. They vary considerably from year to year and from authority to authority.
25. In 2010-11 LA LACSEG was estimated to amount to £1.462m in total. This is 90% of the relevant lines in the S251 return<sup>15</sup> subject to adjustment, as stated in the DfE methodology statement for LACSEG, to take account of special factors affecting a small number of individual authorities.
26. The LGA has been unable to ascertain from DfE the basis for the 90% factor. When the question was asked at the consultation meeting on 29<sup>th</sup> July the answer given was that this was the method that had been adopted for LACSEG for pre-2010 academies.
27. For the reasons explained earlier in this response document, the LGA does not accept that DfE's LA LACSEG per pupil estimates constitute an appropriate foundation for the calculation of savings to local authorities. Budget estimates of unit cost are not reliable indicators of potentially available marginal savings available if the relevant functions have to be performed for smaller numbers of pupils following Academy conversions. However, additional compelling reasons why purported savings estimates

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<sup>15</sup> <http://media.education.gov.uk/assets/files/xls/b/budget%20summary%202010%2011.xls>

based on overall LA LACSEG per pupil figures are inappropriate become clear when the constituents of LA LACSEG are examined. It should be stressed that where, in any of the constituent lines of expenditure, a funding reduction is made that is greater than that appropriate under the New Burdens doctrine then authorities as a whole will have to reduce services or, at least in theory, increase council tax.

28. The following chart shows how the relevant LACSEG services are broken down. The figures are taken from the 2010-11 S251 budget return.



29. As the Chart shows, two elements dominate the overall level of LA LACSEG – Statutory / Regulatory duties (£524m) and School Improvement (£520m). These two elements cover more than 70% of the total. A further three elements are also significant: Asset Management (£128m), Education Welfare Services (£117m) and premature retirement and redundancy costs (£98m). The top five elements cover almost 95% of total LA LACSEG.

30. Based on comments from authorities the LGA would make the following observations on the particular lines used to derive LA LACSEG (numbers in brackets relate to the S251 budget return for 2010-11).



- a. **Statutory / Regulatory duties** (Net) (90%) (7.0.1) - (35% of the total)  
 These are functions which the local authority must perform to comply with legislation and regulation. Large parts are only marginally, or not affected at all by the scale of Academy conversions. The s.251 return does not split between the various statutory and regulatory duties and therefore cannot isolate those elements of cost which are relevant to academies. Examples of costs included under this heading where it is not possible to identify any material savings as a result of Academy conversions are
- i. Functions of the Director of Children's Services – a large part of which relate to their statutory safeguarding and Every Child Matters roles;
  - ii. Strategic planning – this is not a service to be carried out by academies;
  - iii. Revenue budget preparation and other finance matters – authorities have told the LGA that it is difficult to separate out services which relate to children's services rather than education – there are also fixed costs which will not change.
  - iv. Retrospective membership of pension schemes – which it would not be appropriate to expect schools to meet the cost from the schools' budget share.
  - v. Legal services relating to the functions of the authority – this is not relevant to academies as legal costs to schools are all delegated.
  - vi. Expenditure on the authority's functions on the Standing Advisory Council on religious education constituted by the authority; this is not a function which academies have.
  - vii. Expenditure on making pension payments other than in respect of schools.
- b. **School improvement** (Gross) (90%) (2.1.9) (35% of the total) This funding is directed to supporting schools with low/failing standards. In most authorities good or outstanding schools would not be in receipt of this service, and hence a disproportionate level of funding will relate to schools that are not eligible for academy status. In 2010-11 this may include a share of some LA standards grants which will subsequently have been devolved to schools.
- c. **Asset Management – education** (Net) (90%) (2.2.1). (9% of the total)  
 This is an authority wide responsibility. A number of authorities will have included costs for Building Schools for the Future schemes in 2010-11; any method of reduction based on average LA LACSEG will allocate a share of this funding to academies; this would be likely to represent double funding for academies and an unjustified reduction in local authority funding.
- d. **Education Welfare Services** (Gross) (90%) (2.1.8) (8% of the total)  
 There have been no savings as a result of conversion of schools to academies. Most authorities already operate the non statutory elements of this function as a buy back service. What remains is

largely a statutory service, for example prosecutions for non attendance and issuing of child employment permits, which has to be provided irrespective of schools converting to academies.

- e. **Premature retirement and redundancy costs** (Gross) (90%) (7.0.2). (7% of the total) This budget will reflect decisions based on affordability, having regard to 2009-10 and 2010-11 funding levels. It is not justified to assume that similar levels of expenditure would be affordable for years post-CSR 2010.
  - f. **Music Services** (not Standards Fund supported) (Net) (90%) (2.2.3) (2% of the total)
  - g. **Pupil support** (Gross) (90%) (2.1.2) (1% of the total)
  - h. **Therapies and other health related services** (Gross) (90%) (2.0.3). (1% of the total) This is focussed on a small number of schools and pupils; it does not reduce pro-rata when schools become academies.
  - i. **Outdoor education** including Environmental and Field Studies (not sports) (Net) (90%) (2.2.5) (1% of the total) One authority has told us that this provision is used only by primary and special school pupils; but a share of it is being allocated to secondary academies
  - j. **Monitoring national curriculum assessment** (Gross) (90%) (7.0.7) (1% of the total)
  - k. **Visual and Performing Arts** (other than music) (Net) (90%) (2.2.4) (less than 1% of the total)
31. This analysis clearly demonstrates that, in relation to the five most significant elements of LA LACSEG making up almost 95% of the total, the Department's underlying assumption that 90% of costs in effect follow the pupil, and can therefore be saved by a local authority when schools convert to Academy status, is completely unjustified.
32. A further point, and one that may go some way to explaining the wide differences in LA LACSEG per pupil figures between authorities, is that the s.251 return was never intended to be used to calculate the amount of funding for LACSEG purposes. The DfE guidance is not comprehensive and there is no detailed audit of the returns to ensure consistent treatment between local authorities. Different local authorities may take different views, entirely consistent and in accordance with the guidance, on questions such as where to account for grants to the local authority which are passed on to schools, and gross and net expenditure.
33. The DfE has assumed a standard reduction of 9% in 2011-12 and 15% for 2012-13 on 2010-11 figures. Authorities have told the LGA that they have, as a result of general reductions in local authority funding, taken steps to review their spend on centrally provided services and have in practice made much higher reductions than this. This is evidenced by the Department's own estimates of LA LACSEG which reduce from around £305 per pupil in 2010-11 to £220 per pupil in 2011-12 – a reduction of more than 25%. Furthermore, the Department's LACSEG figures for any particular year are calculated using information from budgets for the previous year and therefore do not represent estimates that are in line with

budgets for the current year: they are a year out of date. Even if the DfE's methodology was in other respects valid, therefore, the appropriate per pupil figures to be used would be of the order of £200 (£220 less 9%) for 2011-12 and £187 (£220 less 15%) for 2012-13.

34. There are, though, demonstrable further errors in the calculation proposed in the consultation document. Paragraph 38 of the document purports to explain the basis on which the average per pupil amount of LA LACSEG has been calculated. However, on the evidence of the authority by authority figures that DfE has published for the Section 251 returns for 2009-10 and the related LACSEG calculations, the per pupil averages of £304 (primary) and £306 (secondary) are derived by taking the arithmetic mean across all authorities of individual authorities' average LA LACSEG per pupil. The figures calculated according to the Department's stated methodology are in fact lower, because of the impact of economies of scale for larger authorities, and are £281 (primary) and £275 (secondary). The position on the figures based on Section 251 returns for 2010-11 is similar. The consultation document claims that an average figure of around £220 is appropriate. In fact, applying the department's stated methodology to the figures shown on authorities' Section 251 returns, the correct average is £207.<sup>16</sup>

#### **Different ways of working out the appropriate transfer**

35. The consultation document refers in passing to DfE's consideration of other methods of calculating savings to local authorities, but does not provide any detailed evidence of the methods which may have been investigated. As the preceding sections of this response have shown, the application of the method proposed by DfE would not deliver results that accord with the policy set out in the New Burdens Doctrine. Even if that were the case, it has been demonstrated that the proposed LA LACSEG based calculation is based on invalid underlying estimates, reflects major errors of principle and produces overall estimates of savings that are clearly grossly excessive.
36. The LGA and its member authorities accept that a practicable and workable means of estimating the appropriate level of funding transfer is necessary. We therefore now go on to consider some possible ways in which the transfer could be established.
37. Two methods which could be used are briefly described below. Because of the limited time allowed for the consultation, it is not possible at this stage to produce estimates of the amounts of transfer that would result from the application of these methods. However, both methods are based on the use of appropriate objective data. The LGA regards it as essential that the DfE should obtain such objective data. It is not an acceptable answer to assert that the data is not currently held, or difficult to obtain, and to use those difficulties as an excuse for falling back on a

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<sup>16</sup> However, even that figure is inappropriate as a measure of marginal savings, because of the issue of economies of scale. LGA modelling suggests that, based on 2010-11 Section 251 return data, the **maximum** theoretical saving as pupils are transferred to academies is no more than £163 per pupil and will in practice be considerably less.

methodology that is plainly wrong. The LGA has therefore, within the limited time available, explored with a number of its member authorities what savings are likely to have been achieved at individual authority level. The findings from this work are reported on later in this response.

38. **Recoupment basis** This was discussed briefly with the Secretary of State at the Children and Young People's Board in January 2011; the LGA also outlined it as a possible method at the meeting with DfE on 29<sup>th</sup> July 2011.

- a. This would require a calculation to be made when any LA school converts to an academy of the actual savings. This would be calculated by the LA and verified independently – this could be by the authority's auditors.
- b. Initially it would be worked out on a part year basis; it would be then be repeated every year as part of working out the overall budget.
- c. It would take into account both savings and costs to the authority. The latter could be expected to arise from the costs of conversion, at least in the first year.
- d. The agreed total sum would be recouped from the authority by the DfE, or, depending on the precise arrangements which apply to school funding, from the Education Funding Agency. If the sum was negative due to the higher costs of conversions the DfE would pay an additional grant to the authority under the New Burdens Doctrine.
- e. If this was agreed the transfers from formula grant of £148m in 2011-12 and £265m in 2012-13 should be returned to authorities. This could be by specific grant to avoid having to reopen the 2011-12 and 2012-13 local government finance settlements

39. **Unit costs – based on actual savings** A method based on establishing actual savings at individual authority level would arguably be the fairest, but it would involve a deal more administrative work for authorities, and would need to be applied retrospectively. An alternative approach, that might allow a forward looking estimate of overall savings to be calculated, would be based on a calculation of an average overall unit cost saving which fairly applies the principles of the New Burdens Procedure. The aim would be to identify a national net unit cost of verifiable savings from authorities, which could then be multiplied by the number of pupils in academies to get a fair sum for the transfer.

40. This might be derived from a costing exercise based on work with a representative sample of authorities of different types (i.e unitary and county), in different geographical region, and with different numbers of academies.

41. The LGA has examined the feasibility of such an exercise, working initially in detail with four local authorities of different types and with markedly different numbers of academy conversions, and drawing on summarised information provided by 32 of its member authorities. The following are the initial findings:

- a. Authorities with no or few academies do not have significant savings. This is because, as mentioned in the LACSEG section above, services may be targeted at schools which are not academies or because any economies of scale do not materialise, at least not in 2011-12 or 2012-13. Typically once the conversion costs mentioned below are taken into account there is a net cost for academy conversions in year 1.
  - b. Authorities with more academies may have savings, which should be capable of being costed by a robust costing exercise. One large authority with a lot of academies (not part of the sample group of 32) reports that its actual rate of budgeted spend per pupil is £85 in 2011-12 and £68 in 2012-13; this compares with the proposed DfE holdback of £304 per secondary pupil for the period April to August 2011 and £219 per secondary pupil for the period August 2011 to August 2012. Another authority, which expects by 2012-13 to have had academy conversions covering around 40% of its school population, has tentatively estimated savings per pupil, before conversion costs, of around £22 per pupil by 2012-13.
  - c. Conversion costs for local authorities can be significant; these are legal costs; staffing issues, land and legal matters, and contract issues. These are doubly complicated if the school was built under a PFI scheme. Authorities have told the LGA that conversion costs for a single academy can be as high as £30,000 although there may be economies of scale as more academies convert. A typical range appears on evidence we have seen to be of the order of £10,000 - £15,000 per school.
  - d. Many authorities, in drawing up their S251 returns, allocate proportionate shares of central costs to schools functions. These apportioned costs can be substantial and relate to areas of the authority's business that are not directly involved with academies. Such elements of cost do not represent realisable savings.
42. The LGA considers that, in arriving at an estimate of the realisable savings to authorities from academy conversions, the Department should take into account conversion costs and, in relation to savings, distinguish between:
- a. realisable cash savings, which arise where funding is clearly directly related to pupil numbers;
  - b. realisable opportunity savings, where reduced demand for a particular service of a general nature may allow savings to be realised over time; and
  - c. apportionments of general costs that do not give rise either to immediately realisable or to opportunity savings.
43. In reports made to the LGA, a total of 15 authorities out of 32 indicated that they expected by the end of 2011-12 to have fewer than 5% of their pupils in schools that had converted to Academy status. 11 of these authorities said that they expected to have made no savings by the end of 2011-12. For the remaining four, estimated savings ranged from around

£17.50 per pupil to around £47.50 per pupil. These figures are of savings before related costs of academy conversions.

44. The remaining 17 authorities that reported details had considerably greater experience of conversions of schools to Academy status. The group included 3 London Boroughs, 7 shire counties, 3 metropolitan districts and 4 non-metropolitan unitary authorities. The authorities estimated that by the end of 2011-12 they would have between 9% and 47% of their pupils in schools that had converted to Academy status. Estimated savings per pupil varied from zero to £67.80 per pupil, with the highest level of savings achieved by an authority that expected by the end of 2011-12 to have around one third of its pupils in schools that had converted to Academy status.
45. Analysis of the data as a whole suggests that there is a positive, albeit weak relationship between the percentage of pupils in converted academies by the end of 2011-12 and assumed savings. The average savings per additional pupil amount to just over £15. Trend analysis suggests very tentatively that it is unlikely that savings much above £70 per pupil would be achievable even with very high levels of Academy conversions.
46. Qualitatively, savings were reported most frequently in the following areas
  - a. Education welfare services (14 out of 32)
  - b. School improvement (13 out of 32)
  - c. Statutory and regulatory duties (8 out of 32)

No authority reported that savings were being achieved in the areas of premature retirement costs or national curriculum assessment.

47. These practical findings by individual local authorities are entirely consistent with the analysis of LA LACSEG figures considered earlier in this paper, which noted that on the basis of LA LACSEG data across the entire spectrum of local authorities, the maximum theoretical savings would only be of the order of around £163 per pupil at 2010-11 funding levels – a figure that would be expected to reduce significantly for 2011-12 and 2012-13 given the general reductions in local authority grant funding.

### **Equalities implications**

48. The DfE's view is that the reconsidered decision is unlikely to have equalities implications. This is because, as paragraph 61 of the consultation document asserts, for the vast majority of authorities the amount of the reduction in funding will be less than the total of savings through no longer providing services to Academies and income from selling services to Academies. The Department states, secondly, that as formula grant is not ringfenced it will be up to each local authority to allocate any shortfall as between different services.
49. The LGA finds this reasoning surprising. The Department's assertion that most authorities will make savings, through no longer having to provide services to Academies or by generating income from academies, that exceed the amount of the funding reduction is not supported by any

evidence. Furthermore, earlier in the consultation document (paragraph 34) it is stated merely that savings are “commensurate with” the reduction in funding. As has been demonstrated by the evidence in this response, even that lesser claim is manifestly unsupportable.

50. The LGA further regards the DfE’s consideration of equalities issues in paragraph 61 as insufficient to discharge the department’s duties under the Equalities Act for the following reasons
- a. Although formula grant is not ringfenced, the underlying assumption of the transfer in funding is that it should be possible for an authority’s expenditure on central education services to be reduced accordingly. Therefore, particularly in the light of DfE’s admission that some authorities will suffer an overall loss of funding, the Department should consider the equalities implications of a reduction in expenditure
  - b. The nature of central education services are such that some of them are likely to be of particular importance to groups directly within the contemplation of the equality legislation or to disadvantaged communities
  - c. If local authorities see a reduction in funding for providing central services to maintained schools, and academies find themselves in a preferential situation, this could have equalities implications if the pupil populations of these two types of school differ in their gender and ethnic origin or in the number with special educational needs. Evidence collected by the LGA as part of the costing exercise above suggests that this is the case.
  - d. Finally, although the LGA is not here promoting any one distribution methodology, we would note that the approach taken to the Academies in the 2011-12 and 2012-13 local government finance settlements does have equalities implications since it is the authorities with the highest relative needs indicators which have the highest proportional transfer.
51. These conclusions are supported by evidence from a number of member authorities. One large authority in what is usually considered one of the more prosperous parts of the country, in which around half of secondary schools have converted to Academy status, has comprehensively analysed the main socio-economic indicators for pupils in the two groups of schools. It finds that, in its maintained schools, children are significantly more likely to be eligible for free school meals, have another language than English as their first language, and have a SEN statement. Children living in wealthy areas within the authority are significantly more likely to attend Academies than maintained schools: the reverse is true of children living in the most deprived parts of the authority’s area. In the light of this evidence it is clear that a transfer of funding on the pro-rata basis that the Department is proposing will operate to the disbenefit of more disadvantaged groups in society.

## **Implication for the 2011-12 and 2012-13 local government finance settlements**

52. The arguments in this response, and the costing exercise set in motion, suggest strongly that there are no grounds under the new burdens doctrine for removing £148m in 2011-12 and a further £265m in 2012-13.
53. We note that the consultation document says in paragraph 24 that, for 2011-2, the calculation of the appropriate reduction in local authority funding will not necessarily determine whether any additional reduction in local authority will be effected, and if so, how it will be done. The meaning of this is not clear and the corresponding position for 2012-13 is not stated.
54. The LGA considers that any further reduction in formula grant would be a breach of its, and authorities' legitimate expectation that the amount of formula grant for 2011-12 and 2012-13 would not be reduced. This expectation was created by the letter from the Secretary of State for Education to Baroness Ritchie of 31 January 2011 in which he states "but if the number of new academies is higher or lower than we predicted we will not seek to renegotiate the amount transferred because that would create more instability in the funding arrangements."
55. There is, furthermore, the overall matter of the desirability of stability of funding for local authorities. The consultation document touches on this in paragraphs 21-24 but only in relation to issues relating to the allocation between authorities of an estimated overall saving.
56. Local authorities appreciate the stability and certainty provided by a multi-year grant settlement. Such settlements should not be disturbed without good reason. When, as is the case here, the relevant Secretary of State has put on record an assurance that funding decisions originally reflecting a particular estimate of the rate at which policy implementation proceeds will not be revised if that estimate proves to be higher or lower than estimated, that assurance should be honoured, as authorities have a legitimate right to expect. At the time of the consultation on the proposed 2011-12 Local Government Finance Settlement, a great many local authorities expressed serious concerns, backed by evidence, that the funding transfers in respect of Academies for 2011-12 and 2012-13 were grossly excessive.
57. Many authorities were aware of the assurance in the Secretary of State for Education's letter to Baroness Ritchie, dated 31 January 2011, that that "if the number of new academies is higher or lower than we predicted we will not seek to renegotiate the amount transferred because that would create more instability in the funding arrangements". Authorities were extremely disappointed that the government, against a weight of evidence presented in consultation, decided not to reduce the 2011-12 and proposed 2012-13 amounts of funding transfer. In considering the appropriate action in response to that decision, authorities took into account the clear assurance that the settlement was intended to deliver certainty and stability in funding. Accordingly, whilst a number of authorities decided to take the legal action that has prompted this reconsideration of the matter, a good number of others amongst our member authorities, although



disappointed by the government's decision, accepted it. In determining what should now be done, it is essential that the government should respect the legitimate expectations and interests of those authorities that decided, having regard to the Secretary of State's assurance, to accept the original decision. Equally, authorities that can evidence that they have suffered funding reductions that are considerably in excess of the amounts that are appropriate having regard to the New Burdens Doctrine, and that put excessive pressure on council tax, should be compensated.

58. The LGA's conclusion based on the evidence set out in this consultation response is that it would be contrary to authorities' legitimate expectations under the New Burdens Doctrine for funding reductions to be taken that reflect savings per pupil of more than a range £15-£70 per pupil; and that, for authorities expecting relatively low levels of academies conversion, the per pupil funding reduction should be at the lower end of that range. Even on the Department's revised forecasts for conversions of schools to Academy status, that would result in a funding reduction for 2012-13 at a level below the originally proposed £265m.

### **Other issues**

59. There are a number of issues concerning the Local Government Pension Scheme which affect non-teaching staff at academies. The Local Government Group wrote on 18<sup>th</sup> April to Noreen Graham at DfE.

60. Amongst the matters raised in that letter is the issue of the apportionment of any funding deficit. There are two main ways that a share of any funding deficit could be allocated:

- a. the academy could only be attributed with a share of the deficit that applies to those current LGPS staff who transfer to the academy, or
- b. the academy could be attributed with a share of the whole deficit i.e. that applying to current LGPS staff who transfer to the academy and that attributable to deferred and pensioner members.

The second option is "fairer" on the basis that it recognises the local authority will lose funding in respect of the provision of education services but will remain responsible for the pension liabilities of former education staff whose benefits will not transfer to the academy.

61. There has yet to be an answer to this letter from DfE.

62. Authorities have raised concern about the carbon tax, where academies will be considered within the local authority total. There is no clear way to recover this tax from academies, although some authorities may have made arrangements.

Local Government Association

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