

EXPLANATORY MEMORANDUM TO
THE SCHOOL FINANCE (ENGLAND) REGULATIONS 2008

2008 No. 228

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

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Merits Committee.

2. **Description**

2.1 The School Finance (England) Regulations 2008 (“the 2008 Regulations”) define the various local authority education budgets, (the LEA and schools budgets) and make provision for the funding of maintained schools. They are made using powers in sections 45(1B), 45A, 45AA, 47, 47A(4), 48(1) and (2), 49(2) and (2A) and 138(7) of and paragraph 2B of Schedule 14 to the School Standards and Framework Act 1998¹ and follow on from the School Finance (England) Regulations 2006² which relate to the financial years 2006-07 and 2007-08 and remain in force only in relation to those financial years.

2.2. The 2008 Regulations relate to the financial years 2008-09, 2009-10 and 2010-11. To a large degree, they re-enact provisions in the previous regulations. There are, however, some minor changes and some significant changes. These have been made following two separate consultations: an extensive policy consultation on school funding conducted from March – May 2007, and a technical consultation on the draft Regulations in October 2007. All major and miscellaneous changes are described in section 7.

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

3.1 None

4. **Legislative Background**

4.1 The 2008 Regulations define the LEA budget (regulation 3), the schools budget (regulation 5), central expenditure (regulation 7) and the individual schools budget (regulation 7 and Schedule 3) and provide the basis upon which a local authority determines schools’ budget shares. They also, in regulation 26 and Schedule 5, require a local authority to maintain a scheme setting out specified matters connected with the financing of schools which they maintain.

5. **Territorial Extent and Application**

¹ 1998 c.31.

² S.I. 2006/468 as amended by S.I. 2007/365.

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 In March 2007 the DCSF consulted extensively with schools on matters of policy relating to school funding. The consultation ran from 7th March 2007 to 1st June 2007. The children's services directors of all local authorities were informed of the consultation along with chairs of schools forums, a wide range of other partners, stakeholders and providers including Government Offices and members of 14-19 partnerships. The consultation documents were available on the public website Teachernet for other interested parties to access.
- 7.2 The Minister made a statement in the House of Commons on the outcome of the consultation and the policy decisions on 25th June 2007. A summary of responses to the consultation was placed in the Library of the House. Policy changes requiring new or different obligations to be imposed following the outcome of the consultation are contained within the 2008 Regulations. A second consultation on the draft schools finance regulations took place between 20th September 2007 and 26th October 2007. This consultation was on the detail of how the policy changes would be applied through regulation. Responses to this consultation were received and could be split into 3 specific areas of response.
- 7.3 The first concern regarded the previously announced intention that all positive school balances should be subject to a 5% redistribution. The draft regulation consulted upon showed that this would be 5% of the total balance with no exceptions and that the first year of implementation would be based upon the March 2007 year end balance. About 1000 replies were received on this subject, the majority from schools; all but one against either the concept, or the retrospective nature of the implementation. Those that objected to the concept of the redistribution did not realise that an announcement had already been made with regard to the policy and that the policy had been subject to consultation in the spring. Given the strength of feeling against the implementation, and taking into account concerns expressed on the detail of what schools should be allowed to retain given that they did not know at March 2007 that their balances would be used for this purpose; and that they did not have time to take steps where these would have been prudent and sensible, the Minister agreed to announce at the end of the consultation period that we would not continue with this proposal. It was stated that this would be reviewed over the three year period and reintroduced as a policy at a later date if school balances continued to remain high.
- 7.4 The second major subject for response was the proposal that actual salaries would not be allowed as a factor in school funding formulae with effect from April 2008. This policy had not been consulted on earlier. Not many authorities use this as a factor in their formula, but the minority that do were strong in their opposition to it being disallowed. Thirteen separate responses were received (4 from various

parties associated with Norfolk Schools). All stated that they believed that there was insufficient time to make changes. Two mentioned the need to use actual salaries when trying to encourage redeployment of potentially redundant staff. This is a valid argument. Again it was decided to postpone until 2011 this part of the regulation changes so that consideration may be given to ways to remove actual salaries from some parts of the formula while allowing them to continue in other parts – all in a planned manner.

- 7.5 Seventeen local authorities, 2 teacher unions and the Local Government Association all responded regarding various technical issues associated with the remainder of the regulations. 103 separate points were made of which 33 specifically expressed agreement with various changes, 10 specifically expressed disagreement with various changes, and 19 responses either noted the change or added a comment that was not relevant to the regulation change. Thirteen points made could be clarified and explained in guidance to be provided with the regulations. Twenty eight responses made points regarding specific wording and whether it met the desired intention. All of these were individually considered and incorporated where possible or appropriate: for example, one comment related to Academies – but Academies are not covered by the powers authorising these regulations and this comment could not therefore be used.
- 7.6 The changes since the last set of regulations are as outlined here. These are divided into ‘major’ and ‘miscellaneous’ changes.

Major changes since the last set of regulations

- 7.7 The 2008 Regulations now cover a three year funding period of 2008-09, 2009-10 and 2010-11 and incorporate within the body of the text the amendments made in the Schools Finance (England) (Amendment) Regulations 2007.
- 7.8 The calculation of the Central Expenditure Limit (CEL) has been fundamentally changed; in the 2006 regulations the year on year increase in central expenditure had to be no more than the increase in the Individual Schools Budget (ISB). The revision in these regulations changes the calculation to be expressed in terms of a minimum increase in percentage terms of the ISB plus funding for the 3 and 4 year old free entitlement paid to Private, Voluntary and Independent (PVI) Nursery Providers which must be greater than or equal to the percentage increase in the Schools Budget. The inclusion of PVI funding with the ISB is intended to ensure that where policy changes to funding for all early years provision are implemented, the funding to PVI providers is not constrained by the CEL calculation.
- 7.9 The Minimum Funding Guarantee (MFG) calculations for schools with rising rolls now mirror the calculation for schools with falling rolls. Previously schools with rising rolls received the full amount of baseline funding per pupil for each additional pupil, whilst schools with falling rolls only lost 80% (Primary) or 87.5% (Secondary) of the baseline funding per pupil, to reflect the fact that some costs do not change with pupil numbers. From April 2008 schools with rising rolls will equally gain only the marginal funding per pupil.

- 7.10 The MFG has been set at 2.1% per pupil for each of the three years of the funding period for all schools.
- 7.11 Funding for pupils in sixth forms in schools will no longer be included within the MFG calculations. Changes to the formula for funding from the LSC will have their own transitional arrangements, and will not in addition be protected by the MFG. Schedule 4 has been amended to reflect this change
- 7.12 The Schools Forum has been able to approve changes to the operation of the MFG where these affect 20% of pupils in schools or less. These Regulations change that limit to changes that will affect 50% of pupils in schools or less. Under the previous criteria a schools forum could implement a change which would affect all secondary schools, but not one which affected all primary schools. The new limit should ensure equity for phases of schools.
- 7.13 Given the increased emphasis at national level on personalised learning for all pupils it was decided to allow local authorities to provide funding in their formula aimed specifically at gifted and talented pupils – they are already allowed or required to distribute funding for pupils with other additional educational needs such as SEN, being from a deprived background or English as an additional language (for example). This change has been added to Schedule 3.
- 7.14 Policy changes to early years funding have been announced to take effect over a three year period and bring the funding for PVI providers and maintained nursery schools and classes closer together through the development of a single formula for early years funding. These regulations which apply to the maintained sector have been amended to change the emphasis from place funding nursery pupils to funding actual nursery pupil numbers and to separate out the regulations for maintained schools from maintained nursery schools or classes.

Miscellaneous changes since the last set of regulations:

- 7.15 Part 1:
- 7.15.1 Removal of references to regulations that will be revoked in this part. (2004 regulations, budget regulations and amended budget regulations)
 - 7.15.2 Rewording of the definition of ‘expenditure on schools specific contingency’ to assist understanding.
 - 7.15.3 Change definition of ‘vocational education’ to ‘practical and applied learning’ to better reflect what is happening in schools.
 - 7.15.4 Add new definition of ‘PVI providers’ for providers of free early years entitlement that are not maintained schools or academies.
 - 7.15.5 Amendment to the definition of ‘school year’ as this is now contained within s579 of the 1996 Act.
 - 7.15.6 Reword the reference to SEN transport costs to aid understanding.
 - 7.15.7 Reword the reference to ‘summer term’ to take account of schools having 6 terms in a school year.
 - 7.15.8 change references to specific dates or monetary values in regulations where necessary
- 7.16 Part 2:
- 7.16.1 Regulation 5(1) is now subject to regulation 5(2)

- 7.16.2 Regulation 5(1)(c) new; widens the definition of the schools budget to include expenditure incurred in connection with the expenditure referred to in 5(1)(a) and (b).
- 7.16.3 Regulation 6(a) (ii) new; makes clear the position that that payments of arrears of pay including those derived from capital may be met from the schools budget. This is relevant to the issue of where schools are incurring back pay resulting from single status settlements.
- 7.16.4 Regulation 11; incorporated in its entirety from the 2007 amending regulations with a minor wording change at 11(7) to emphasise the need for a new school's pre opening delegated budget to be sufficient and at 11(3) to be consistent with primary powers.
- 7.16.5 Regulation 12 (2) expanded to be consistent with other regulations within this instrument.
- 7.16.6 Regulation 12 (3) new; clarification that a local authority must advise schools in advance of the multi year funding period if they know that they are likely to make changes to the mechanisms of the local formula within the multi year funding period.
- 7.16.7 Regulation 12 (4) states that the notification to Governing Bodies must take place within 28 days.
- 7.16.8 Regulation 13 amended; now makes it clear that the LA must inform the governing body of each school of their budget share for the following year(s) at the start of each new funding period.
- 7.16.9 Regulation 14 (4) and (5) new: state that for each funding period any authorisations given by the schools forum or secretary of state in a previous year will continue to apply unless it was clear that this was not the intention in the authorisation.

7.17 Part 3:

- 7.17.1 Regulation 15 (3) now makes particular reference to places in special schools or schools with boarding accommodation.
- 7.17.2 Regulation 15(4) (g) now uses the revised definition for practical and applied learning.
- 7.17.3 Regulation 20 (2) (b) new; makes particular reference to closing schools. This is to enable local authorities to redetermine the minimum funding guarantee for a school which was not confirmed as closing until after the start of the financial year. Where it becomes known after the start of the financial year that a school will close in August, but the school has been given a full year's budget, the LA may adjust the budget and the MFG accordingly.
- 7.17.4 Regulation 25; reworded to fit with powers in primary legislation.

7.18 Part 4

- 7.18.1 Regulation 27; incorporated in its entirety from the 2007 amending regulations
- 7.18.2 Regulation 28; removed second sentence which was considered repetitive.

7.19 Schedule 1

- 7.19.1 Paragraph 9 (a) revised wording to bring this into line with other current legislation
- 7.19.2 Paragraph 10; deleted reference to the School Organisation Committee which no longer exists and the authority's functions in relation to the

preparation of the Children and Young Peoples Plan relating to schools admissions. The preparation of the CYPP is included within Paragraph 20.

7.19.3 Paragraph 20; removal of references to the Chief Education Officer, this post no longer exists, it has been superseded by the Director of Children's Services.

7.19.4 Paragraph 31 new; reference to costs in connection with the Local authority's powers with regard to the employment of children.

7.20 Schedule 2

7.20.1 Heading: Revision to the wording to make it clear that the expenditure deducted under this schedule is still part of the Schools Budget.

7.20.2 Paragraph 15 revised wording: to simplify the wording to aid understanding.

7.20.3 Paragraph 25 new; allow additional expenditure related to back pay of staff in schools and other staff whose salaries are met from the schools budget to be centrally retained from the schools budget.

7.20.4 Paragraph 26 additional wording; to clarify that this expenditure includes payments to early years providers for the free 3 and 4 year old entitlement at private voluntary and independent providers.

7.20.5 Paragraph 29 revised wording: to add clarity to the wording regarding library services for schools.

7.20.6 Paragraph 35; reflects the revised definition of practical and applied learning.

7.21 Schedule 3

7.21.1 Proposed changes to paragraph 18 regarding the use of actual salaries have been removed and the first sentence is identical to the 2006 regulations on this point. This paragraph also states specifically that back pay may be taken into account in an authority's formula, whereas before this was simply implied.

7.22 Schedule 5

7.22.1 Paragraph 1 additional wording; to specify that local authorities must have a balance control mechanism to reduce excess surplus balances within their scheme.

Guidance

7.23 Guidance on each point referred to above will be provided with notification of the revised regulations. It will lay out paragraphs similar to these expanding on them further if necessary to aid understanding in their application.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. As these regulations replace fundamentally similar regulations, there will be no additional impact for local authorities.

9. Contact

Margaret Judd at the Department for Children, Schools and Families Tel: 0207 925 3756 or e-mail: Margaret.Judd@dcsf.gsi.gov.uk can answer any queries regarding the instrument.