EXPLANATORY MEMORANDUM TO

THE SCHOOL FINANCE (ENGLAND) REGULATIONS 2011

2011 No. 371

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The School Finance (England) Regulations 2011 (the 2011 Regulations) define the local authority education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and set out how local authorities are to allocate funding from the individual schools budget (ISB) to maintained schools and private, voluntary and independent providers of free early years provision (relevant early years providers) through a locally determined formula.

2.2 The 2011 Regulations relate to the 2011-12 financial year only because there is to be a wider review of the school funding system for 2012-13 onwards.

2.3 To a large degree, the 2011 Regulations re-enact provisions in the School Finance (England) Regulations 2008 (the 2008 Regulations) but there are some significant changes, relating particularly to the early years single funding formula and the incorporation of a number of grants within the Dedicated Schools Grant, which were previously paid as separate grants.

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

3.1 None

4. Legislative Context

4.1 New regulations need to be made because the 2008 Regulations apply only to the end of the 2010-11 financial year. These Regulations are made under the provisions of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (SSFA 1998) (financing of maintained schools).

4.2 Section 202(3) of the Apprenticeships, Skills, Children and Learning Act 2009 Act (ASCLA 2009), which comes into force on 28th February 2011, inserts a new section 47ZA into Part II of the SSFA 1998. Section 47ZA applies where a local authority propose to allocate money to a childcare provider (other than a maintained school), for the purposes of securing sufficient childcare free of charge under section 7 of the Childcare Act 2006. This new power, together with powers already conferred by section 47 SSFA 1998, is being used for the first time to introduce ‘the early years single funding formula’. This formula will be used by local authorities to determine how much is to be allocated to private, voluntary and independent providers and maintained schools to fund the free entitlement to early years provision for three and four year olds.

4.3 Section 24(3)(b) of the Education Act 2002 is also being used for the first time in school finance regulations to enable local authorities to treat school federations as single schools for the purposes of the Regulations, allowing them to allocate a single budget share to those federations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Ministers announced on 26th July 2010 proposals for school funding for the 2011-12 financial year, with a commitment to a fundamental review of the school funding system for 2012-13 onwards. The proposals for 2011-12 were based on maintaining the existing system of the Department for Education allocating Dedicated Schools Grant (DSG) to local authorities and then local authorities distributing funding to their maintained schools through a locally determined formula, but with some modifications. The principal changes to the previous arrangements were that grants previously allocated separately to schools were to be included within DSG and that local authorities would be required to introduce a single funding formula for early years providers. The pupil premium will be paid as a separate grant and is therefore not subject to regulations. Consultation on these proposals ran until 18th October 2010.

7.2 The main changes compared to the 2008 Regulations are set out below.

7.3 The 2011 Regulations require local authorities to implement an Early Years Single Funding Formula (EYSFF) from April 2011. This means that there will be a formula covering all providers offering the free entitlement to three and four year olds (regulation 9(3)). The purpose of this is to ensure that there is greater transparency in early years funding and to treat all sectors fairly. The EYSFF will, therefore, apply to maintained nursery schools and classes, and providers in the private, voluntary and independent (PVI) sector - including day nurseries, playgroups and childminders. Funding for PVI providers of this free entitlement will now come out of the Individual Schools Budget, which was previously restricted to funding the budget shares of maintained schools.

7.4 The school funding settlement announced that the Minimum Funding Guarantee (MFG) would continue, but at a rate of -1.5% per pupil. The MFG provides protection to schools against changes to local formulae or other data changes unrelated to pupil numbers. The circumstances in which a local authority can vary its MFG, with the approval of its schools forum, are set out in the Regulations (regulation 25).

7.5 The settlement also confirmed that a number of grants previously paid separately to local authorities and schools would be incorporated ("mainstreamed") within the DSG. To avoid undue turbulence at school level, local authorities will be allowed to use a formula factor which replicates part or all of the previous level of grant, either as a cash amount or using the grant methodology (Schedule 3, paragraph 37). The mainstreamed grants must also be taken into account in the calculation of the MFG (Schedule 4, paragraph 1(d)) and the central expenditure limit (CEL) (regulation 7(6)).

7.6 Schools are increasingly joining together in federations as a way of achieving efficiencies and sharing costs. The requirement to issue separate budgets for schools within a federation can act as a barrier to reducing bureaucracy because of the extra administration involved when there is usually a single head and governing body, with many costs apportioned between the schools. The 2011 Regulations allow local authorities to treat schools federated under section 24 of the Education Act 2002 as a single school and allocate a single budget share to the federation (instead of a budget share for each school within the federation). However, where the amount allocated by way of a single budget share would be less than the amount that would otherwise have been allocated to the federation, the local authority must adjust the budget share by adding to it the difference between the two amounts (regulation 22) so that the federation is not worse off.

8. Consultation outcome

8.1 Consultation on a draft of the 2011 Regulations took place from 17th September to 12th December 2010. There were 95 responses - 34 from local authorities, 31 from individual schools, 6 from schools forums and 24 from individuals and other groups. Full details of the consultation responses will be published on the Department for Education website.

8.2 Responses were generally supportive of the proposed changes relating to the EYSFF. Responses were also generally supportive in relation to the mainstreaming of grants, but wanted transparency in the funding allocations. There was some concern, in relation to the Minimum Funding Guarantee, about protecting some of the mainstreamed grant allocations, where these had related to specific policies which were no longer in force.

8.3. There was support in terms of reducing bureaucracy for being able to issue a single budget share to a federation, but some concern that this might act as a disincentive to federation if schools lost funding as a result. There was opposition from special educational needs groups to removing the change to the school finance regulations on low incidence SEN for pupils in academies until there is a commitment from the government to protect services for such pupils.

9. Guidance

9.1 A guidance note is to be sent to all local authorities outlining the changes, together with the Regulations, and these will be published on the Department for Education website www.education.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that relevant early years providers will be funded in respect of the free entitlement for three and four year olds through the same formula that will be used to determine the funding of this free entitlement in maintained schools. This formula will be determined by the local authority in accordance with the Regulations. The financial impact will depend on local formula decisions and previous allocations.

10.2 The impact on the public sector is that local authorities must comply with these Regulations when allocating their schools budget and determining budget shares for schools and amounts for early years providers. The mainstreaming of grants should reduce the bureaucracy of allocating and monitoring separate funding streams in schools and local authorities.

10.3 An Impact Assessment was carried out for ASCLA 2009, which this instrument helps to implement. The relevant extract was prepared for section 202(3), which inserted section 47ZA into SSFA 1998 (the enabling legislation for the funding of relevant early years providers out of the individual schools budget). It is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The current regulatory framework will be considered as part of the review of the whole school funding system from 2012-13 onwards.

12.2 The changes will be monitored through the usual contact which the School Funding Team within the Department for Education has with schools and local authorities. It will log and review any correspondence from schools and local authorities relating to the instrument.

13. Contact

Keith Howkins at the Department for Education Tel: 020 7227 5163 or email: keith.howkins@education.gsi.gov.uk can answer any queries regarding the instrument.

Children Skills and Learning Bill
Impact Assessment

Part 2 – Every School a Good School

2.11 Early Years Funding Changes

BACKGROUND

The proposed intervention aims to minimise discrepancies between the funding for Early Years provision in the Maintained Sector and the Private, Voluntary and Independent (PVI) sector. By carrying out the intervention an environment would be created where funding for all providers is transparent and based on the same factors, removing inconsistencies between the PVI and maintained sectors. In addition, local authorities will be required to base funding for the maintained sector on participation rather than places. A more sustainable PVI sector and a Maintained Sector with an incentive structure that is more family focused should enable increased competition which should over time lead to better quality and more flexible early years provision.

However, there is little evidence on the costs and benefits so it is not possible to assess quantitatively the size of the burdens to local authorities or the likely size of the transfers in funding between the different sectors. Consequently, it is not possible to estimate an NPV.

RATIONALE

The free entitlement for 3 and 4 year olds is currently provided by a wide variety of maintained, private, voluntary and independent providers. The money used to pay for this comes in the main from the Dedicated Schools Grant. Distribution by local authorities is variable and the legal provisions differ depending on what sector is receiving the money.

The current system of funding places rather than participation in the maintained sector provides no incentives to increase numbers and raise the quality of provision. Moving to funding participation rather than places will create a more efficient market.

We also want to reduce discrepancies in order to level the playing field and create a fairer market for this provision. Much of these discrepancies are caused by the statutory framework, and therefore we need to intervene. We want to improve the way that local authorities fund the free entitlement for 3 and 4 year olds in order to improve quality, sustainability, affordability and take-up of early years provision. Intervention is necessary to ensure that the PVI sector, which provides a large proportion of this provision, is funded appropriately.

We propose to move the money for PVI provision from LAs' central expenditure within the Schools Budget to the Individual Schools Budget. This will mean that we will be able to apply the school funding regulations to PVI providers, and will support a single local formula. Currently local authorities are able to fund the Maintained Sector based on number of places rather than actual participation. As part of this intervention, we are limiting the amount of place-led funding to when it is necessary for sustainability and for the LA to meet its duty to secure sufficient childcare. The Maintained sector will no longer be funded on the basis of places but on participation, therefore increasing the incentive to the maintained sector to attract parents and children to use the services they offer. Doing nothing would allow the current situation to perpetuate where there are discrepancies in the way that providers are funded, while we are trying to level the market.

AIMS AND OBJECTIVES

To improve the way that local authorities fund the free entitlement for 3 and 4 year olds in order to improve quality, sustainability, affordability and take-up of early years provision. Intervention is necessary to ensure that the PVI sector, which provides a large proportion of this provision, is funded appropriately. Moving the money for PVI provision from LAs' central expenditure within the Schools Budget to the Individual Schools Budget will mean that we will be able to apply the school funding regulations to PVI providers, and will support a single local formula.

COST / BENEFIT ANALYSIS

This section outlines the benefits and costs imposed on various parties.
Assumption: This intervention does not affect the total funding provided to local authorities.

All costs and benefits are from April 2010 onwards, except for local authority costs and benefits.

Children and Parents

Currently some Primary, Nursery and Maintained sector provision is funded on the basis of available places rather than actual participation. Requiring LAs to base Maintained sector provision funding on participation should help increase the incentive to attract parents and children to use that provision. In addition, funding the PVI sector in the same way as the Maintained sector would help create a more level playing field enabling the PVI sector to become more sustainable. A longer term consequence of these two changes is likely to be greater competition resulting in higher quality and more flexible early years provision. Although take-up of the free entitlement is already high, with 90% of three year olds and almost all four year olds taking up the free entitlement, greater choice and more flexible provision may enable some parents to return to work or work longer hours.

Overall is it expected there would be a net benefit to children and parents.

Primary and Nursery Maintained Schools

The amount of funding available in maintained settings that are not full could reduce. However, funding unfilled places is not an effective use of taxpayers' money.

Settings with few empty spaces would be likely to see an increase in funding with a participation-based formula. However, there is a chance that funding could also reduce for these settings if the formula shifts funding away from the Maintained Sector to the PVI Sector

Overall it is likely a small amount of funding would be transferred away from the Maintained Sector.

Schools

Discontinuing funding for empty spaces could release a small amount of funding that could go elsewhere, e.g. to the Schools Budget Headroom.

PVI early years providers

The system for funding PVI providers would be brought in line with maintained schools, improving competition and reducing a degree of the advantage that the maintained sector currently holds from a funding perspective. In some cases this would lead to increased funding for the PVI sector.

However, PVI providers will need to contribute to the LA cost analysis which will enable the LA to produce the local distribution formula. In certain circumstances this would mean that PVI providers with falling rolls lose money, but there will be additional protections in place to ensure sustainability in any case.

Overall, it is likely funding would be transferred into the PVI sector. Precise figures are extremely difficult to calculate because of the variation between how local authorities will implement the policy locally.

Local authorities

Local Authorities will incur some costs in moving to the proposed framework. Indications from the pilot authorities show that the vast majority of these will be one off costs and all costs are likely to be outweighed by the expected long term benefits to a child's outcomes:

- Calculating their local distribution formulae. This would be a one-off cost since any future updates to the formulae would replace work that they would have done previously to update funding formulae for PVI providers. Initial indications, based on the work of a selection of the pilot authorities, point towards the cost being in the region of £5k - £20k over a period of 18 months.
- Applying the school funding regulations to PVI providers. This would be an annual cost and there has been some indication from our pilots that if necessary this could be met through an additional financial administration post. Early indications suggest that the cost of meeting this would be in the region of £18k - £26k per annum.

A large proportion of these costs and benefits are transfers between different organisations. The net costs and benefits of the intervention are expected to be as follows:

Net benefits

A longer term consequence would be greater competition resulting in higher quality and more flexible childcare provision, which in turn would lead to improved long-term outcomes for children. Evidence from the Effective Provision of Pre-School Education (EPPE)[1] project shows that:

- disadvantaged children benefit significantly from good quality pre-school experiences
- high quality pre-schooling is related to better intellectual and social/behavioural development for children
- settings that have staff with higher qualifications have higher quality scores and their children make more progress
- pre-school quality was significantly related to children's scores on standardised tests of reading and mathematics at age 6.
- There is a significant link between higher quality and better intellectual and social/behavioural outcomes at entry to school.
- There is a significant relationship between the quality of a pre-school centre and improved child outcomes.

Greater choice and more flexible provision would enable parents to return to work or work longer hours therefore increasing economic activity and the overall contribution to UK plc.

Net costs

- The one-off costs involved with LAs recalculating their funding formulae.
- The annual costs associated with LAs applying school funding regulations to PVI providers

EVALUATION

We plan to commission an assessment of the process and impact for the LAs that are implementing in 2009, and then we will work with GOs and provider representatives to monitor future impact. We will also get monitor information received through S52 about the impact on funding levels.

[1] The Effective Provision of Pre-School Education (EPPE) project is the first major European longitudinal study of a national sample of young children's development between the ages of 3 and 7 years. To effectively investigate the effects of pre-school education the project has collected a wide range of information on 3,000 children as well as looking at background characteristics related to parents. The full report can be found at www.surestart.gov.uk/research/keyresearch/eppe/