

---

STATUTORY INSTRUMENTS

---

**2012 No. 2991**

**The School and Early Years Finance  
(England) Regulations 2012**

**PART 1**

**Introduction**

**Citation, commencement, application and interpretation**

**1.—**(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2012 and come into force on 1st January 2013.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2013.

(3) These Regulations apply only in relation to England.

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996<sup>(1)</sup>;

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2002 Act” means the Education Act 2002;

“the 2005 Act” means the Education Act 2005<sup>(2)</sup>;

“the 2006 Act” means the Education and Inspections Act 2006<sup>(3)</sup>;

“the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009<sup>(4)</sup>;

“the 2012 Regulations” means the School Finance (England) Regulations 2012<sup>(5)</sup>;

“academic year” means any period commencing with 1st August and ending with the next 31st July;

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003<sup>(6)</sup>;

“CRC” means the CRC Energy Efficiency Scheme operated by the Environment Agency;

“central expenditure” means the total amount deducted by a local authority from their schools budget in accordance with regulation 8;

“CERA” means capital expenditure which an authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003;

---

(1) 1996 c.56.

(2) 2005 c.18.

(3) 2006 c.40.

(4) 2009 c.22.

(5) S.I. 2012/335.

(6) 2003 c.26. Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146, as amended by S.I. 2004/534, 2004/3055 and 2007/573).

“children in need” means children in respect of whom the local authority in whose area they reside must provide a range and level of services appropriate to their needs under section 17 of the Children Act 1989(7);

“combined service” is a service funded partly from central expenditure, and partly from other budgets of the authority or contributions from other bodies;

“Dedicated Schools Grant” is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act;

“Early Years Foundation Stage Profile” has the meaning given in section 39 of the Childcare Act 2006(8);

“early years provision” has the meaning given in section 20 of the Childcare Act 2006;

“expenditure on the schools specific contingency” is central expenditure deducted for the purpose of ensuring that monies are available to enable an increase in a school’s budget share after it has been allocated and where it subsequently becomes apparent that a governing body have incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share which may include expenditure in relation to—

- (i) schools in financial difficulty,
- (ii) the writing-off of deficits of schools which are discontinued, excluding any associated costs and overheads,
- (iii) new, amalgamating or closing schools, or
- (iv) other expenditure where the circumstances were unforeseen when initially determining the school’s budget share;

“funding period” means the financial year beginning on 1st April 2013;

“hospital education” means education provided at a community special school or foundation special school established in a hospital, or under any arrangements made by the local authority under section 19 of the 1996 Act (exceptional provision of education), where the child is being provided with such education by reason of a decision made by a medical practitioner and “hospital education places” shall be read accordingly;

“IDACI” means the Income Deprivation Affecting Children Index;

“IDACI bands” means the groupings of IDACI scores as published by the Department for Education in the document named “School Funding Reform: Arrangements for 2013-14”(9);

“IDACI score” means the score allocated to a child under IDACI;

“institution within the further education sector” has the meaning given in section 91(3) of the Further and Higher Education Act 1992(10);

“key stage” means the key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 84, 85 and 85A of the 2002 Act(11) and “key stage 1”, “key stage 2”, “key stage 3” and “key stage 4” mean the first, second, third and fourth key stages referred to in those sections respectively, and references to the number of pupils at those key stages are references to the number at the school on 4th October 2012 unless otherwise stated;

“learning difficulty” means a significantly greater difficulty in learning than the majority of persons of his or her age, or a disability which either prevents or hinders the person from

---

(7) 1989 c.41.

(8) 2006 c.21.

(9) Available at: <http://media.education.gov.uk/assets/files/pdf/s/school%20funding%20reform%20-%20final%202013-14%20arrangements.pdf>

(10) 1992 c.13.

(11) Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.

making use of facilities of a kind generally provided for further education to persons of his or her age;

“learning difficulty assessment” has the meaning given in section 13(5) of the 1996 Act, and a reference to a person being subject to learning difficulty assessment has the meaning given in section 13(4) of the 1996 Act;

“looked after child” means a person who, for the purposes of the Children Act 1989, is a child looked after by a local authority, and references to the authority looking after the child are to be read accordingly;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988(12);

“PFI scheme unitary payment” means a charge payable by a local authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(13);

“prescribed early years provision” means early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006;

“previous funding period” means the financial year beginning on 1st April 2012;

“primary or secondary school” means a primary or secondary school which is a community, foundation or voluntary school;

“proper practices” means those accounting practices which a local authority are required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment are generally regarded, whether by reference to any generally recognised published code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned(14);

“provider”, in relation to prescribed early years provision, may be a governing body of a school or a relevant early years provider;

“prudential borrowing” means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings expected to be achieved are equal to or more than the expenditure expected to be incurred in borrowing the money;

“pupil premium” means the amount allocated by a local authority from the pupil premium grant to a school in respect of each registered pupil at that school who is entitled to it under the terms and conditions of the grant;

“pupil premium grant” is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

“relevant early years provider” means a provider of prescribed early years provision, other than the governing body of a maintained school;

“relevant early years provision” means prescribed early years provision provided by a relevant early years provider;

“school census” means the record of individual pupil information supplied by local authorities to the Secretary of State under section 537A of the 1996 Act;

“school year” has the meaning given in section 579(1) of the 1996 Act(15);

---

(12) 1988 c.41.

(13) S.I. 1997/319. These Regulations have lapsed but article 11 of the Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains a savings provision for regulation 16 of the 1997 Regulations.

(14) This definition is taken from section 21 of the Local Government Act 2003 and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

(15) Section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44) inserted this definition.

“sixth form grant” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of sixth form pupils, on condition that it is passed on to a particular school;

“special Academy” means an Academy which meets the requirements of section 1A(2) of the Academies Act 2010<sup>(16)</sup>;

“specific grant” means any grant (other than the Dedicated Schools Grant or any sixth form grant) paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used;

“unavoidable costs” means costs which must be incurred by virtue of a statutory requirement.

(5) In these Regulations—

a reference to a determination or redetermination of a budget share or amount to be allocated is for the funding period, unless otherwise stated;

a reference to a “governing body” of a school shall include the management committee of a pupil referral unit;

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools includes such expenditure of that class or description as the authority may incur in relation to Academies, and to pupils registered at Academies;

a reference to “special educational needs transport costs”, for the purposes of paragraph 4(d) of Schedule 2, is a reference to the costs of home to school transport for pupils with special educational needs in schools maintained by a local authority where the authority are meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by them are equal to, or greater than, the costs of such transport; and

a reference to “termination of employment costs”, for the purposes of paragraph 4(b) of Schedule 2, is a reference to expenditure relating to the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school.

### Revocation of previous Regulations

2. The Financing of Maintained Schools (England) Regulations 2004<sup>(17)</sup>, the School Finance (England) Regulations 2011<sup>(18)</sup> and the School Finance (Amendment) (England) Regulations 2011<sup>(19)</sup> are revoked on 1st April 2013.

### Amendments

3.—(1) The Schools Forums (England) Regulations 2012<sup>(20)</sup> are amended as follows.

(2) In regulation 8—

(a) in paragraph (9), for “paragraph (10)”, substitute “paragraphs (9A) to (10)”,

(b) after paragraph (9) insert—

“**9A.** Only the schools members of the schools forum who are representatives of primary schools may vote to decide whether or not to authorise the matters referred to in regulation 12(1)(d) of the School and Early Years Finance (England) Regulations 2012 where they relate to primary schools.

---

<sup>(16)</sup> 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).

<sup>(17)</sup> S.I. 2004/3130.

<sup>(18)</sup> S.I. 2011/371.

<sup>(19)</sup> S.I. 2011/778.

<sup>(20)</sup> S.I. 2012/2261.

**9B.** Only the schools members of the schools forum who are representatives of secondary schools may vote to decide whether or not to authorise the matters referred to in regulation 12(1)(d) of the School and Early Years Finance (England) Regulations 2012 where they relate to secondary schools.”

## PART 2

### Action to be Taken by a Local Authority

#### CHAPTER 1

##### Appropriation of the Non-Schools Education Budget

#### **The Non-Schools Education Budget**

**4.** The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority’s non-schools education budget, subject to the exceptions in regulation 7—

- (a) those specified in Schedule 1, including expenditure on associated administrative costs and overheads; and
- (b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget).

#### CHAPTER 2

##### Determination of Schools Budgets, Individual Schools Budgets, and Budget Shares

#### **Initial determination of a local authority’s schools budget**

- 5.** A local authority must not later than 15th March 2013—
- (a) make an initial determination of their schools budget; and
  - (b) give notice of that determination to the governing bodies of the schools they maintain.

#### **The schools budget**

**6.—(1)** The classes or descriptions of local authority expenditure specified in sub-paragraphs (a) to (e) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority’s schools budget, subject to paragraph (2) and the exceptions in regulation 7—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local authority;
- (c) all other expenditure incurred in connection with the authority’s functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraph (a) or (b);
- (d) expenditure on the education of—
  - (i) pupils or students up to the age of 25 with special educational needs,

- (ii) persons provided with further education who are aged under 19 and have learning difficulties, and
- (iii) persons provided with further education who are aged 19 or over but under 25 and are subject to learning difficulty assessment,
  - in so far as that expenditure does not fall within sub-paragraphs (a) to (c); and
- (e) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraphs (a) to (d).

(2) Where a local authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 36(c) of Schedule 2 to the 2012 Regulations is only expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget where that expenditure is incurred in providing an educational benefit to those pupils.

### Exceptions

7. A local authority's non-schools education budget or schools budget must not include the following classes or descriptions of expenditure—

- (a) capital expenditure, other than—
  - (i) CERA,
  - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred—
  - (i) on prudential borrowing,
  - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph (a)(ii); and
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(21)</sup> (arrangements for patrolling school crossings).

### Determination of the individual schools budget for the funding period and limit on increase in central expenditure

8.—(1) Subject to paragraphs (2) to (8), not later than 15th March 2013, a local authority must deduct from their schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 ("the central expenditure") as they propose to deduct, in order to determine their individual schools budget.

(2) Central expenditure referred to in paragraphs 3 and 4 of Part 1 (Central Services) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken in previous funding periods that commit the authority to incur expenditure in the funding period.

(3) In deducting the central expenditure referred to in Part 1 (Central Services) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 5 of Schedule 2, unless they are authorised to do so under regulation 25.

(4) A local authority must not deduct the central expenditure referred to in paragraphs 8 or 9 of Schedule 2 without authorisation from their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3), of the criteria for determining the expenditure.

---

(21) 1984 c.27. Section 26 was amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), sections 288 and 423 of, and Schedule 34 to, the Greater London Authority Act 1999 (c.29) and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

(5) A local authority must not deduct the central expenditure referred to in Part 1 (Central Services), Part 2 (Central Schools Expenditure), Part 3 (Central Early Years Expenditure) or Part 5 (Items That May Be Removed From Maintained Schools' Budget Shares) of Schedule 2 without authorisation from their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3).

(6) Where a local authority carries forward a deficit in the central expenditure from the previous funding period to the funding period which reduces the amount of the schools budget available, the funding of this deficit from the schools budget must be authorised by their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3).

(7) A local authority may apply to the Secretary of State for authorisation under regulation 25(1) to deduct from their schools budget any expenditure falling outside the classes or descriptions of planned expenditure set out in Schedule 2, in order to determine their individual schools budget.

(8) References to planned expenditure in this regulation and Schedule 2 are references to that expenditure net of—

- (a) all related specific grants;
- (b) all related fees, charges and income; and
- (c) any funding received from the Secretary of State in respect of PFI scheme unitary payments,  
and the expenditure referred to in Schedule 2 includes expenditure on associated administrative costs and overheads.

### **Consultation**

**9.**—(1) In determining the formulae under regulation 10 a local authority may make changes to the formulae they determined under regulation 9 of the 2012 Regulations.

(2) Subject to paragraph (4), a local authority must consult their schools forum and schools maintained by them about any proposed changes under paragraph (1), in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(3) Where a local authority proposes to make changes under paragraph (1) which will affect relevant early years providers in their area they must also consult those providers in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(4) Paragraph (2) does not apply to changes made relating to matters referred to in regulation 20 (sixth form funding) or 23 (excluded pupils).

(5) A local authority must consult their schools forum before incurring any of the expenditure referred to in paragraphs 8 or 9 of Schedule 2.

### **Formulae for determination of budget shares etc for certain maintained schools and early years providers**

**10.**—(1) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2), decide upon the formula which they will use to determine the budget shares for schools maintained by them (other than special schools, pupil referral units, nursery schools and in relation to nursery classes in schools maintained by them).

(2) A local authority must use the formula determined under paragraph (1) in all determinations of school budget shares in respect of the funding period.

(3) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2) or 9(3), decide upon the formula they will use to determine—

- (a) the budget shares for nursery schools maintained by them;

(b) the amounts to be allocated in respect of nursery classes in schools maintained by them; and

(c) the amounts to be allocated to relevant early years providers in their area.

(4) A local authority must use the formula determined under paragraph (3) in all determinations of budget shares for nursery schools maintained by them, the amounts to be allocated in respect of nursery classes in schools maintained by them and the amounts to be allocated to relevant early years providers in their area in respect of the funding period.

(5) A local authority may not make changes to their formulae after the funding period has commenced.

### **Determination of allocation of budget shares etc for the funding period**

**11.**—(1) Not later than 15th March 2013, a local authority must determine the budget share for each of the schools maintained by them (other than special schools, pupil referral units, nursery schools and in relation to nursery classes in schools maintained by them), using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

(2) When making the determination under paragraph (1) the local authority must identify within each budget share an amount calculated by reference to the requirements, factors and criteria specified in Part 3 which are relevant to pupils with special educational needs.

(3) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (6), the authority may apply to their schools forum under regulation 12(1), or to the Secretary of State under regulation 12(3) for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from the budget shares of—

(a) all primary schools other than nursery schools,

(b) all secondary schools, or

(c) all primary schools other than nursery schools, and all secondary schools,

where the expenditure is instead to be treated as central expenditure.

(4) Not later than 15th March 2013, a local authority must determine the budget share for each of the special schools and pupil referral units maintained by them in accordance with Part 3 of these Regulations.

(5) Not later than 31st March 2013, a local authority must determine the budget share for each of the nursery schools maintained by them, the amount to be allocated in respect of each nursery class in schools maintained by them and the amount to be allocated to each relevant early years provider in their area, using the formula referred to in regulation 10(3) in accordance with Part 3 of these Regulations.

(6) Not later than 31st March 2013, a local authority must give notice of each budget share or amount determined under paragraphs (1), (4) and (5) to the governing body of the school or the relevant early years provider concerned, except where the budget share has been redetermined under paragraph (3) in which case the authority must give notice of the redetermined budget share.

## **CHAPTER 3**

### **Further Deductions and Variations to Limits Authorised by Schools Forums or the Secretary of State**

#### **Applications to the schools forum and the Secretary of State**

**12.**—(1) Subject to paragraph (2), on the application of a local authority, their schools forum may authorise—



- (a) the criteria for determining expenditure referred to in paragraphs 8 or 9 of Schedule 2, under regulation 8(4);
  - (b) the making of deductions from the authority's schools budget of certain central expenditure under regulation 8(5);
  - (c) the funding of any deficit in the authority's central expenditure from the schools budget under regulation 8(6); or
  - (d) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from schools' budget shares where it is instead to be treated by the authority as central expenditure, under regulation 11(3).
- (2) Where—
- (a) a schools forum does not authorise any of the matters referred to in paragraph (1); or
  - (b) a local authority are not required to establish a schools forum for their area, the authority may make an application to the Secretary of State for such authorisation.
- (3) On the application of a local authority under paragraph (2), the Secretary of State may authorise the matters referred to in paragraph (1).

## PART 3

### Determination of Budget Shares etc

#### CHAPTER 1

##### Requirements, and Factors and Criteria Taken into Account

#### **Pupil numbers**

**13.**—(1) Subject to regulation 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision) and paragraph (2), in determining and redetermining budget shares for primary and secondary schools, a local authority must ascertain and take into account in their formula the number of registered pupils at those schools on the date specified in paragraph (3).

(2) For the purposes of paragraph (1), the number of registered pupils does not include pupils—

- (a) in places in primary or secondary schools which the authority have reserved for children with special educational needs, or
- (b) in respect of whom a sixth form grant is payable.

(3) The date for ascertaining pupil numbers is 4th October 2012.

(4) Where a primary school had more registered pupils in reception classes on 19th January 2012 than on 6th October 2011, the authority may take into account in their formula the number of additional pupils, and where they do so this factor must be applied to all primary schools in the area.

(5) A local authority must include in their formula a single per pupil amount for each of the following—

- (a) the number of registered pupils in reception classes and at key stage 1 and 2,
- (b) the number of registered pupils at key stage 3, and
- (c) the number of registered pupils at key stage 4,

where the number of registered pupils is calculated with reference to paragraphs (2) to (4).

## Places

- 14.—(1) In determining and redetermining budget shares for—
- (a) special schools, and
  - (b) primary or secondary schools with places which the authority have reserved for children with special educational needs,
- paragraphs (2) and (3) have effect.
- (2) A local authority must include the sum of £10,000 for each place other than—
- (a) places for pupils in respect of whom a sixth form grant is payable, and
  - (b) hospital education places.
- (3) For each hospital education place the local authority must include the equivalent amount per place which the authority included in their budget share in the previous funding period for hospital education.
- (4) In determining and redetermining budget shares for pupil referral units, paragraphs (5) and (6) have effect.
- (5) A local authority must include the sum of £8,000 for each place other than hospital education places.
- (6) For each hospital education place the local authority must include the equivalent amount per place which the authority provided to the pupil referral unit in the previous funding period for hospital education.

## Social deprivation

- 15.—(1) In determining budget shares for schools maintained by them (other than special schools, pupil referral units or nursery schools), a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation in pupils registered at the schools maintained by them, subject to paragraphs (2) to (4).
- (2) The authority must base the incidence of social deprivation referred to in paragraph (1) on one or both of the following—
- (a) either a pupil's eligibility for free school meals on 4th October 2012 or a pupil's eligibility for free school meals recorded in any school census between and including Summer 2006 and Spring 2012,
  - (b) a pupil's IDACI score on 4th October 2012,
- and where it is based on an IDACI score the authority may use factors which differentiate between different IDACI bands.
- (3) In determining budget shares pursuant to paragraph (1) the authority may take into account in their formula a single per pupil amount for each socially deprived pupil in reception classes and at key stage 1 and 2, and a single per pupil amount for each socially deprived pupil at key stage 3 and 4.
- (4) In paragraph (3) a reference to a "socially deprived pupil" is to a pupil who has been determined as being such pursuant to paragraph (2).
- (5) Other than in respect of two year olds, in determining—
- (a) budget shares for maintained nursery schools,
  - (b) amounts to be allocated in respect of nursery classes in schools maintained by them, and
  - (c) amounts to be allocated to relevant early years providers in their area,
- a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation in pupils registered at the nursery school or in the nursery

class or among children receiving relevant early years provision from the provider, and the determination of the incidence of social deprivation must be based on the characteristics of the pupils or children and not on the location of the school or provider.

(6) In determining—

- (a) budget shares for maintained nursery schools,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them, and
- (c) amounts to be allocated to relevant early years providers in their area,

in respect of two year olds, a local authority may take into account in their formula a factor or factors based on the incidence of social deprivation in pupils registered at the nursery school or in the nursery class or among children receiving relevant early years provision from the provider, and the determination of the incidence of social deprivation must be based on the characteristics of the pupil or child and not on the location of the school or provider.

### **Special arrangements for pupils in maintained nursery schools and nursery classes and for children receiving relevant early years provision**

16.—(1) Subject to paragraphs (5) and (6), in determining—

- (a) budget shares for nursery schools maintained by them,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them, and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, as the case may be, using as a basis for the calculation the most recent data available about the actual numbers of registered pupils or children receiving prescribed early years provision.

(2) A local authority must review the budget share for each maintained nursery school and the amount allocated in respect of each nursery class when further information about hours of attendance becomes available, taking into account—

- (a) in the case where the local authority decide to fund only prescribed early years provision—
  - (i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive prescribed early years provision during the period (using as a basis for the calculation the actual hours of such attendance in each of at least three sample weeks); or
  - (ii) the actual total number of hours of such attendance for the period;
- (b) in the case where the local authority decide to fund early years provision in excess of that which is prescribed—
  - (i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive early years provision during the period (using as a basis for the calculation the actual hours of such attendance in each of at least three sample weeks); or
  - (ii) the actual total number of hours of such attendance for the period; andredetermine that budget share or amount allocated, as the case may be.

(3) A local authority must review the amount allocated to each relevant early years provider, when further information about hours of attendance becomes available, taking into account—

- (a) the predicted total number of hours of attendance of children who will receive prescribed early years provision from the relevant early years provider during the period (using as a

basis for the calculation the actual hours of such attendance in each of at least three sample weeks); or

- (b) the actual total numbers of hours of such attendance for the period; and redetermine the amount allocated.

(4) Where a local authority make any redetermination pursuant to paragraph (2) or (3) they must give notice to the governing body of the school or the relevant early years provider concerned of the redetermination and the date on which it will be implemented, within 28 days of the redetermination.

(5) When determining budget shares for maintained nursery schools, amounts to be allocated in respect of nursery classes and amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider according to the special educational needs of any such pupils or children.

(6) When determining amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of children receiving prescribed early years provision from the relevant early years provider according to whether any children have been admitted to the relevant early years provider in excess of the number agreed with the authority.

(7) When determining—

- (a) budget shares for maintained nursery schools,  
(b) amounts to be allocated in respect of nursery classes in schools maintained by them, and  
(c) amounts to be allocated to relevant early years providers in their area,

a local authority may take into account in their formula the number of places they wish to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where those places have been reserved by the authority for children with special educational needs, children in need or children that meet the condition prescribed by regulation 3(2) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012<sup>(22)</sup>.

### **Differential funding**

17. For the purpose of determining or redetermining—

- (a) budget shares for maintained nursery schools,  
(b) amounts to be allocated in respect of nursery classes in schools maintained by them, and  
(c) amounts to be allocated to relevant early years providers in their area,

a local authority may use factors or criteria which differentiate between different categories or descriptions of school or provider on the basis of unavoidable costs.

### **Additional requirements, factors or criteria**

18.—(1) Subject to paragraph (3), in determining budget shares, a local authority may take into account in their formula any or all of the requirements, factors or criteria set out in Part 1 of Schedule 3, and where they do the date for ascertaining pupil numbers is 4th October 2012, save as otherwise stated.

(2) Subject to regulation 17 (differential funding), in determining budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools

---

(22) S.I. 2012/2488.

maintained by them and amounts to be allocated to relevant early years providers in their area, a local authority may take into account in their formula any or all of the requirements, factors or criteria set out in Part 2 of Schedule 3.

(3) The requirements, factors and criteria set out in Schedule 3 may not be taken into account by a local authority on the basis of actual or estimated cost unless otherwise stated in that Schedule.

(4) Subject to paragraphs (5) and (6), in determining the budget shares for schools maintained by them (other than special schools, pupil referral units and nursery schools), with reference to the per pupil amount of redetermined adjusted budget share for the previous funding period, a local authority may—

- (a) determine a percentage beyond which the per pupil amount of redetermined adjusted budget share a school would otherwise be allocated must not increase by, or
- (b) determine a proportionate limit to this increase.

(5) In paragraph (4) “redetermined adjusted budget share for the previous funding period” and “redetermined adjusted budget share” have the same meanings as in Schedule 4.

(6) Where the local authority decide to determine such a percentage or proportionate limit under paragraph (4) it must be applied to the budget shares of all schools in the local authority area.

### **Minimum funding guarantee**

**19.**—(1) Subject to paragraph (4), in determining and redetermining budget shares for primary and secondary schools maintained by them, a local authority must ensure that an amount equal to the guaranteed funding level is included, calculated in accordance with Schedule 4.

(2) For the purpose of determining budget shares, paragraph (1) does not apply to any school opening during the funding period, except in the circumstances set out in paragraph 3 of Schedule 4.

(3) In determining and redetermining—

- (a) budget shares for nursery schools maintained by them,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them, and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must ensure that the number by which they multiply the predicted total number of hours calculated pursuant to regulation 16(1) is no lower than 1.5 percent less than the number by which they multiplied the predicted total number of hours calculated pursuant to regulation 16(1) of the 2012 Regulations for making such determinations in the previous funding period.

(4) A local authority may make changes to the operation of this regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State under regulation 25 (alternative arrangements).

### **Sixth form funding**

**20.**—(1) A local authority must include in the budget shares of secondary and special schools an amount equal to any sum notified to the local authority by the Secretary of State as being the allocation in respect of that school’s sixth form grant.

(2) A local authority may, in determining budget shares, use a factor which allocates funding in respect of the number of registered pupils in sixth forms on 4th October 2012 subject to the limitation in paragraph (3).

(3) Where a local authority use a factor in determining budget shares pursuant to paragraph (2) they must ensure that the amount allocated per pupil in respect of this factor in the funding period is no greater than the amount that was allocated per pupil in sixth forms in the previous funding period,

save that in determining the amount allocated per pupil in the previous funding period account should be taken of amounts that formed part of central expenditure in that funding period.

(4) A local authority must redetermine the budget share of a secondary school before the end of the funding period where the authority receive a written notification from the Secretary of State of a revised allocation in respect of the sum referred to in paragraph (1).

### **New schools**

**21.** A local authority must determine a budget share for any new school in their area from the date of the school's opening in accordance with this Part.

### **Federated schools**

**22.—**(1) Subject to paragraphs (2) and (3), where two or more schools are federated under section 24 of the 2002 Act, the local authority must determine a budget share for each school in accordance with Part 3 of these Regulations.

(2) After carrying out the determination under paragraph (1) the local authority may treat the schools as a single school for the purposes of these Regulations and, accordingly, allocate a single budget share to the governing body of the federation.

(3) Where the local authority decide to allocate a single budget share to the governing body of a federation under paragraph (2) they must determine this by combining the budget shares of all the schools that form part of that federation.

(4) Where one or more schools are to leave a federation which has been allocated a single budget share under paragraph (2), the local authority must—

- (a) determine the budget share for each of the leaving schools; and
- (b) redetermine the budget share for the federation, in accordance with Part 3 of these Regulations.

## **CHAPTER 2**

### **Adjustments, Correction of Errors, and Alternative Arrangements Authorised by the Secretary of State**

### **Pupils permanently excluded from, or leaving, maintained schools**

**23.—**(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, pupil referral unit or from a place which the authority have reserved for children with special educational needs) (“the excluding school”) the authority must redetermine the excluding school's budget share in accordance with paragraph (2).

(2) The excluding school's budget share must be reduced by the amount  $Ax(B/52)+C$  where—

- (a) A is the amount determined by the authority in accordance with this Part, that would be attributable to a registered pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority for the full funding period;
- (b) B is the number of complete weeks remaining in the funding period calculated from the relevant date, except that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a

different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date; and

- (c) C is the amount of the adjustment made to the school's budget share pursuant to a financial adjustment order.

(3) Where a pupil who has been permanently excluded from a school maintained by a local authority is admitted to another school maintained by a local authority other than a pupil referral unit ("the admitting school") in the funding period, the authority must redetermine the admitting school's budget share in accordance with paragraphs (4) and (5).

(4) The admitting school's budget share must be increased by an amount which may not be less than the amount  $Dx(E / F)$  where—

- (a) D is the amount by which the authority reduced the budget share of the excluding school, or would have reduced the budget share had that school been maintained by the authority, except that any reduction in the excluding school's budget share made pursuant to a financial adjustment order must not be taken into account for these purposes;
- (b) E is the number of complete weeks remaining in the funding period during which the pupil is a registered pupil at the admitting school; and
- (c) F is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) In redetermining the admitting school's budget share, the authority may increase it by any amount up to the amount of the adjustment made by the excluding school's budget share pursuant to a financial adjustment order.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school, the school's budget share must be increased by an amount which is no less than  $Gx(H / I)$  where—

- (a) G is the amount by which the authority reduced the school's budget share under paragraph (2);
- (b) H is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c) I is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school other than a pupil referral unit for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(8) For the purposes of paragraph (2)(a), the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula, by reference to pupil numbers rather than by reference to any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom a sixth form grant is payable, the amount attributable to that pupil is £3,135 for the funding period).

(9) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority other than a pupil referral unit ("the excluding school") the local authority must redetermine the excluding school's budget share in accordance with paragraph (10).

(10) The excluding school's budget share must be reduced by  $Jx(K / 52)$  where—

- (a) J is the amount of the pupil premium allocated to the excluding school for the funding period in respect of that child; and

- (b) K is the number of complete weeks remaining in the funding period calculated from the relevant date, except that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, K is the number of complete weeks remaining in that school year calculated from the relevant date.

(11) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority and admitted to another school maintained by a local authority other than a pupil referral unit (“the admitting school”) in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (12).

(12) The admitting school’s budget share must be increased by an amount which may not be less than  $Lx(M/N)$  where—

- (a) L is the amount by which the authority reduced the budget share of the excluding school or would have reduced the budget share had that school been maintained by the authority;
- (b) M is the number of complete weeks remaining in the funding period during which the pupil is a registered pupil at the admitting school; and
- (c) N is the number of complete weeks remaining in the funding period calculated from the relevant date.

(13) Where a permanently excluded pupil in respect of whom a pupil premium is payable is subsequently reinstated by the governing body of the school, the school’s budget share must be increased by an amount which is no less than  $Ox(P/Q)$  where—

- (a) O is the amount by which the authority reduced the school’s budget share under paragraph (10);
- (b) P is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c) Q is the number of complete weeks remaining in the funding period calculated from the relevant date.

(14) Paragraphs (9) and (10) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school other than a pupil referral unit for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(15) For the purposes of this regulation—

- (a) “the relevant date” is the sixth school day following the date on which the pupil has been permanently excluded; and
- (b) “a financial adjustment order” means an order for the adjustment of a school’s budget share made under regulation 25(5)(b) of The School Discipline (Pupil Exclusions and Reviews) (England) Regulations(23) in respect of the exclusion of the pupil from the excluding school.

### **Correction of errors and changes in non-domestic rates**

**24.**—(1) A local authority may at any time during the funding period redetermine a school’s budget share or the amount allocated to a relevant early years provider for the funding period or any earlier funding period in order to correct an error in a determination or redetermination under these or



any previous Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise, and any such redetermination will take effect in the following funding period.

(2) A local authority may redetermine a school's budget share to take into account any changes in that school's non-domestic rate liability in relation to the funding period or any earlier funding period.

(3) In so far as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the regulations in force during the funding period in which the error occurred.

### **Alternative arrangements approved by Secretary of State**

**25.**—(1) Subject to paragraph (2), on application by a local authority, the Secretary of State may authorise the authority to—

- (a) disregard the limits referred to in paragraph 5 of Schedule 2 when deducting any expenditure referred to in regulation 8(3) (Central Services expenditure),
- (b) deduct any expenditure referred to in regulation 8(7) (expenditure falling outside of Schedule 2),
- (c) determine or redetermine budget shares of schools maintained by them,
- (d) determine or redetermine amounts to be allocated in respect of nursery classes in schools maintained by them,
- (e) determine or redetermine amounts to be allocated to relevant early years providers in their area,
- (f) include additional factors or criteria in their formula under regulation 10(1) (formula for determining budget shares) where the nature of a school's premises exceptionally gives rise to significant additional cost,
- (g) include additional factors or criteria that the authority propose to include in their formula under regulation 10(3) (early years single funding formula),
- (h) vary the amount by which a school's redetermined adjusted budget shall be reduced for the purpose of determining the guaranteed level of funding in paragraph 1 of Schedule 4,
- (i) disregard regulation 13 (pupil numbers), or
- (j) disregard regulation 14 (places) in the determination and redetermination of budget shares for pupil referral units.

(2) The Secretary of State may authorise the matters referred to in paragraph (1) to such extent as the Secretary of State may specify in accordance with arrangements approved in place of the arrangements provided for by these Regulations.

## **PART 4**

### **Schemes**

#### **Required content of schemes**

**26.** A scheme prepared by a local authority under section 48(1) of the 1998 Act must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

### **Approval by the schools forum or the Secretary of State of proposals to revise schemes**

27.—(1) Where a local authority submit a copy of their proposals to revise their scheme to their schools forum for approval pursuant to paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, the members of the schools forum who represent schools maintained by the authority may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(2) Where the schools forum approves the proposals to revise the scheme, it may specify the date upon which the revised scheme is to come into force.

(3) Where—

- (a) the schools forum refuses to approve proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, or approves any such proposals subject to modifications which are not acceptable to the local authority; or
- (b) the local authority are not required to establish a schools forum for their area, the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(5) When approving proposals to revise the scheme, the Secretary of State may specify the date upon which the revised scheme is to come into force.

(6) No revised scheme is to come into force unless approved by the schools forum or the Secretary of State in accordance with this regulation.

### **Publication of schemes**

28.—(1) A local authority—

- (a) must publish their scheme on a website which is accessible to the general public; and
- (b) may publish it elsewhere, in such manner as they see fit.

(2) Whenever a local authority revise the whole or part of their scheme they must publish the scheme as revised on a website which is accessible to the general public by the date that the revisions are due to come into force, together with a statement that the revised scheme comes into force on that date.

27th November 2012

*David Laws*  
Minister of State  
Department for Education