

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND)**  
**REGULATIONS 2012**

**2012 No. 2991**

**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 and Early Years Finance (England) Regulations 2012 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 These Regulations relate only to the 2013-14 financial year.

2.3 The Regulations give effect to the decisions made to reform the school funding system through simplified local formulae, greater delegation to schools and new arrangements for funding pupils with high needs.

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

None.

**4. Legislative Context**

4.1 New regulations need to be made because the School Finance (England) Regulations 2012 (S.I. 2012/445) apply only to the end of the 2012-13 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), as amended.

**5. Territorial Extent and Application**

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 Following two previous consultations, Ministers announced on 26 March 2012 that there would be reforms to the school funding system from the 2013-14 financial year. These Regulations give effect to the decisions announced then.

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

7.3 The number of different factors which can be used by local authorities in their school funding formula has been reduced from 37 to 12. These include compulsory factors for total pupil numbers and deprivation. Factors using pupil numbers will be based on the October pupil census instead of the January census as previously; this will enable local authorities to calculate school budgets earlier and they will be required to issue budgets to maintained schools by 15 March rather than 31 March as previously. Local authorities must consult all maintained schools as well as their schools forum when changing their formulae.

7.4 Local authorities are able to apply to the Secretary of State to request additional factors but these must relate to additional costs arising as a result of the nature of the school's premises.

7.5 The Minimum Funding Guarantee (MFG) for schools has been set at -1.5% per pupil for 2013-14. The calculation has been simplified compared with previous years and the Regulations set out the factors which are excluded from the calculation. Local authorities can apply to the Secretary of State for other factors to be excluded from the calculation. Authorities can also cap or scale back gains schools are making as a result of formula changes, but this must be applied consistently for all schools in the authority's area.

7.6 There are greater restrictions on the expenditure which can be held centrally within the schools budget and schools forum approval is required for each heading. Some services which could previously be held centrally will now have to be delegated to schools through the formula. Others relating to historic commitments can only be retained centrally if the planned expenditure does not exceed that reported in the 2012-13 financial year.

7.7 Some budgets can be retained centrally without any limit if the schools forum agree. Local authorities will be able to retain funding centrally for pupil growth related to basic need or to enable schools to meet the requirements of the infant class size legislation. The growth criteria must be approved by the schools forum.

7.8 Some services can be retained centrally by maintained primary or secondary schools if their schools forum representatives vote to do so. This is known as "de-delegation" and means that the budgets are initially included in the funding formula calculation but are then removed before schools receive their budgets. The Regulations amend the Schools Forums (England)

Regulations 2012 (S.I. 2012/266) to allow separate voting by the maintained primary or secondary representatives on the forum.

7.9 The Regulations also reflect changes to funding for pupils with high needs. Maintained special schools must receive a delegated budget of £10,000 for each agreed place, with the balance of funding paid as a “top-up” from central expenditure relating to high needs. This also applies to special units in mainstream schools. The same principles apply to pupil referral units, which will for the first time have delegated budgets from 1 April 2013. They will receive funding of £8000 for each agreed place, again with the balance of funding paid as a “top-up”.

7.10 The Regulations also reflect the transfer of funding for pupils with special educational needs or in further education with a learning difficulty assessment up to the age of 25. The definitions of eligible schools budget expenditure and eligible central high needs expenditure have been amended accordingly.

7.11 Funding for disadvantaged two year olds is moving into the schools budget from 1 April 2013. The Regulations relating to the Early Years Single Funding Formula have been amended to allow places to be funded for two year olds, to support capacity building, and to remove the requirement to have a deprivation factor for these children, as they are all from disadvantaged groups.

7.12 There are a few other changes relating to early years funding. The deprivation factor will have to relate to the characteristics of the children rather than the provider. Protection on the basic hourly rates of funding will also apply to all providers for the first time, at -1.5% in line with the MFG for schools. The schools forum will have to approve the level of centrally retained expenditure on early years.

## **8. Consultation outcome**

8.1 As stated in paragraph 7.1, two consultations were carried out on the reforms to the school funding system prior to the announcement by Ministers on 26 March 2012. The first consultation ran from 13 April to 25 May 2011, and the second ran from 19 July to 11 October 2011. The responses to these consultations have already been published and can be found on the school funding reform page on the Department of Education’s website (<http://www.education.gov.uk/schools/adminandfinance/financialmanagement/schoolsrevenuefunding/a00215225/school-funding-reform>).

8.2 As a result of this previous consultation on the principles of change, the technical consultation on the School and Early Years Finance (England) Regulations 2012 focused on proposals that were not part of the earlier consultations and subsequent announcements. The consultation lasted from 19 July to 21 September 2012. There were 37 responses – 33 from local authorities, one from a schools forum, one from trades unions and two from

national organisations. This consultation focused on three questions relating to nursery education for two-year olds.

8.3 The proposals for consultation were:-

- To relax the requirement to have a mandatory deprivation supplement
- To relax the rules on place based funding to support capacity building
- To receive views on whether to have a mandatory quality supplement

8.4 For the mandatory deprivation supplement, there were 24 respondents consisting of 22 local authorities and two national organisations. 92% of respondents supported the proposal to relax the requirement to have a mandatory deprivation supplement. Respondents commented that by definition the eligible pupils will only be from disadvantaged areas, so having a deprivation supplement would not create any differential in funding.

8.5 For the place based funding, there were 21 respondents, consisting of 19 local authorities and two national organisations. 71% of respondents supported the proposals to relax the rules on place based funding in order to support capacity building. Respondents commented that relaxation will enable targeted and stable provision within local areas.

8.6 For the quality supplement, there were 24 respondents, consisting of 22 local authorities and two national organisations. 83% of respondents agreed that there should not be a mandatory quality supplement. Respondents commented that only good and outstanding providers were able to make this provision, so a quality factor would not create a differential in funding.

## **9. Guidance**

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](http://www.education.gov.uk)

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for three and four year olds through the same formula that the local authority will use to determine the funding of this free entitlement in maintained schools. As noted above, protection on the hourly base rates will apply to non-maintained providers for the first time, while funding for disadvantaged two year olds will also be distributed through this formula.

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.

10.3 An Impact Assessment has not been prepared for this instrument, but an Equality Impact Assessment was produced alongside the funding reform

consultation documents published on 26 March 2012 and 28 June 2012. The Impact Assessment can be accessed here:  
<http://media.education.gov.uk/assets/files/pdf/s/school%20funding%20equia.pdf>

**11. Regulating small business**

The legislation does not apply to small business.

**12. Monitoring & review**

12.1 The regulatory framework will be considered as part of the continuing review of school funding and potential movement towards a national funding formula.

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 can answer any queries regarding the instrument. Tel: 020 7227 5163 or email: [keith.howkins@education.gsi.gov.uk](mailto:keith.howkins@education.gsi.gov.uk)