
STATUTORY INSTRUMENTS

2013 No. 3104

**The School and Early Years Finance
(England) Regulations 2013**

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2013 and come into force on 1st January 2014.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2014.

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

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996⁽¹⁾;

“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⁽²⁾;

“the 2006 Act” means the Education and Inspections Act 2006⁽³⁾;

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

“the 2012 Regulations” means the School and Early Years Finance (England) Regulations 2012⁽⁵⁾;

“the 2008 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 19th May 2008⁽⁶⁾;

“the 2012 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 27th March 2012⁽⁷⁾;

“the 2013 Document” means the document entitled “2013 Key Stage 2 Assessment and Reporting Arrangements”⁽⁸⁾ containing provisions made pursuant to Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003⁽⁹⁾, made under section 87(3) of the Education Act 2002;

(1) 1996 c.56.

(2) 2005 c.18.

(3) 2006 c.40.

(4) 2009 c.22.

(5) S.I. 2012/2991.

(6) Available at: www.education.gov.uk/publications/eOrderingDownload/00267-2008BKT-EN.pdf

(7) Available at: www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012

(8) Available at: http://media.education.gov.uk/assets/files/pdf/2/sta136001_2013%20ks2%20ara.pdf

(9) S.I. 2003/1038, amended by S.I. 2009/1585, 2010/290, 2011/2392, 2013/1513, there are other amending instruments but none is relevant.

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

“all-through schools” means those primary or secondary schools known by this title where pupils may join the school at an age of between three and five years and remain at the school until the age of between 16 and 19 years;

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper accounting practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003⁽¹⁰⁾;

“central expenditure” means, in respect of the funding period, the total amount deducted by a local authority from their schools budget in accordance with regulation 8, or in respect of the previous funding period, the total amount deducted by a local authority from their schools budget in accordance with regulation 8 of the 2012 Regulations;

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

“community early years provision” means prescribed early years provision provided by the governing body of a maintained school under section 27(1) of the 2002 Act to children other than pupils at the school, where the local authority have chosen to fund such provision;

“the Early Years Foundation Stage Profile” has the meaning given in section 2 of the 2008 Document or the 2012 Document, as the context specifies more particularly;

“early years provision” has the meaning given in section 20 of the Childcare Act 2006⁽¹¹⁾;

“eligibility for free school meals” means eligibility for free lunches under section 512ZB of the 1996 Act⁽¹²⁾;

“exempt early years provider” means a provider of exempt early years provision;

“exempt early years provision” means early years provision which is not included in prescribed early years provision for the purposes of section 7(1) of the 2006 Act by virtue of regulation 2(2) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012⁽¹³⁾;

“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 2014;

⁽¹⁰⁾ 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.

⁽¹¹⁾ 2006 c.21.

⁽¹²⁾ Section 512ZB was inserted by section 201(1) of the 2002 Act and amended by section 28 of, and paragraph 16(3) of Schedule 3 to, the Welfare Reform Act 2007 (c. 5), section 26(1)(a) to (e) of the Child Poverty Act 2010 (c. 9) and section 31, and paragraph 39(a) and (b) of Schedule 2 to, the Welfare Reform Act 2012 (c.5).

⁽¹³⁾ S.I. 2012/2488.

“home school” means, in respect of a pupil, a school which is the shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

- (i) a selective school,
- (ii) a special school, or
- (iii) an independent school which is not an Academy;

“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 referred to in the document named “English Indices of Deprivation 2010” published by the Department for Communities and Local Government(14);

“IDACI bands” means the groupings of IDACI scores as published by the Department for Education in the document named “Schools Block Dataset Technical Specification: 2014 to 2015”(15);

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

“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(16) 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;

“learning difficulty” means difficulty in learning that a person has that is significantly greater than the majority of persons of his or her age, or a disability which either prevents or hinders the person from 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(17), and a reference to a person being subject to learning difficulty assessment has the meaning given in section 13(4) of the 1996 Act(18);

“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;

“middle school single sum formula” is $A \times (B / C) + D \times (E / C)$ where—

- (i) A is the amount allocated per school by the authority under paragraph 1(a) of Schedule 3 (primary single sum),
- (ii) B is the number of primary-age year groups in the school,
- (iii) C is the number of year groups in the school,
- (iv) D is the amount allocated per school by the authority under paragraph 2(a) of Schedule 3 (secondary single sum),
- (v) E is the number of secondary-age year groups in the school;

(14) Available at: www.gov.uk/government/publications/english-indices-of-deprivation-2010

(15) Available at: www.gov.uk/government/publications/2014-to-2015-schools-block-dataset-technical-specification

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

(17) Subsection (5) of section 13 was inserted by section 59 of, and paragraphs 1 and 2 of Schedule 2 to, the 2009 Act.

(18) Subsection (4) of section 13 was inserted by section 59 of, and paragraph 1 and 2 of Schedule 2 to, the 2009 Act.

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988⁽¹⁹⁾;

“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 2013 and “previous funding periods” means such financial years as the context specifies more particularly;

“proper accounting 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⁽²⁰⁾;

“provider”, in relation to prescribed early years provision, includes a governing body of a maintained 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 as a result 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 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 learning goals” means the early learning goals in the prime areas in section 1 of the 2012 Document and also the early learning goals of reading, writing, numbers and shape, space and measures in section 1 of that document;

“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⁽²¹⁾;

“second closest school” means, in respect of a pupil, a school which is the second shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

- (i) a selective school,
- (ii) a special school, or
- (iii) an independent school which is not an Academy;

“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⁽²²⁾;

⁽¹⁹⁾ 1988 c.41.

⁽²⁰⁾ 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).

⁽²¹⁾ Section 537A was inserted by section 140(1) of, and paragraph 153 of Schedule 30 to, the 1998 Act.

⁽²²⁾ 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).

“specific grant” means any grant paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used other than—

- (i) a grant named “Dedicated Schools Grant”, paid to a local authority by the Secretary of State under section 14 of the 2002 Act, or
- (ii) any sixth form grant;

“teaching assessment of English writing” means the assessment referred to as such in the 2013 Document;

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

“selective school” means a school where all the pupils in the school are selected by ability or by aptitude;

“Year 1” means the school year in which the majority of pupils attain the age of six;

“Year 2” means the school year in which the majority of pupils attain the age of seven;

“Year 3” means the school year in which the majority of pupils attain the age of eight;

“Year 4” means the school year in which the majority of pupils attain the age of nine;

“Year 5” means the school year in which the majority of pupils attain the age of ten;

(5) In these Regulations—

- (a) a reference to a determination or redetermination of a budget share or amount to be allocated is a reference to such a determination or redetermination for the funding period, unless otherwise stated;
- (b) a reference to an Academy school’s “predecessor school” is a reference to—
 - (i) the school that was discontinued and which that Academy school replaced, or
 - (ii) the maintained school which converted into that Academy school in accordance with section 4 of the 2010 Act;
- (c) a reference to a “governing body” of a school includes the management committee of a pupil referral unit;
- (d) a reference to an inspection under section 5 of the 2005 Act includes a reference to an inspection under section 8 of that Act (other inspections) which has been treated by the Chief Inspector as an inspection under section 5;
- (e) a reference to the number of pupils at a particular key stage is a reference to the number on 3rd October 2013, unless otherwise stated;
- (f) a reference to “pupils or children” in regulations 15 and 16 is a reference to—
 - (i) in respect of a nursery school, the pupils at the school,
 - (ii) in respect of a nursery class, the pupils in the class,
 - (iii) in respect of a prescribed early years provider, the children receiving prescribed early years provision from the provider,
 - (iv) in respect of a relevant early years provider, the children receiving relevant early years provision from the provider,
 - (v) in respect of an exempt early years provider, the children receiving exempt early years provision from the provider, and
 - (vi) in respect of community early years provision, the children receiving such provision at the school;
- (g) a reference to “pupils” includes only those pupils who are recorded on the school census as either—
 - (i) registered solely at that school, or

- (ii) registered at more than one school, but attending that school for the majority of their time,
except in regulations 15(5), 15(6) and 16 where “pupil” means a registered pupil⁽²³⁾;
- (h) a reference to “schools” in Schedules 1 and 2 includes maintained schools and Academies except where the context requires otherwise;
- (i) 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
- (j) 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

- 2. The School Finance (England) Regulations 2012⁽²⁴⁾ are revoked on 1st April 2014.

Amendments

- 3.—(1) The Schools Forums (England) Regulations 2012⁽²⁵⁾ are amended as follows.
- (2) In regulation 1(3), after “In these Regulations—”, insert—
““16 to 19 provider” means—
(a) an institution within the further education sector, or
(b) an educational institution other than one referred to in subparagraph (a) that is principally concerned with providing further education suitable for persons over compulsory school age who have special educational needs or learning difficulties or are subject to learning difficulty assessment,
where 20% or more of the students at the institution reside in the authority’s area;”.
- (3) In regulation 1(3), in the definition of “representative”, after “save for in”, insert—
“regulation 7(1)(a) and”.
- (4) In regulation 4(2)(c), after “non-schools members appointed” insert—
“or elected”.
- (5) For regulation 4(3), substitute—
“(3) If, for any reason, an election for a schools member under regulation 5(1), an Academies member under regulation 6(1), or person to represent 16 to 19 providers under regulation 7(1)(a) either does not take place by the date (if any) set by an authority or results in a tie between two or more candidates, the authority must appoint the schools member, Academies member or person to represent 16 to 19 providers to their schools forum instead.”
- (6) In regulation 7, for paragraph (1), substitute—
“(1) The schools forum must include—

⁽²³⁾ “Registered pupil” is defined in section 434(5) of the 1996 Act.

⁽²⁴⁾ S.I. 2012/335.

⁽²⁵⁾ S.I. 2012/2261, amended by S.I. 2012/2991.

- (a) where there is at least one 16 to 19 provider, at least one person to represent 16 to 19 providers, that person to be elected by representatives of the 16 to 19 providers, or if there is only one 16 to 19 provider, by the representatives of that provider; and
 - (b) one or more persons appointed by the authority to represent early years providers.”
- (7) In regulation 8, for paragraphs (9A) and (9B), substitute—
- “(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 2013 where they relate to primary schools.
- (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 2013 where they relate to secondary schools.”.