

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2013**  
**2013 No. 3104**

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 2013 (“the 2013 Regulations”) provide how local authorities set their education budgets and how they allocate funding to maintained schools and providers of free early years provision in their area.

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

- 3.1 None

**4. Legislative Context**

- 4.1 The 2013 Regulations are made under the provisions of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools).
- 4.2 The 2013 Regulations relate to the 2014-15 financial year. To a large degree, they re-enact provisions in the School and Early Years Finance (England) Regulations 2012 (“the 2012 Regulations”) for the previous financial year, but there are some changes to reflect the reforms to be made to the school funding system in 2014-15.

**5. Territorial Extent and Application**

- 5.1 This instrument applies to England.

**6. European Convention on Human Rights**

- 6.1 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 19 July 2011 that school funding for 2013-14 would continue under the existing system whereby the Department for Education allocates Dedicated Schools Grant (DSG) to local authorities and then local authorities distribute funding to their maintained schools through a locally determined formula. This arrangement will continue in 2014-15. A

consultation is expected to begin around the end of 2013 on proposals for a reformed funding system, which could be introduced in 2015-16.

- 7.2 The main changes in the 2013 Regulations compared to the 2012 Regulations are set out below.
- 7.3 The 2013 Regulations set out the purposes for which local authorities can use any unspent money from the 2013-14 growth and infant class size funds and any unspent 2013-14 de-delegated central expenditure (expenditure initially allocated to schools' budget shares but then retained centrally with the schools forum permission). The unspent money can be used for the same purposes as it was intended to be used for in 2013-14.
- 7.4 The 2013 Regulations clarify special educational needs funding arrangements including: that there is a threshold of £6,000 below which schools will be expected to meet the additional costs of pupils with special educational needs (SEN) from their budget shares; that places reserved for children with SEN do not count towards a mainstream school's pupil numbers for the purpose of calculating its budget through the local funding formula; and that all places in special schools will be funded at £10,000 per place with effect from 1 August 2014.
- 7.5 The 2013 Regulations provide that the basic per pupil amount in a local authority's formula must be at least £2,000 for primary and £3,000 for secondary pupils.
- 7.6 Changes are made to the optional factors which a local authority is allowed to take into account in its formula. A factor has been introduced to relate to the sparseness of schools in a local authority area, and there are also changes to how local authorities can include factors in relation to the prior attainment and mobility of pupils in schools, and to the incidence of looked after pupils.
- 7.7 The 2013 Regulations remove the ability of local authorities to reduce the funding paid for government funded early education to private, voluntary and independent providers who admit children above a limit previously agreed with the local authority as this could constrain parental choice. The Regulations also clarify that local authorities are able to fund government funded early education delivered by maintained schools using the schools powers contained in section 27 of the Education Act 2002 (powers to provide community facilities).

## **8. Consultation outcome**

- 8.1 Consultation on the School and Early Years Finance Regulations 2013 ran from 1 August 2013 to 11 October 2013. The consultation document is available here: <https://www.gov.uk/government/consultations/school-and-early-years-finance-regulations-2013> There were 36 responses – 23 from local authorities and school forums, six from teacher, college and special school associations and seven from schools in Wokingham. The low response rate indicates that the changes proposed were not in general deemed contentious.

- 8.2 We have published a document setting out a full response to the consultation which is available here:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265749/DfE\\_consultation\\_response\\_to\\_School\\_Early\\_Years\\_Regulations\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265749/DfE_consultation_response_to_School_Early_Years_Regulations_2013.pdf)
- 8.3 The key change we made in light of the consultation was the treatment of certain unspent money. A major change to the 2012 Regulations we also consulted on was how to deal with certain aspects of early years funding.
- 8.4 We have reviewed our position regarding the treatment of unspent money that the local authority allocated in the previous financial year to fund significant growth in pupil numbers or that was needed to fund extra infant classes. As originally drafted, the 2013 Regulations provided that local authorities were required to put any unspent money that they had allocated for these purposes in the 2013-14 financial year into the 2014-15 “individual schools budget” (which is then passed on to individual schools). In response to comments received in the consultation we are instead going to allow the unspent amounts to be carried over and used for the same purpose in 2014-15 as it was in 2013-14. This is provided for in regulation 8(7).
- 8.5 In the consultation we also highlighted our proposal not to include in the 2013 Regulations the provision in regulation 17(6) of the 2012 Regulations which enables local authorities to vary the funding paid to providers of early years education outside of the maintained sector if the number of children admitted by a provider is in excess of a number agreed by the local authority. We proposed not including it in the 2013 Regulations because we were concerned that the provision restricts parental choice.
- 8.6 On this issue the Department received 11 responses with five making no comment on this change, one not making a judgment on the merits of the change and five not supporting the change to this provision. Those who opposed its removal believed local authorities should have a flexibility to limit funding in private, voluntary and independent early years providers, and that this was necessary to enable authorities to carry out their statutory duty to secure sufficient free early years provision in their area (see section 7 of the Childcare Act 2006). The Department does not agree that local authorities need to be able to reduce the funding for such providers to be able to meet their duty, as the duty is to ensure at least sufficient provision exists whether that be in the maintained sector or otherwise. Removing the flexibility is therefore important to maximise parental choice about where parents can take their government funded hours of early education.

## **9. Guidance**

- 9.1 A guidance note is to be sent to all local authorities outlining the changes, together with the Regulations, and is also published here:  
<http://media.education.gov.uk/assets/files/pdf/s/2013%20regs%20summary.pdf>

## **10. Impact**

- 10.1 There is minimal impact on business, charities and voluntary bodies in respect of private, voluntary and independent early years providers, as described above.
- 10.2 There is minimal impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business, except for private, voluntary and independent providers early years providers, as referred to above.

## **12. Monitoring & review**

- 12.1 The current regulatory framework will be considered as part of the review of the whole school funding system from 2015-16 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. The team will log and review any correspondence from schools and local authorities relating to the instrument.

## **13. Contact**

- 13.1 Kit McHenry at the Department for Education Tel: 020 7340 7976 or email: [kit.mchenry@education.gsi.gov.uk](mailto:kit.mchenry@education.gsi.gov.uk) can answer any queries regarding the instrument.