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STATUTORY INSTRUMENTS

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**2018 No. 10**

**The School and Early Years Finance  
(England) Regulations 2018**

**PART 1**

**Introduction**

**Citation, commencement, application and interpretation**

**1.—(1)** These Regulations may be cited as the School and Early Years Finance (England) Regulations 2018 and come into force on 5th February 2018.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2018.

(3) These Regulations apply in relation to England.

(4) In these Regulations—

“1989 Act” means the Children Act 1989**(1)**;

“1996 Act” means the Education Act 1996**(2)**;

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

“2002 Act” means the Education Act 2002;

“2003 Act” means the Local Government Act 2003**(3)**;

“2005 Act” means the Education Act 2005**(4)**;

“2006 Act” means the Education and Inspections Act 2006**(5)**;

“2010 Act” means the Academies Act 2010**(6)**;

“2014 Act” means the Children and Families Act 2014**(7)**;

“the Early Years Provision Regulations 2014” means the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014**(8)**;

“2017 Regulations” means the School and Early Years Finance (England) Regulations 2017**(9)**;

“2008 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 19th May 2008**(10)**;

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(1) 1989 c.41.

(2) 1996 c.56.

(3) 2003 c.26.

(4) 2005 c.18.

(5) 2006 c.40.

(6) 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).

(7) 2014 c.6.

(8) S.I. 2014/2147, as amended by S.I. 2016/887.

(9) S.I. 2017/44.

(10) Available at: <http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00261-2008>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

“2012 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 27th March 2012(11);

“2014 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 31st March 2014(12);

“2017 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 3rd March 2017(13)

“2016 ARA” means the document entitled “2016 Key Stage 2 Assessment and Reporting Arrangements”(14) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003(15), made under section 87(3) of the 2002 Act;

“2017 ARA” means the document entitled “2017 Key Stage 2 Assessment and Reporting Arrangements”(16) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003, made under section 87(3) of the 2002 Act;

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

“administrative costs and overheads” includes—

- (i) expenditure on legal services;
- (ii) expenditure in relation to the investigation and resolution of complaints;
- (iii) expenditure related to functions imposed by or under Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools), the administration of grants to the authority (including preparation of applications) and, where it is the authority’s duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions; and
- (iv) expenditure on recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools’ budget shares and who are paid for services;

“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 2003 Act(17);

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- (11) Available at: <http://webarchive.nationalarchives.gov.uk/20130404110654/https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
  - (12) A printed copy may be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
  - (13) Available at: <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>. A printed copy may be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
  - (14) Available at: <https://www.gov.uk/government/publications/2016-assessment-and-reporting-arrangements-pdf-format-versions>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
  - (15) 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.
  - (16) Available at: <https://www.gov.uk/government/publications/2017-key-stage-2-assessment-and-reporting-arrangements-ara>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
  - (17) Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146). Relevant amendments to those regulations are made by S.I. 2004/534, 2004/3055 and 2007/573.

“central expenditure” means, in respect of the funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 or, in respect of the previous funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 of the 2017 Regulations;

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

“community early years provision” means funded 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 has chosen to fund such provision;

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

“early years block” means the amount of funding allocated to a local authority in relation to early years provision in the Dedicated Schools Grant during the funding period;

“the Early Years Foundation Stage Profile” has the meaning given in section 2 of the 2008 Document, the 2012 Document, the 2014 Document, or the 2017 Document as the context specifies more particularly;

“early years provision” has the meaning given in section 20 of the Childcare Act 2006**(18)**;

“early years pupil premium” means funding supplied by the Department for Education for the purpose of early years provision to children who meet the criteria in regulation 17(2);

“EHC plan” has the meaning given in section 37(2) of the 2014 Act;

“eligibility for free school meals” means eligibility for free lunches under section 512ZB of the 1996 Act**(19)**;

“excluded early years provision” means early years provision provided by a provider—

- (i) which is an independent school (other than an academy) which does not meet the standards prescribed under section 94 of the Education and Skills Act 2008**(20)** in relation to the spiritual, moral, social and cultural development of pupils at the school; or
- (ii) which the local authority has reasonable grounds to believe—
  - (aa) does not actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - (bb) promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations;

“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 has incurred expenditure which it would be unreasonable to expect it 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

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**(18)** 2006 c.21.

**(19)** 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).

**(20)** 2008 c.25.

(iv) circumstances which were unforeseen when the school's budget share was initially determined;

“funded early years provision” means—

- (i) early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006; and
- (ii) early years provision specified for the purposes of section 2(1) of the Childcare Act 2016<sup>(21)</sup>;

“funding period” means the financial year beginning on 1st April 2018;

“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<sup>(22)</sup>; 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 “The English Indices of Deprivation 2015” published by the Department for Communities and Local Government<sup>(23)</sup>;

“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<sup>(24)</sup> and “key stage 1”, “key stage 2”, “key stage 3” and “key stage 4” mean, respectively, the first, second, third and fourth key stages referred to in those sections;

“looked after child” has the meaning given by—

- (i) section 22(1) of the 1989 Act; or
- (ii) section 74(1) of the Social Services and Well-being (Wales) Act 2014<sup>(25)</sup>;

“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); and
- (v) *E* is the number of secondary-age year groups in the school;

“the maintained nursery school supplement” is any amount allocated to the authority in respect of nursery schools maintained by it, notified to the authority in the early years block;

(21) 2016 c. 5.

(22) For the meaning of special school, see section 337 of the 1996 Act.

(23) Available at: [www.gov.uk/government/statistics/english-indices-of-deprivation-2015](http://www.gov.uk/government/statistics/english-indices-of-deprivation-2015). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

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

(25) 2014 anaw. 4.

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988(26);

“previous funding period” means the financial year beginning on 1st April 2017 and “previous funding periods” means such funding periods as the context specifies more particularly;

“proper accounting practices” means those accounting practices which a local authority is 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(27);

“prescribed alteration” means a prescribed alteration within the meaning of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013(28);

“provider”, in relation to funded 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 2017 Document (or, as the case may be, the 2012 Document or 2014 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 funded early years provision, other than the governing body of a maintained school;

“relevant early years provision” means funded 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(29);

“second closest school” means, in respect of a pupil, the 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;

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

“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;

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(26) 1988 c.41.

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

(28) S.I. 2013/3110. The regulations are made under section 18 of the 2006 Act.

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

“special academy” means an educational institution which meets the requirements of section 1A(2) of the 2010 Act;

“special educational needs” has the meaning given in section 20(1) of the 2014 Act;

“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) the Dedicated Schools Grant; or
- (ii) any sixth form grant;

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

“Year 1” means the school year(30) 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;

“Year 6” means the school year in which the majority of pupils attain the age of eleven.

(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’s “predecessor school” is a reference to—
  - (i) the school that was discontinued and which that academy replaced, or
  - (ii) the maintained school which converted into that academy 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 5th October 2017, unless otherwise stated;
- (f) a reference to disadvantaged two year olds in regulations 22 and 23 means—
  - (i) a child who is eligible for funded early years provision only by virtue of meeting the eligibility condition in regulation 3(2) of the Early Years Provision Regulations 2014, including any three year olds who are so eligible, or
  - (ii) a child in respect of whom funding is allocated by virtue of regulation 15(6);
- (g) 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 funded early years provider, the children receiving funded 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, and

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(30) For the meaning of “school year”, see section 579(1) of the 1996 Act.

- (v) in respect of community early years provision, the children receiving such provision at the school;
- (h) 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 most of their time, except in regulations 15(5), 15(6) and 16 where “pupil” means a registered pupil<sup>(31)</sup>;
- (i) a reference to “schools” in Schedule 1 includes maintained schools and academies, except where the context requires otherwise;
- (j) a reference to “special educational needs transport costs”, for the purposes of paragraph 2(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 is meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by it are equal to, or greater than, the costs of such transport;
- (k) a reference to “termination of employment costs”, for the purposes of paragraph 2(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;
- (l) a reference to “children”, for the purposes of Schedule 2, has the meaning given by section 579 of the 1996 Act;
- (m) a reference to “young people”, for the purposes of Part 5 of Schedule 2, is a reference to a person who is over compulsory school age but under the age of 19.

## **Revocation**

**2.** The School and Early Years Finance (England) Regulations 2015<sup>(32)</sup> are revoked on 1st April 2018.

## **Amendments**

**3.** In regulation 8 of the Schools Forums (England) Regulations 2012<sup>(33)</sup>, in each place where the words “the School and Early Years Finance (England) Regulations 2017” occur, substitute “the School and Early Years Finance Regulations (England) Regulations 2018”.

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<sup>(31)</sup> “Registered pupil” is defined in section 434(5) of the 1996 Act.

<sup>(32)</sup> S.I. 2015/2033.

<sup>(33)</sup> S.I. 2012/2261, amended by S.I. 2012/2991, S.I. 2013/3104, S.I. 2015/2033, and S.I. 2017/44.

## PART 2

### Action to be Taken by a Local Authority

#### CHAPTER 1

##### Determination of the Non-Schools Education Budget, Schools Budget, Individual Schools Budget, and Budget Shares

###### **The non-schools education budget**

4.—(1) 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;
- (b) expenditure which is to be treated as part of the non-schools education budget by virtue of regulation 8(12); and
- (c) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget).

(2) The expenditure referred to in paragraph (1) includes expenditure on associated administrative costs and overheads.

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

5. A local authority must, not later than 28th February 2018—

- (a) make an initial determination of its schools budget; and
- (b) give notice of that determination to the governing bodies of the schools which it maintains.

###### **The schools budget**

6.—(1) The classes or descriptions of local authority expenditure specified in paragraph (2) 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 the exceptions in regulation 7.

(2) The classes or descriptions of local authority expenditure are—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils at maintained schools;
- (b) expenditure on the education of children 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 children 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-paragraphs (a) or (b);
- (d) expenditure on the education of—
  - (i) persons provided with further education who are aged under 19 and have special educational needs; and
  - (ii) persons provided with further education who are aged 19 or over but under 25 and are subject to an EHC plan,

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 subparagraphs (a) to (d).

### **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>(34)</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 this regulation, not later than 28th February 2018, a local authority must deduct from its schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 as it proposes to deduct in order to determine its individual schools budget.

(2) Expenditure referred to in paragraphs 1 and 2 of Part 1 (Historic Commitments) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken before 1st April 2013 that commit the authority to incur expenditure in the funding period.

(3) In deducting the expenditure referred to in Part 1 (Historic Commitments) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 3 of Schedule 2, unless it is authorised to do so under regulation 29(1)(a).

(4) A local authority must not deduct the expenditure referred to in paragraphs 4 to 6 of Schedule 2 unless the criteria for determining the expenditure have been authorised by its schools forum under regulation 12(1), or by the Secretary of State under regulation 12(3).

(5) Except as provided for in paragraphs (12) and (13), a local authority must not deduct the expenditure referred to in Schedule 2 (other than expenditure referred to in paragraph 8 (expenditure on licences) and Part 5 (Children and Young People With High Needs) of Schedule 2) without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3).

(6) Where a local authority carries forward a deficit 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 its schools forum under regulation 12(1), or by the Secretary of State under regulation 12(3).

(7) Any amount of expenditure which was deducted under paragraphs 4 (growth fund), 5 (falling rolls), 6 (new schools), and 7 (extra infant classes) of Schedule 2 to the 2017 Regulations for the

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<sup>(34)</sup> 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), sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38), and section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13).

previous funding period and which remains unspent may be used by the local authority in the funding period for the purposes listed in paragraphs 4 to 7 of Schedule 2 to the 2017 Regulations that applied to such expenditure.

(8) A local authority must deduct the expenditure referred to in paragraph 31 of Schedule 2.

(9) Where a local authority treated any expenditure described in Part 6 of Schedule 2 to the 2017 Regulations (Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools) as central expenditure for the previous funding period under regulation 11(4) of the 2017 Regulations and any such amounts remain unspent, such amounts may be used by the local authority in the funding period for the purposes listed in Part 6 of Schedule 2 to the 2017 Regulations that applied to such expenditure.

(10) Where a local authority treated any expenditure described in Part 6 of Schedule 2 to the 2017 Regulations as central expenditure for the previous funding period under regulation 11(4) of the 2017 Regulations and carries forward a deficit in respect of that expenditure, the funding of this deficit from the schools budget must be authorised by its schools forum under regulation 12(1) or by the Secretary of State under regulation 12(3).

(11) A local authority may apply to the Secretary of State for authorisation under regulation 29(1) to—

- (a) deduct from its schools budget any expenditure falling outside the classes or descriptions of planned expenditure in Schedule 2, in order to determine its individual schools budget; and
- (b) alter the operation of regulation 11(3) (additional costs of pupils with special educational needs).

(12) A local authority may deduct the expenditure specified in paragraph (13) from the schools budget without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3), in which case it shall be treated as if it were part of the non-schools education budget, prescribed in regulation 4.

(13) The specified expenditure, for the purposes of paragraph (12), is the description of expenditure referred to in—

- (a) paragraphs 9 to 12 of Schedule 2;
- (b) Part 3 of Schedule 2; and
- (c) Part 7 of Schedule 2.

(14) 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 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(35).

(15) The expenditure referred to in Schedule 2 includes expenditure on associated administrative costs and overheads.

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(35) 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.

## **Consultation**

9.—(1) In determining the formulae under regulation 10, a local authority may change the formulae which it determined under regulation 10 of the 2017 Regulations.

(2) Subject to paragraph (4), a local authority must consult its schools forum and schools maintained by it 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 its area, it 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 24 (Sixth form funding) or 27 (Excluded pupils).

(5) A local authority must consult its schools forum before incurring any of the expenditure referred to in paragraphs 4 to 6 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 on the formula which it will use to determine the budget shares for schools which it maintains (other than special schools, pupil referral units and nursery schools, and in relation to nursery classes in schools maintained by it).

(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 (3), decide on the formula which it will use to determine—

- (a) the budget shares for nursery schools maintained by it;
- (b) the amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) the amounts to be allocated to relevant early years providers in its area; and
- (d) the amounts to be allocated in respect of community early years provision in schools maintained by it.

(4) A local authority must use the formula determined under paragraph (3) when making all the determinations referred to in paragraph (3)(a) to (d) in respect of the funding period.

(5) A local authority may not change its formulae after the funding period has begun.

(6) The formulae must be determined in accordance with Part 3 of these Regulations.

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

11.—(1) Except as provided for in paragraphs (2), (4) and (9), not later than 28th February 2018, a local authority must determine the budget share for each school which it maintains, using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

(2) Paragraph (1) does not apply to any determination of amounts to be included in budget shares under regulation 24 (sixth form funding) and in relation to such determination the local authority must make the determination and notify the school to which the determination relates within a reasonable period after the notification given by the Secretary of State under regulation 24(1).

(3) 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; such amount must be

calculated using a sum of £6,000 as the threshold below which the school will be expected to meet the additional costs of pupils with special educational needs from its budget share.

(4) Not later than 28th February 2018, a local authority must determine the budget share for each of the special schools and pupil referral units maintained by it in accordance with Part 3 of these Regulations.

(5) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (10), the authority may apply to its schools forum under regulation 12(1), or to the Secretary of State under regulation 12(2), for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools) of Schedule 2 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 if it were part of central expenditure.

(6) After the local authority has made a determination under paragraph (1) or (4) but before giving notice under paragraph (10), the authority may apply to its schools forum under regulation 12(1), or to the Secretary of State under regulation 12(2), for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 7 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary, Secondary, and Special Schools, and Pupil Referral Units) of Schedule 2 from the budget shares of the schools specified in paragraph (7), where the expenditure is instead to be treated as if it were part of central expenditure.

(7) For the purposes of paragraph (6), the specified schools are all primary schools other than nursery schools, all secondary schools, and all special schools and pupil referral units.

(8) Where the local authority makes an application under paragraph (6), the amount by which the budget share is to be redetermined must be set out—

- (a) in the case of a maintained school which is not a special school, on an amount per pupil basis;
- (b) in the case of a maintained school which is a special school, or a pupil referral unit, on an amount per place basis.

(9) Not later than 31st March 2018, a local authority must determine—

- (a) the budget share for each of the nursery schools maintained by it;
- (b) the amount to be allocated in respect of each nursery class in schools maintained by it;
- (c) the amount to be allocated to each relevant early years provider in its area; and
- (d) the amount to be allocated in respect of community early years provision,

using the formula referred to in regulation 10(3) in accordance with Part 3 of these Regulations.

(10) Not later than 31st March 2018, a local authority must give notice of—

- (a) each budget share or amount determined under paragraphs (1), (4) and (9); or
- (b) the redetermined budget share, when the budget share has been redetermined under paragraph (5) or (6),

to the governing body of the school or the relevant early years provider concerned.

(11) Save as provided in this regulation and in regulations 16 (Special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision), 19 (Differential funding), 24 (Sixth form funding), 25 (New schools, merged schools and closing schools), 26 (Federated schools), 27 (Excluded pupils), 28 (Correction of errors and non-

domestic rates) and 29 (Alternative arrangements), the authority must not redetermine a school's budget share or the amount allocated to a relevant early years provider.

## CHAPTER 2

### 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) On the application of a local authority, its schools forum may authorise—
- (a) the criteria for determining expenditure referred to in paragraphs 4 to 6 of Schedule 2, under regulation 8(4);
  - (b) the making of deductions from the authority's schools budget of expenditure under regulation 8(5);
  - (c) the funding of any deficit from the schools budget under regulation 8(6) or (10); or
  - (d) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares) of Schedule 2 from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(5); and
  - (e) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 7 (Items That May Be Removed From Maintained Schools' Budget Shares - Primary, Secondary, and Special Schools, and Pupil Referral Units) of Schedule 2 from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(6).
- (2) Where—
- (a) a schools forum does not authorise any of the matters referred to in paragraph (1); or
  - (b) a local authority is not required to establish a schools forum for its area,

the authority may apply 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) In determining budget shares for primary and secondary schools, except in respect of nursery classes, a local authority must ascertain and take into account in its formula the number of pupils who were at those schools in accordance with paragraph (2) on the date specified in paragraph (3).

- (2) For the purposes of paragraph (1), the number of pupils is  $A - B$  where—
- (a)  $A$  is the total number of pupils in the school; and
  - (b)  $B$  is the number of pupils in the school in respect of whom sixth form grant is payable.

- (3) The date for ascertaining pupil numbers is 5th October 2017.
- (4) Where—
- (a) there is or may be an increase to the published admission number at the school; or
  - (b) the school is subject to a prescribed alteration that may lead to an increase in the number of pupils at the school,

the authority may, instead of ascertaining pupil numbers on 5th October 2017, include an estimate of pupil numbers.

(5) Where a primary school had more pupils in reception classes on 19th January 2017 than on 6th October 2016, the local authority may take the number of additional pupils into account in its formula, and where it does so this factor must be applied to all primary schools in the area.

- (6) A local authority must include in its formula a single per pupil amount of at least—
- (a) £2,000 for each of the pupils in reception classes and at key stages 1 and 2;
  - (b) £3,000 for each of the pupils at key stage 3; and
  - (c) £3,000 for each of the pupils at key stage 4.

(7) In this regulation, “published admission number” means the number of pupils in any relevant age group at the school determined by the admission authority under sections 88C and 88D of the 1998 Act<sup>(36)</sup>.

## Places

14.—(1) In determining budget shares for special schools, a local authority—

- (a) must include £10,000 for each place other than—
  - (i) hospital education places; and
  - (ii) places for those who are over 18, unless they are aged 19 and are continuing to attend a particular course of secondary education which they began before they reached the age of 18; and
- (b) must not include funding for places described in sub-paragraph (a)(ii).

(2) In determining budget shares for primary or secondary schools maintained by the local authority, with places which the authority has reserved for children with special educational needs, a local authority must—

- (a) in the case of a place that was taken by a pupil on 5th October 2017, include £6,000 per place, and
- (b) in all other cases except hospital education places, include £10,000 per place.

(3) In determining budget shares for pupil referral units, a local authority must include £10,000 for each place other than hospital education places.

(4) Paragraph (3) applies to places to be commissioned by schools or directly by a local authority.

(5) For each hospital education place referred to in paragraphs (1) to (3) the local authority must include at least the equivalent amount per hospital education place which the authority included in the budget share of the school or pupil referral unit, as the case may be, in the previous funding period.

(6) In determining budget shares under this regulation, a local authority must ensure that it funds places which may be taken by children who are not ordinarily resident in their area.

<sup>(36)</sup> Sections 88C and 88D of the 1998 Act were inserted by section 151(1) and (4) of the Education and Skills Act 2008. For the meaning of “admission authority”, see section 88(1) of the 1998 Act.

## Social deprivation

15.—(1) In determining budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority must take into account in its formula one or more factors based on the incidence of social deprivation in pupils at the schools maintained by it.

(2) The authority must base the incidence of social deprivation referred to in paragraph (1) on any or all of the following—

- (a) a pupil's eligibility for free school meals on 5th October 2017;
- (b) a pupil's eligibility for free school meals recorded in any school census between and including Summer 2011 and Spring 2017; and
- (c) a pupil's IDACI score on 5th October 2017,

and where it is based on an IDACI score the authority may use factors which differentiate between different IDACI bands (that is, groupings of IDACI scores set out at Annex 2 to the document published by the Department for Education named "Schools Revenue Funding 2018 to 2019: Operational Guide"<sup>(37)</sup>).

(3) In determining budget shares under paragraph (1), the authority may take into account in its 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 using the criteria in paragraph (2).

(5) Subject to regulation 23, 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 it;
- (c) amounts to be allocated to relevant early years providers in its area; and
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must take into account in its formula one or more factors based on the incidence of social deprivation in pupils or children, 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 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 it;
- (c) amounts to be allocated to relevant early years providers in its area; and
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority may take into account in its formula one or more factors based on the incidence of social deprivation in pupils or children, 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.

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(37) Published in August 2017 (and last updated in December 2017) and available at: <https://www.gov.uk/guidance/pre-16-schools-funding-guidance-for-2018-to-2019>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

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

16.—(1) Subject to this regulation, in determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area; and
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must take into account in its formula the predicted total number of hours of attendance of pupils or children, basing the calculation on the most recent data available about the actual numbers of pupils or children.

(2) When further information about hours of attendance becomes available a local authority must—

- (a) review the budget share for each maintained nursery school, the amount allocated in respect of each nursery class and the amount allocated in respect of community early years provision; and
- (b) redetermine that budget share or amount allocated, as the case may be.

(3) When carrying out a review and redetermination under paragraph (2) the local authority must—

- (a) in the case where the local authority decides to fund only funded early years provision, take into account—
  - (i) the predicted total number of hours of attendance of pupils in the nursery school or nursery class, and of children being provided community early years provision, who will receive funded early years provision during the period (basing the calculation on 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 decides to fund early years provision in excess of funded early years provision, take into account—
  - (i) the predicted total number of hours of attendance of pupils in the nursery school or nursery class, and of children being provided community early years provision, who will receive early years provision during the period (basing the calculation on 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.

(4) When further information about hours of attendance becomes available, a local authority must—

- (a) review the amount allocated to each relevant early years provider; and
- (b) redetermine the amount allocated.

(5) When carrying out a review and redetermination under paragraph (4) the local authority must take into account—

- (a) the predicted total number of hours of attendance of children who will receive funded early years provision from the relevant early years provider, during the period (basing the calculation on 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.



(6) Within 28 days of making any redetermination under paragraph (2) or (4), the local authority must give notice of the redetermination and the date on which it will be implemented to the governing body of the school, or the relevant early years provider concerned.

(7) When making determinations under this regulation, a local authority may weight the predicted total number of hours of attendance of pupils or children, according to the special educational needs of any such pupils or children.

(8) When determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area;
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority may take into account in its formula the number of places it wishes to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where the authority has reserved those places for children with special educational needs or children in need.

(9) In paragraph (8) “children in need” means children in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17 of the 1989 Act.

### **Early years pupil premium**

17.—(1) When determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area;
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must include in the amount to be allocated an amount equivalent to 53 pence for each child eligible who is eligible for the early years pupil premium, for each hour of early years provision that the child receives, up to a maximum of 570 hours.

(2) A child is eligible for early years pupil premium if the child—

- (a) is eligible for funded early years provision under regulation 3(3) of the Early Years Provision Regulations 2014;
- (b) receives at least one hour of such provision; and
- (c) either—
  - (i) the child’s parents are receiving one or more of the benefits in paragraph (3), or
  - (ii) the child has previously been looked after by a local authority and is no longer so looked after as a result of the making of an order in paragraph (4).

(3) The benefits are—

- (a) universal credit;
- (b) income support;
- (c) income-based jobseekers’ allowance;
- (d) income-related employment and support allowance;
- (e) support under Part VI of the Immigration and Asylum Act 1999;

- (f) the guaranteed element of state pension credit;
  - (g) child tax credit (where the recipient is not also entitled to working tax credit and has an annual gross income of no more than £16,190), and
  - (h) working tax credit run-on.
- (4) The orders are—
- (a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002<sup>(38)</sup>;
  - (b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act<sup>(39)</sup>; and
  - (c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act<sup>(40)</sup> which consists of, or includes, arrangements relating to either or both of the following—
    - (i) with whom the child is to live;
    - (ii) when the child is to live with any person.
- (5) A local authority must include in the amount to be allocated for relevant early years provision or community early years provision in its area an amount of £302.10 (equivalent to 53 pence multiplied by 570) for each looked after child aged three or four years old in the local authority's area.
- (6) The allocation referred to in paragraph (5) must be managed by the local authority's designated virtual school head for the benefit of the educational needs of the relevant looked after children as described in their personal education plans (that is, plans relating to the children's education and training, including as far as is relevant and reasonably practicable the information in paragraph 2 of Schedule 1 to the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(41)</sup>).
- (7) In paragraph (6), "virtual school head" means a person appointed by a local authority under section 22(3B) of the 1989 Act<sup>(42)</sup> for the purpose of discharging the local authority's duty set out in section 22(3A) of that Act (duty to promote the educational achievement of children looked after by the authority).
- (8) No early years provider may receive an amount of more than £302.10 per child under this regulation.

### **Disability access fund**

- 18.—**(1) When determining—
- (a) budget shares for nursery schools maintained by it;
  - (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
  - (c) amounts to be allocated to relevant early years providers in its area;
  - (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must include in the amount to be allocated a single amount of £615 for each disabled child who is in receipt of funded early years provision by virtue of regulation 3(3) of the Early Years Provision Regulations 2014.

- (2) A local authority may only include an amount under paragraph (1) once in respect of any child.

<sup>(38)</sup> 2002 c.38.

<sup>(39)</sup> Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

<sup>(40)</sup> Section 8(1) was amended by section 12 of the 2014 Act.

<sup>(41)</sup> S.I. 2010/959.

<sup>(42)</sup> Section 22(3A) was inserted by section 52 of the Children Act 2004 (c. 31); section 22(3B) was inserted by section 99 of the 2014 Act.

(3) For the purposes of this regulation, a child is disabled if he or she is paid or entitled to disability living allowance by virtue of section 71 of the Social Security Contributions and Benefits Act 1992(43).

(4) The duty in paragraph (1) does not apply in respect of early years provision which is funded under regulation 14.

### **Differential funding**

**19.**—(1) For the purpose of determining or redetermining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area; and
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

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.

(2) In particular, a local authority may include an additional sum in the budget share of each nursery school maintained by it.

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

**20.**—(1) Subject to paragraph (3), in determining budget shares, a local authority may take into account in its formula any or all of the requirements, factors or criteria in Part 1 of Schedule 3, and where it does the date for ascertaining pupil numbers is 5th October 2017, except where these Regulations provide otherwise.

(2) Subject to regulation 23, in determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area; and
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority may, in its formula, provide additional funding to the provider, taking into account any or all of the factors in Part 2 of Schedule 3.

(3) The requirements, factors and criteria 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) to (9), where a school would otherwise receive a greater amount of redetermined adjusted budget share per pupil than it did in the previous funding period, the local authority may do one or both of the following—

- (a) determine a percentage beyond which the per pupil amount of redetermined adjusted budget may not increase;
- (b) determine a percentage by which the amount that the per pupil redetermined adjusted budget share would otherwise increase by will be reduced.

(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 decides to take one or both of the actions described in paragraph (4) (a) and (b), this must be applied to the budget shares of all schools in the local authority area.

(7) Paragraph (8) applies where the local authority—

- (a) decides to take one or both of the actions described in paragraph (4)(a) and (b); and
- (b) takes into account the factor in paragraph 16 of Schedule 3 in its formula.

(8) The local authority must ensure that no school in the area receives a budget share that is less than the amount it would have received if it had received funding by virtue of the factor at paragraph 16 of Schedule 3.

(9) Paragraph (4) does not apply to the determination of budget shares for—

- (a) special schools;
- (b) pupil referral units;
- (c) nursery schools;
- (d) any school that has opened since 1 April 2011 and does not yet have pupils in each year group for which it proposes to provide education; and
- (e) any school that receives funding by virtue of the factor at paragraph 16 of Schedule 3.

### **Schools minimum funding guarantee**

**21.**—(1) Except as provided for in this regulation, in determining and redetermining budget shares for primary and secondary schools maintained by it, 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) This regulation does not apply in relation to a redetermination of a budget share under regulation 11(5) or (6).

(4) A local authority may change the operation of this regulation and the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State under regulation 29 (alternative arrangements).

### **Early years 95 per cent requirement**

**22.**—(1) In making determinations under regulation 11(9), a local authority must comply with the formula set out in this regulation.

(2) The formula is  $(A - B) / C$  is no less than 95 percent of D, where—

- (a) A is the total of—
  - (i) all budget shares and amounts determined by the authority under regulation 11(9);
  - (ii) any amount deducted by the authority under paragraph 26 of Schedule 2 to these Regulations; and
  - (iii) any amount of the fund established under paragraph 31 of Schedule 2 to these Regulations, which the authority intends to distribute to early years providers;
- (b) B is the total of—
  - (i) the maintained nursery school supplement, and
  - (ii) any part of the budget share or amount determined by the authority under regulation 11(9) in respect of disadvantaged two year olds;
- (c) C is the total number of hours of attendance of children, predicted by the authority under regulation 16(1), less any predicted hours of attendance of disadvantaged two year olds;

- (d) D is the hourly unit funding rate, notified to the local authority in the early years block.

### **10 per cent early years discretionary funding cap**

**23.**—(1) A local authority must ensure that the total amount of discretionary funding does not exceed 10 per cent of early years allocations.

(2) In this regulation, “discretionary funding” means funding that is attributable to—

- (a) the factors based on the incidence of social deprivation in pupils or children referred to in regulation 15(5) (social deprivation), and
- (b) the requirements, factors and criteria set out in Part 2 of Schedule 3 which by virtue of regulation 20(2) a local authority may take into account in its formula.

(3) In this regulation, early years allocations is the total amount of the following budget shares and amounts determined by the local authority under regulation 11(9)—

- (a) the budget shares for nursery schools maintained by the authority,
- (b) the amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) the amounts to be allocated to relevant early years providers in its area; and
- (d) the amounts to be allocated in respect of community early years provision in schools maintained by it.

less any of the amounts specified in paragraph (4).

(4) The following are not included in early years allocations for the purposes of this regulation—

- (a) any amounts allocated in respect of disadvantaged two year olds; and
- (b) the maintained nursery school supplement.

### **Sixth form funding**

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

(2) A local authority may also include an additional amount in the budget shares of maintained secondary schools and special schools where permitted to do so under the sixth form grant.

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

### **New schools, merged schools and closing schools**

**25.**—(1) Where in the funding period, but excluding 1st April 2018, a new maintained school opens, and is a replacement for two or more maintained schools that are discontinued during the funding period, a local authority must calculate the budget share of the new school by adding together the budget shares of the schools that have been discontinued.

(2) Except where paragraph (1) applies, a local authority must determine a budget share for—

- (a) any new maintained school in its area, and
- (b) any school that has opened since 1st April 2011 and does not yet have pupils in each year group for which the school proposes to provide education,

from the date of the school’s opening on the basis of expected pupil numbers during the funding period estimated by the authority, and regulation 13 does not apply.

(3) Where a school to which paragraph (2) applies was funded on the basis of estimated pupil numbers in the previous funding period, the local authority may take account of any difference between estimated and actual pupil numbers in the previous funding period when estimating pupil numbers for the funding period.

(4) Where in the previous funding period or on 1st April 2018 a new maintained school opened or opens and is a replacement for two or more maintained schools that were discontinued during the previous funding period or on 1st April 2018, a local authority must include in the budget share of the new school an amount equal to 85% of the total amount which the schools that it replaced would have been allocated in their budget shares under paragraphs 1 and 2 of Schedule 3 (single sums) if the schools had not been discontinued.

(5) Where paragraph (4) applies, no single sum is to be included in the new school's budget share under paragraph 1 or 2 of Schedule 3.

(6) A local authority must determine a budget share for any maintained school in its area which is to be discontinued in the funding period up to the date when the school is discontinued in accordance with this Part.

(7) Where in the funding period, but excluding 1st April 2018, a maintained school is subject to a prescribed alteration as a result of a closure of a school, a local authority must redetermine the budget share of the enlarged school by adding to it the budget share of the school that has been discontinued.

(8) Where in the previous funding period or on 1st April 2018 a maintained school is subject to a prescribed alteration as a result of a closure of a school during the previous funding period or on 1st April 2018, a local authority must include in the budget share of the enlarged school an amount equal to 85% of the total amount which the schools whose provision it has replaced would have been allocated in their budget shares under paragraph 1 and 2 of Schedule 3 if the school had not been discontinued.

(9) Where in the funding period, but excluding 1st April 2018, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, a local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.

(10) A local authority may change the operation of this regulation where authorised to do so by the Secretary of State under regulation 29 (alternative arrangements).

### **Federated schools**

**26.**—(1) Subject to paragraphs (2) and (3), where two or more maintained 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 decides to allocate a single budget share to the governing body of a federation under paragraph (2), it must determine it 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**

27.—(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, a pupil referral unit, or a place which the authority has 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  $A \times (B / 52) + C$  where—
- (a)  $A$  is the amount determined by the authority in accordance with this Part that would be attributable to a 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 either—
    - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
    - (ii) 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, 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 under a financial adjustment order.

(3) Where a pupil has been permanently excluded from the excluding school and is admitted to another school maintained by a local authority (other than a special school, a pupil referral unit, or to a place which the authority has reserved for children with special educational needs) (“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 is not less than  $D \times (E / F)$  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 if that school had been maintained by the authority, except that any reduction in the excluding school’s budget share made under 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 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 to the excluding school’s budget share under 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  $G \times (H / I)$  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 special school, a pupil referral unit, or a place which the authority has reserved for children with special educational needs) 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 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 a sixth form grant is payable in respect of the pupil in question, the amount attributable to that pupil is £4,000 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 ("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  $J \times (K / 52)$  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 either—
  - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
  - (ii) 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, 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 ("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 is not less than  $L \times (M / N)$  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 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  $O \times (P / Q)$  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 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 2012<sup>(44)</sup> in respect of the exclusion of the pupil from the excluding school.

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

**28.**—(1) A local authority may at any time during the funding period redetermine a maintained school’s budget share, or the amount allocated to a relevant early years provider, for the funding period or any previous funding period in order to correct an error in a determination or redetermination made under these Regulations or any previous regulations made under sections 47 or 47ZA of the 1998 Act, whether arising from a mistake as to the number of pupils at the school or otherwise, and any such redetermination will take effect in the next financial year following the 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 previous 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 the Secretary of State**

**29.**—(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 3 of Schedule 2 when deducting any expenditure referred to in regulation 8(3) (historic commitments);
- (b) deduct any expenditure referred to in regulation 8(11)(a) (expenditure falling outside Schedule 2);
- (c) alter the operation of regulation 11(3) (additional expenditure on children with special educational needs);
- (d) determine or redetermine budget shares of schools maintained by it;
- (e) determine or redetermine amounts to be allocated in respect of nursery classes in schools maintained by it;
- (f) determine or redetermine amounts to be allocated to relevant early years providers in its area;

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<sup>(44)</sup> S.I. 2012/1033.

- (g) include additional factors or criteria in its 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;
- (h) include additional factors or criteria that the authority proposes to include in its formula under regulation 10(3) (early years single funding formula);
- (i) vary the amount by which a school's redetermined adjusted budget share must be reduced for the purpose of determining the guaranteed level of funding in paragraph 1 of Schedule 4;
- (j) disregard regulation 13 (pupil numbers);
- (k) alter the operation of regulation 25 (new schools, merged schools and closing schools) in respect of particular schools;
- (l) alter the operation of paragraphs 14 (primary sparsity) and 15 (secondary sparsity) of Schedule 3 in respect of particular schools; and
- (m) alter the operation of regulation 22 (early years 95 per cent requirement).

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

## PART 4

### Schemes

#### Required content of schemes

**30.** 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

**31.—**(1) Where a local authority submits a copy of its proposals to revise its scheme to its schools forum for approval under 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 the proposals;
- (b) approve the proposals with modifications; or
- (c) refuse to approve the proposals.

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

(3) The local authority may apply to the Secretary of State for approval of proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act<sup>(45)</sup> where—

- (a) the schools forum refuses to approve the proposals, or approves them with modifications which are not acceptable to the local authority; or
- (b) the local authority is not required to establish a schools forum for its area.

(4) The Secretary of State may—

- (a) approve the proposals;

<sup>(45)</sup> Paragraph 2A of Schedule 14 to the 1998 Act was inserted by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.

- (b) approve the proposals with modifications; or
- (c) refuse to approve the proposals.

(5) When approving proposals, the Secretary of State may specify the date on 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**

**32.**—(1) A local authority—

- (a) must publish its scheme on a website which is accessible to the general public; and
- (b) may publish it elsewhere.

(2) Whenever a local authority revises the whole or part of its scheme, it 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.

8th January 2018

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