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STATUTORY INSTRUMENTS

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**2021 No. 59**

The School and Early Years Finance  
(England) Regulations 2021

PART 1

Introduction

**Citation, commencement, application and interpretation**

**1.**—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2021 and come into force on 11th February 2021.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2021.

(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)**;

“2020 Regulations” means the School and Early Years Finance (England) Regulations 2020**(9)**;

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

(7) 2014 c.6.

(8) S.I. 2014/2147, as amended by S.I. 2016/887, S.I. 2018/146, and S.I. 2018/383.

(9) S.I. 2020/83.

(10) 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.

“2014 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 31st March 2014<sup>(11)</sup>;

“2017 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 3rd March 2017<sup>(12)</sup>

“2016 ARA” means the document entitled “2016 Key Stage 2 Assessment and Reporting Arrangements”<sup>(13)</sup> containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003<sup>(14)</sup>, made under section 87(3) of the 2002 Act;

“2017 ARA” means the document entitled “2017 Key Stage 2 Assessment and Reporting Arrangements”<sup>(15)</sup> 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;

“2018 ARA” means the document entitled “2018 Key Stage 2 Assessment and Reporting Arrangements”<sup>(16)</sup> 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;

“2019 ARA” means the document entitled “2019 Key Stage 2 Assessment and Reporting Arrangements”<sup>(17)</sup> 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;

<sup>(11)</sup> A printed copy may be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

<sup>(12)</sup> 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.

<sup>(13)</sup> Available at: 2016 Key stage 2: assessment and reporting arrangements (ARA) - Guidance - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

<sup>(14)</sup> 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.

<sup>(15)</sup> 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.

<sup>(16)</sup> Available at: 2018 key stage 2: assessment and reporting arrangements (ARA) - Digital Education Resource Archive (DERA) ([ioe.ac.uk](http://ioe.ac.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

<sup>(17)</sup> Available at: 2019 key stage 2: assessment and reporting arrangements (ARA) - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

“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<sup>(18)</sup>;

“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 2020 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 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<sup>(19)</sup>;

“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<sup>(20)</sup>;

“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<sup>(21)</sup> 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

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<sup>(18)</sup> 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.

<sup>(19)</sup> 2006 c.21.

<sup>(20)</sup> 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).

<sup>(21)</sup> 2008 c.25.

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
- (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>(22)</sup>;

“funding period” means the financial year beginning on 1st April 2021;

“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>(23)</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 “Statistical release – main findings” under the title for the collection of related data and documents, “English Indices of Deprivation 2019” published by the Ministry for Housing and Local Government<sup>(24)</sup>;

“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>(25)</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>(26)</sup>;

“LSOA rank” means the rank allocated to a pupil in respect of the Lower-layer Super Output Area in which the pupil lives under IDACI;

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

(22) 2016 c. 5.

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

(24) Available at: English indices of deprivation 2019 - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

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

(26) 2014 anaw. 4.

- (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;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988<sup>(27)</sup>;

“premises factor allocation” means—

- (i) any additional funding that would be allocated to the school by virtue of paragraph 10 to 12 of Schedule 3; and
- (ii) any additional funding that the local authority has allocated to the school which has been authorised by the Secretary of State under regulation 31(1)(h);

“previous funding period” means the financial year beginning on 1st April 2020 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<sup>(28)</sup>;

“prescribed alteration” means a prescribed alteration within the meaning of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013<sup>(29)</sup>;

“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;

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<sup>(27)</sup> 1988 c.41.

<sup>(28)</sup> 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).

<sup>(29)</sup> S.I. 2013/3110. The regulations are made under section 18 of the 2006 Act.

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

“Risk Protection Arrangement” means an arrangement to cover the costs of certain liabilities arising in connection with maintained schools and their premises that is entered into between the Secretary of State and—

- (i) the governing bodies of maintained schools, (in the case of a maintained school apart from a pupil referral unit), or
- (ii) the local authority, (in the case of a pupil referral unit);

“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<sup>(30)</sup>;

“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;

“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<sup>(31)</sup> 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;

“Year 7” means the school year in which the majority of pupils attain the age of twelve;

“Year 8” means the school year in which the majority of pupils attain the age of thirteen.

(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—

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

<sup>(31)</sup> For the meaning of “school year”, see section 579(1) of the 1996 Act.

- (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 unless otherwise specified;
- (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 1st October 2020, unless otherwise stated;
- (f) a reference to disadvantaged two-year-olds in regulations 24 and 25 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
  - (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>(32)</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;

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(32) For the meaning of “registered pupil”, see section 434(5) 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) (No. 2) Regulations 2018<sup>(33)</sup> are revoked on 1st April 2021.

### **Amendments**

- 3.** In regulation 8 of the Schools Forums (England) Regulations 2012<sup>(34)</sup>, in each place where the words “the School and Early Years Finance (England) Regulations 2020” occur, substitute “the School and Early Years Finance (England) Regulations 2021”.

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<sup>(33)</sup> [S.I. 2018/1185](#).

<sup>(34)</sup> [S.I. 2012/2261](#); relevant amending instruments are [S.I. 2012/2991](#), [2013/3104](#), [2015/2033](#), [2017/44](#), [2018/10](#), the 2020 Regulations and [S.I. 2020/540](#).