

## EXPLANATORY MEMORANDUM TO

### THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2022

2022 No. 27

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 These Regulations provide instruction on how local authorities are to set their education budgets in the 2022-23 financial year.
- 2.2 They set the parameters that local authorities must abide by in determining schools' budgets, and the budgets which are allowed to be retained centrally. They also set out how local authorities are to allocate funding to maintained schools and private, voluntary and independent providers of free early years provision through locally-determined funding formulae.
- 2.3 The Department for Education makes these Regulations annually; the 2022 Regulations will apply only to budgets for the 2022-23 financial year.

#### 3. Matters of special interest to Parliament

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

- 3.1 The Regulations have accounted for a previous correspondence from the Joint Committee on Statutory Instruments (JCSI) on the [School and Early Years Finance \(England\) Regulations 2021](#). This correspondence drew the Department's attention to Part 6 of Schedule 2, where there was no provision for expenditure on making payments to, or in providing a temporary replacement for, an employee who is on paternity leave or shared parental leave. Last year, the Department confirmed to the JCSI that it agreed to correct this in subsequent Regulations. This change, alongside corrections to a number of other non-reported errors, has been made for the 2022 Regulations.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

#### 5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

- 6.1 The 2022 Regulations are made under Chapter 4 of Part 2 of the School Standards and Framework Act 1998 which concerns the financing of maintained schools. They relate to the 2022-23 financial year and need to be made because the School and Early Years Finance (England) Regulations 2021 (“the 2021 Regulations”) apply only up to the end of the 2021-22 financial year. The Department for Education makes these Regulations annually.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Regulations largely relate to how local authorities spend their Dedicated Schools Grant (“DSG”) allocation, which consists of funding for: core provision for 5-16-year-olds in mainstream schools; central services carried out on behalf of local schools; provision for children and young people (aged 0-25) with complex needs; and government-funded childcare entitlements for two, three and four-year-olds.
- 7.2 In the 2019 spending round, the Government planned for core funding for schools and high needs through the DSG to increase by £2.4bn in 2022-23, compared to 2021-22. The DSG for 2022-23 can be found here: [Dedicated schools grant \(DSG\): 2022 to 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2022-to-2023).
- 7.3 In addition, the autumn 2021 Spending Review confirmed a further £1.6bn for schools and high needs in 2022-23, over 2021-22 levels, on top of this £2.4bn increase already announced as part of the 2019 spending round; the additional funding for schools is not part of the DSG and is not within scope of these Regulations.
- 7.4 The National Funding Formulae (“NFF”) determine local authority DSG allocations. These were introduced in 2018-19 for schools, high needs and central school services; and in 2017-18 for early years. The schools NFF calculates notional school-level allocations, which are aggregated to form local authorities’ school funding within the DSG. The introduction of the NFF is in line with reforms by the Department for Education to make the funding system simpler, fairer and more transparent. In 2022-23 the Department for Education has allocated at least a 2% increase in per-pupil pupil-led funding for every mainstream school through the NFF, and the average per pupil increase is 2.8%. In addition, every primary school will receive a minimum of £4,265 and every secondary school a minimum of £5,525.
- 7.5 In 2022-23, local authorities will continue to determine schools’ budget allocations at a local level, through a local funding formula. We have announced that we plan to implement a ‘direct’ schools NFF in future, whereby schools receive what they attract through the national formula, rather than through different local authority funding formulae. In 2022-23, however, in order to ensure stability, DfE has not introduced any changes to further restrict local authority discretion over their own funding formulae.
- 7.6 The 2022-23 NFF is broadly similar in policy terms to the original NFF: the same funding factors are in use, which form the basis of funding to schools, but small technical improvements have been made each year, as well as increases to the factor values used. These are set out in the 2022-23 NFF policy document, which we have published each year since the NFF was introduced: <https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs>

7.7 The main changes compared with the 2021 Regulations are set out below:

***Changing the methodology for sparsity funding***

- 7.8 The sparsity factor in the NFF provides additional funding for small, remote schools. This recognises that small, remote schools face financial challenges as they do not have the same opportunities to grow or make efficiency savings as other schools. The sparsity factor targets extra funding to schools that are both small and remote, where remoteness is measured by a school's sparsity distance, and size is measured by a school's average year-group size. We have made two substantive changes to the calculation of the NFF sparsity factor for 2022-23; these changes are reflected in paragraphs 14 and 15 of Schedule 3.
- 7.9 First, the NFF has moved to measuring schools' sparsity distances by using road distances as opposed to 'as the crow flies' distances. This provides a more accurate measure of a school's remoteness and received support from 95% of those who responded to our consultation on the change.
- 7.10 Secondly, we have introduced a new NFF sparsity distance threshold taper, similar to the existing NFF year-group taper. Local authorities have flexibility over whether to apply this taper, in their local formulae, for schools with sparsity distances which are up to 20% below the distance thresholds they set. For example, if a local authority chose to use a 20% taper along with the main distance thresholds used in the NFF, then schools whose sparsity distance is between 1.6 and 2 miles (for primary schools, middle schools and all-through schools) or 2.4 and 3 miles (for secondary schools) would attract some additional funding through the sparsity factor. If a local authority chose not to use a taper, then primary schools would need a sparsity distance of at least 2 miles, or secondary schools at least 3 miles, to be eligible for sparsity funding.
- 7.11 The sparsity factor continues to be an optional factor in local authority funding formulae and the same flexibilities that were present in 2021-22 remain in place in 2022-23. In addition, local authorities can choose to mirror the new distance taper threshold.

***LA school improvement (SI) activity***

- 7.12 Local authorities have been given power in these Regulations to fund all school improvement activities, including their core school improvement activities (defined as their intervention powers under Part 4 of the Education and Inspections Act 2006 ("the 2006 Act"), and the further expectations set out on page 36 of the Government's Schools Causing Concern guidance), via de-delegation of funds from school budget shares, with the agreement of their local schools forum or the Secretary of State. De-delegation allows some services to be provided to maintained schools by the local authority who retain the funding to do so. This change supports our objective of ensuring that maintained schools and academies funding arrangements are more closely aligned; and provides a smoother transition as more schools become academies and move out of local authority control. Alongside this change the department will phase out the School Improvement Monitoring & Brokering (LAMB) Grant, which is currently allocated to local authorities to support school improvement activities.
- 7.13 This change has been reflected in paragraph 8 in Schedule 1 and in Parts 6 and 7 of Schedule 2 to the Regulations. This permits councils to deduct expenditure incurred for the purposes of improvement, including that required by the local authority's

functions under Part 4 of the 2006 Act, from schools' budget shares, with the agreement of their schools forum or the Secretary of State. In line with other de-delegation decisions, the Secretary of State would retain the power to approve the de-delegation contrary to the decision of the schools forum, if satisfied that the local authority had demonstrated such de-delegation was necessary to ensure the authority is adequately funded to exercise core improvement activities.

*Accounting for lack of 2020 May School Census for mobility factor*

- 7.14 The mobility factor supports schools in which a significant proportion of pupils join the school part way through the year. Eligibility for the mobility factor is usually determined based on the census in which pupils first appear at their current school. Considering the cancellation of the May 2020 census, pupils who joined a school between January and May 2020 will attract funding for mobility based on their entry date, rather than by virtue of the May school census being their first census at the current school. We have amended paragraphs 7 and 8 of Schedule 3 to reflect the fact that a pupil will attract mobility funding where that pupil was not at the school on the January 2020 census and has an entry date on the October census between the date of the January 2020 census and the (cancelled) May 2020 census, as long as the school was open before the January 2020 census.
- 7.15 This section reflects the fact that local authorities should continue to use the January and May censuses from 2019 and 2021 to determine eligibility for mobility funding, in the usual way.

*Free School Meals Ever 6 Factor Census Date*

- 7.16 From 2022-23, data on pupils who are eligible for free school meals will be taken from the most recent October census instead of from the preceding January census. This brings the FSM6 factor in line with how other NFF factors are calculated and shortens the FSM6 funding lag in the NFF by 9 months.
- 7.17 Regulation 15 has been amended to require local authorities use more recent data on pupil characteristic data for their formulae. As such, for 2022-23, they should measure FSM6 by data from the most recent October census (October 2021) instead of the preceding January census (January 2021).

*Accounting for lack of 2020 assessment data for low prior attainment factor*

- 7.18 The 2021 Regulations were amended following the cancellation of assessments in summer 2020 due to coronavirus (COVID-19), as local authorities were not able to use this data as part of setting a low prior attainment factor in local funding formulae. The low prior attainment factor allows local authorities to give additional funding to schools in respect of their pupils who had low scores in previous assessments. Following the cancellation of assessments in 2021 due to COVID-19, local authorities will use 2019 assessment data as a proxy for both the 2020 and 2021 reception and year 6 cohorts. That is, local authorities will use 2019 assessment data, from the school's Year 3 and Year 9 pupils in the 2020/21 academic year, as a proxy for the school's Year 1 and Year 2, and Year 7 and Year 8 cohorts. These changes are reflected in paragraphs 3 and 4 of Schedule 3.

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 None.

## **10. Consultation outcome**

- 10.1 The Department has conducted two separate public consultations for the main substantive changes in the regulations on changes to the sparsity factor and LA Statutory Improvement services.
- 10.2 Between 2nd March 2021 and 9th April 2021 the Government held a consultation on: “Schools National Funding Formula: changes to the sparsity factor”. The consultation sought views on how we propose to provide greater support to small, remote schools through changes to the national funding formula's (NFF) sparsity factor in 2022-23. The proposals that we consulted on included measuring sparsity distances by road journeys rather than as the crow flies, to better identify schools’ remoteness and increasing the maximum amount that schools can attract through the sparsity factor by £10,000, to £55,000 for primary schools and £80,000 for all other schools. The consultation received responses from 600 individual respondents and representative organisations. These responses were carefully considered when designing the NFF sparsity factor which will come into place from April 2022. The Government Response to the sparsity factor consultation can be found here: <https://consult.education.gov.uk/funding-policy-unit/schools-nff-changes-to-sparsity-factor-2022-23/>
- 10.3 The Government consultation on: “Reforming how local authorities’ school improvement functions are funded” ran between 29th October 2021 and 26th November 2021. The consultation covered the proposals to remove the School Improvement Monitoring & Brokering (LAMB) Grant, which is currently allocated to local authorities to support school improvement activities; and to make provisions within the School and Early Years Finance (England) Regulations for 2022-23 to allow local authorities to fund all of their school improvement activity (including all core school improvement activities) via de-delegation from schools’ budget shares. The Government response to this consultation, which also summarises responses, has been published here: <https://www.gov.uk/government/consultations/reforming-how-local-authority-school-improvement-functions-are-funded>
- 10.4 For the more technical changes to the allocation of funding (the changes to the low prior attainment factor, mobility factor, and the FSM6 factor) proposals were developed through ongoing engagement with stakeholders, which formed the basis of the changes we are making. The changes relate to alignment with the NFF and thus build on the extensive consultation carried out when it was introduced.
- 10.5 Recent funding reforms to introduce the NFF for schools, high needs and central school services were developed through two formal public consultations. The first stage of the consultation was on the principles of the schools and high needs formulae and took place between 7th March and 17th April 2016. The second stage of the consultation was on the details of the formulae, and took place between 14th December 2016 and 22nd March 2017. It received responses from over 26,000 individual respondents and representative organisations. These responses were carefully considered when designing the NFF, which took effect from April 2018.
- 10.6 The final details of the formulae were announced in September 2017 and were set out in a policy document: <https://www.gov.uk/government/publications/national-funding->

[formula-for-schools-and-high-needs](#). A full government response to the stage 2 consultation was published 14th September 2017 at:  
<https://www.gov.uk/government/consultations/high-needs-national-funding-formula-stage-2>.

- 10.7 The early years NFF consultation ran from 11th August to 22nd September 2016. It covered the distribution of funding from central government to local authorities; the distribution of funding from local authorities to providers (including the introduction of a universal base rate); meeting the needs of children with special educational needs and disabilities; and transitional arrangements. The government response to the consultation was published on 1st December 2016 at:  
<https://www.gov.uk/consultations/early-years-funding-changes-to-funding-for-3-and-4-year-olds>.

## **11. Guidance**

- 11.1 Operational guidance for local authorities for 2022-23, which was issued in July 2021, was updated in mid-December 2021 to align with the DSG. This is available at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902183/Schools\\_operational\\_guide\\_2022\\_to\\_2023\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902183/Schools_operational_guide_2022_to_2023_1.pdf).

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for two, three and four year olds through the same formula that the local authority will use to determine the funding of this entitlement in maintained schools.
- 12.2 The impact on the public sector is that local authorities must comply with these regulations when allocating their schools budget and determining budget allocations for schools and amounts for early years providers.
- 12.3 An Impact Assessment has not been prepared for this instrument because it has minimal impact on businesses, civil society organisations, and on the public sector.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses, except for the early years providers referred to in paragraph 11.1 above.
- 13.2 It applies to local authorities and it is for the local authority to determine how they fund their local providers, within the rules set out in these Regulations.

## **14. Monitoring & review**

- 14.1 The Regulations will be monitored through the usual contact that the Funding Policy Unit within the Department for Education has with schools and local authorities. The team will log and review any correspondence from schools and local authorities relating to the instrument.

## **15. Contact**

- 15.1 Ian Kettlewell at the Department for Education can be contacted with any queries regarding the instrument via the following email: [Ian.Kettlewell@education.gov.uk](mailto:Ian.Kettlewell@education.gov.uk)

- 15.2 Tom Goldman, Deputy Director of the Funding Policy Unit, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robin Walker MP, Minister of State for School Standards at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.