
STATUTORY INSTRUMENTS

2023 No. 59

**The School and Early Years Finance
(England) Regulations 2023**

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(13); 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 2023—

- (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 sub-paragraphs (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⁽¹⁾ (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 the following provisions of this regulation and not later than 28th February 2023, 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) Under paragraph (1), a local authority—
 - (a) must not deduct from its schools budget such of the classes or description of planned expenditure set out in Part 6 of Schedule 2; and
 - (b) may only deduct from its schools budget such of the classes or descriptions of planned expenditure set out in Part 7 of Schedule 2 if that deduction is to be made under paragraph (13).

(1) 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).

(3) 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 which commit the authority to incur expenditure in the funding period.

(4) In deducting the expenditure referred to in Part 1 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 39(1)(a).

(5) 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).

(6) Except as provided for in paragraphs (13) and (14), a local authority must not deduct the expenditure referred to in Schedule 2 (other than expenditure referred to in paragraph 8 (expenditure on licences), Part 5 (children and young people with high needs) and Part 8 (deficit from previous funding period)) without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3).

(7) Where a local authority has expenditure falling within Part 8 of Schedule 2, it must—

- (a) deduct all of that expenditure from its schools budget;
- (b) deduct such part of that expenditure as the authority may determine and carry forward the remaining part to the next funding period; or
- (c) carry forward all of that expenditure to the next funding period.

(8) A local authority may apply to the Secretary of State for authorisation under regulation 39(1) to disregard the requirements in paragraph (7).

(9) 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 2022 Regulations for the 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 2022 Regulations that applied to such expenditure.

(10) A local authority must deduct the expenditure referred to in paragraph 32 of Schedule 2.

(11) Where a local authority treated any expenditure described in Part 6 of Schedule 2 to the 2022 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(5) of the 2022 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 2022 Regulations that applied to such expenditure.

(12) A local authority may apply to the Secretary of State for authorisation under regulation 39(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).

(13) A local authority may deduct the expenditure specified in paragraph (14) 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 must be treated as if it were part of the non-schools education budget, prescribed in regulation 4.

(14) The specified expenditure, for the purposes of paragraph (13) 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.

(15) 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(2).

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

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 2022 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 34 (sixth form funding) or 37 (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.

(2) [S.I. 1997/319](#). These Regulations have lapsed but article 11 of [S.I. 2004/533](#) contains a savings provision for regulation 16 of those Regulations.

(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 must ensure, in the formula determined under paragraph (3), that the predicted total number of hours calculated under regulation 23(1) is multiplied by a rate.

(6) The rate referred to in paragraph (5) must be the same rate used in all determinations referred to in paragraph (3)(a) to (d).

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

(8) 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 2023, 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 34 (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 34(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 threshold sum of £6,000 per pupil 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 2023, 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, except in relation to the expenditure referred to in paragraph

53 in Part 7 of Schedule 2 (expenditure incurred for the purposes of supporting the improvement of standards in maintained schools), must be set out—

- (a) in the case of a maintained school which is not a special school, on an amount per pupil basis; and
 - (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 2023, 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 in schools maintained by it,

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

- (10) Not later than 31st March 2023, 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 23 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision), 26 (risk protection arrangement), 27 (differential funding), 34 (sixth form funding), 35 (new schools, merged schools and closing schools), 36 (federated schools), 37 (excluded pupils), 38 (correction of errors and non-domestic rates) and 39 (alternative arrangements), the authority must not redetermine a school's budget share or the amount allocated to a relevant early years provider.