
STATUTORY INSTRUMENTS

2023 No. 59

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

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 6th October 2022.

(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 6th October 2022, include an estimate of pupil numbers.

(5) A local authority must include in its formula a single per pupil amount for each of the pupils—

- (a) in reception classes and at key stages 1 and 2;
- (b) at key stage 3; and
- (c) at key stage 4.

(6) Where a primary school had more pupils in reception classes on 20th January 2022 than on 7th October 2021, 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.

(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⁽¹⁾.

(1) 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.

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 6th October 2022, 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.

Social deprivation for primary and secondary schools

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 the following 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 the following—

(a) a pupil's eligibility for free school meals on 6th October 2022;

(b) a pupil's eligibility for free school meals recorded in any school census between and including Spring 2017 and Autumn 2022; and

(c) a pupil's LSOA rank on 6th October 2022,

and where it is based on an LSOA rank the authority must use factors which differentiate between different LSOA bands (that is, groupings of LSOA ranks set out in the document published by the Department for Education named "Schools Operational Guide 2023 to 2024"⁽²⁾).

(3) In determining budget shares under paragraph (1), the authority must take into account in its formula—

(a) in reception classes and at key stages 1 and 2, a single per pupil amount for each pupil in respect of—

(2) Published in July 2022 and available at: <https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2023-to-2024/schools-operational-guide-2023-to-2024>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

- (i) a pupil's eligibility for free school meals on 6th October 2022;
 - (ii) a pupil's eligibility for free school meals recorded in any school census between and including Spring 2017 and Autumn 2022; and
 - (iii) a pupil's LSOA rank on 6th October 2022; and
- (b) at key stages 3 and 4, a single per pupil amount for each pupil in respect of—
- (i) a pupil's eligibility for free school meals on 6th October 2022;
 - (ii) a pupil's eligibility for free school meals recorded in any school census between and including Spring 2017 and Autumn 2022; and
 - (iii) a pupil's LSOA rank on 6th October 2022.

Social deprivation for early years

16.—(1) Subject to regulation 33, other than in respect of children who are aged two years, 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 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.

(2) In respect of children who are aged two years, 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 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.

Lump sums for primary and secondary schools

17.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factors.

(2) A single sum for primary schools—

- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
- (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.

(3) A single sum for secondary schools—

- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
- (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.

Low prior attainment factor

18.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factors.

- (2) In respect of pupils at key stages 1 and 2, a single per pupil amount based on the total of—
 - (a) the number of pupils in Years 1, 4, 5, and 6 who did not achieve the expected development in relation to the relevant early learning goals in the Early Years Foundation Stage Profile under the 2017 Document or the 2021 Document; and either
 - (b) where a school has pupils in Year 4, the number produced by multiplying together—
 - (i) the proportion of pupils in that year in the school who did not achieve that expected development; and
 - (ii) the total number of pupils in Years 2 and 3 in the school; or
 - (c) where a school has no pupils in Year 4, the number produced by multiplying together—
 - (i) either—
 - (aa) the proportion of pupils in Year 4 in all the maintained schools (other than special schools and pupil referral units) and Academy schools (other than special academies and alternative provision Academies) in the local authority's area who did not achieve that expected development; or
 - (bb) the proportion of pupils in Year 3 in the school in the previous year, or, if there were no pupils in Year 3 in the school in the previous year, the proportion of pupils in Year 2 in the school in the year before the previous year, who did not achieve the expected development in that previous year, or, as the case may be, the year before that previous year; or
 - (cc) the proportion of pupils who did not achieve that expected development who were assessed under the Early Years Foundation Stage Profile assessment in 2022; and
 - (ii) the total number of pupils in Years 2 and 3 in the school.
- (3) In respect of pupils at key stages 3 and 4, a single per pupil amount based on the total of—
 - (a) the number produced by multiplying the total of the following number of pupils by 0.64—
 - (i) the number of pupils assessed under the 2018 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests (or both) referred to in section 4 of the 2018 ARA; and
 - (ii) the number of pupils not falling within paragraph (i) who were given a teacher assessment standard of 'working towards the expected standard', or lower, in English writing, referred to in section 7 of the 2018 ARA; and
 - (b) the number produced by multiplying the total of the following number of pupils by 0.65—
 - (i) the number of pupils assessed under the 2019 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests (or both) referred to in section 5 of the 2019 ARA; and

- (ii) the number of pupils not falling within paragraph (i) who were given a teacher assessment standard of ‘working towards the expected standard’, or lower, in English writing, referred to in section 8 of the 2019 ARA; and either
- (c) where a school has pupils in Year 10, the number produced by multiplying together the total of the following number of pupils by 0.65—
 - (i) the proportion of pupils in that year who fell within sub-paragraph (b)(i) or (ii); and
 - (ii) the total number of pupils in Years 8 and 9 in the school; or
- (d) where a school has no pupils in Year 10, the number produced by multiplying together the total of the following number of pupils by 0.65—
 - (i) either—
 - (aa) the proportion of pupils to whom paragraph (3)(b) applies who were assessed under the 2019 ARA in the last year in which the school had pupils from that cohort; or
 - (bb) the proportion of pupils in that year in all the maintained schools (other than special schools and pupil referral units) and Academy schools (other than special academies and alternative provision Academies) in the local authority’s area who fell within sub-paragraph (b)(i) or (ii); or
 - (cc) the proportion of pupils to whom paragraph (3)(e) applies who were assessed under the 2022 ARA multiplied by 0.54 and then divided by 0.65; and
 - (ii) the total number of pupils in Years 8 and 9 in the school; and
- (e) the number produced by multiplying the total of the following number of pupils by 0.54—
 - (i) the number of pupils assessed under the 2022 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests (or both) referred to in section 5 of the 2022 ARA; and
 - (ii) the number of pupils not falling within paragraph (i) who were given a teacher assessment standard of “working towards the expected standard”, or lower, in English writing, referred to in section 8.3 of the 2022 ARA.

English as an additional language

19.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factors.

(2) A single per pupil amount for each pupil, based on the number of pupils in Year 1, Year 2 and at key stage 2 whose first language is not English, where the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2020.

(3) A single per pupil amount for each pupil, based on the number of pupils at key stages 3 and 4 whose first language is not English, where the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2020.

Mobility factor

20.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factors.

(2) Where the total number of pupils to whom paragraph (3) applies is more than 6% of the total number of pupils at key stages 1 and 2 in the school, a single per pupil amount for every pupil in excess of that 6%.

(3) This paragraph applies to pupils at key stages 1 and 2 who—

- (a) joined the school in the previous three academic years and were first recorded on the school census in a spring or summer term; or
- (b) where the school was open before 17th January 2020, were not recorded on the school census of that date but were first recorded on the school census of 1st October 2020 as having an entry date after 17th January 2020 and before 22nd May 2020,

excluding pupils who joined the school in the nursery class, if the school has such a class, and pupils who were first recorded on the school census in a spring term who were in a reception class at that time.

(4) Where the total number of pupils to whom paragraph (5) applies is more than 6% of the total number of pupils at key stages 3 and 4 in the school, a single per pupil amount for every pupil in excess of that 6%.

(5) This paragraph applies to pupils at key stages 3 and 4 who—

- (a) joined the school in the previous three academic years and were first recorded on the school census in a spring or summer term; or
- (b) where the school was open before 17th January 2020, were not recorded on the school census of that date but were first recorded on the school census of 1st October 2020 as having an entry date after 17th January 2020 and before 22nd May 2020.

The London fringe

21.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factor.

(2) Differential costs at schools in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex (“the London fringe area”) due to schools in those county councils being in different London salary weighting areas.

The sparsity factor

22.—(1) In determining budget shares for primary schools (other than special schools, pupil referral units, and nursery schools), a local authority must ascertain and take into account in its formula the following factors.

(2) In respect of all primary schools to which paragraph (3) applies, other than those which are middle schools or all-through schools, an amount (“final value”) calculated in accordance with paragraphs (4) to (6).

(3) This paragraph applies where—

- (a) in respect of those pupils for whom the school is their home school, the number which represents the average of the road distances between each pupil’s home and their second closest compatible school is greater than 80% of a distance determined by the local authority, which must not be less than two miles, and the same distance must be applied to all such schools; and
- (b) the number which represents the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups) is less than a number determined by the local authority as applying to all such schools, which must be no more than 21.4.

(4) First, the year-group weighting is calculated in accordance with whichever one of the following methods the local authority prefers—

- (a) a value of 1, with each school being allocated the same weighting;
- (b) a value of the amount $(1 - A/B)$; or
- (c) a value determined as follows—
 - (i) if A is less than $0.5 \times B$, the value of 1;
 - (ii) if A is equal to or more than $0.5 \times B$, the value of $1 \times (1 - ((A - (0.5 \times B)) / (0.5 \times B)))$.

(5) Next, a distance weighting is calculated in accordance with whichever of the following methods the local authority prefers—

- (a) a value of 1, with each school being allocated the same weighting; or
- (b) a value determined as follows—
 - (i) if D is equal to or greater than C , the value of 1;
 - (ii) if D is less than C but greater than $0.8 \times C$, the value of $1 - (C - D) / (0.2 \times C)$.

(6) The final value is the amount given by multiplying the year-group weighting, the distance weighting and the lump-sum funding for sparsity determined by the local authority and that lump sum must not exceed £100,000.

(7) The local authority must use the same method of calculating the final value in accordance with paragraphs (4) to (6) in respect of all schools to which paragraph (3) applies.

(8) For the purposes of paragraphs (2) to (7)—

A is the number which represents the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups);

B is the number determined by the authority in accordance with paragraph (3)(b);

C is the number determined by the authority in accordance with paragraph (3)(a);

D is the number which represents the average road distance for the school (calculated by identifying all the pupils for whom the school is their closest compatible school and calculating the average road distance from these pupils' home postcodes to their second closest compatible school).

(9) Where paragraph (10) applies in respect of secondary schools, primary schools which are middle schools and primary schools which are all-through schools, an amount (“final value”) calculated in accordance with paragraphs (11) to (13).

(10) This paragraph applies where—

- (a) in respect of those pupils for whom the school is their home school, the number which represents the average of the road distances between each pupil's home and their second closest compatible school is greater than 80% of a distance determined by the local authority which must not be less than—
 - (i) two miles in respect of middle schools;
 - (ii) two miles in respect of all-through schools; and
 - (iii) three miles in respect of secondary schools other than middle schools or all-through schools; and
- (b) the number which represents the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups) is less than a number determined by the local authority, which must be no more than—
 - (i) 69.2 in respect of middle schools;
 - (ii) 62.5 in respect of all-through schools; and

(iii) 120 in respect of secondary schools other than middle schools or all-through schools, and the same number must be applied to all the schools of each type listed in this paragraph.

(11) First, the year-group weighting is calculated in accordance with whichever one of the following methods the local authority prefers—

- (a) a value of 1, with each school being allocated the same weighting;
- (b) a value of the amount $(1 - A/B)$; or
- (c) a value determined as follows—
 - (i) if A is less than $0.5 \times B$, the value of 1;
 - (ii) if A is equal to or more than $0.5 \times B$, the value of $1 \times (1 - ((A - (0.5 \times B)) / (0.5 \times B)))$.

(12) Next, a distance weighting is calculated in accordance with whichever of the following methods the local authority prefers—

- (a) a value of 1, with each school being allocated the same weighting; or
- (b) a value determined as follows—
 - (i) if D is equal to or greater than C , the value of 1;
 - (ii) if D is less than C but greater than $0.8 \times C$, the value of $1 - (C - D) / (0.2 \times C)$.

(13) The final value is the amount given by multiplying the year-group weighting, the distance weighting and the lump-sum funding for sparsity determined by the local authority and that lump sum must not exceed £100,000.

(14) The local authority must use the same method of calculating the final value in accordance with paragraphs (11) to (13) in respect of all schools to which paragraph (10) applies.

(15) For the purposes of paragraphs (9) to (14)—

A is the number which represents the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups);

B is the number determined by the authority in accordance with paragraph (10)(b);

C is the number determined by the authority in accordance with paragraph (10)(a);

D is the number which represents the average road distance for the school (calculated by identifying all the pupils for whom the school is their closest compatible school and calculating the average road distance from these pupils' home postcodes to their second closest compatible school).

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

23.—(1) Subject to the following paragraphs of 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 nursery school maintained by it, 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; or
 - (b) in the case where the local authority decides to fund funded early years provision and 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)(b) or (4)(b), 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 and redeterminations under the preceding paragraphs of 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 within the area of a local authority in respect of whom that local authority must provide a range of services appropriate to their needs under section 17 of the 1989 Act.

Early years pupil premium

24.—(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 60 pence for each child eligible who is eligible for 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 2014 Regulations;
- (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 where the child’s parent has, in the relevant period, earned income not exceeding the applicable amount;
- (b) income support;
- (c) income-based jobseeker’s 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⁽³⁾.

(4) The orders are—

- (a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002⁽⁴⁾;
- (b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act⁽⁵⁾; and

⁽³⁾ Working tax credits are in certain circumstances, paid for four weeks (“run-on”) following a cessation of employment.

⁽⁴⁾ 2002 c. 38.

⁽⁵⁾ Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

- (c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act⁽⁶⁾ 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 £342 (equivalent to 60 pence multiplied by 570) for each looked after child aged three or four years 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⁽⁷⁾).

(7) In paragraph (6), "virtual school head" means a person appointed by a local authority under section 22(3B) of the 1989 Act⁽⁸⁾ 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 £342 per child under this regulation.

(9) A child eligible for early years pupil premium continues to be so eligible notwithstanding any change in circumstances which would otherwise result in paragraph (2)(c)(i) ceasing to be satisfied, or, in the case of paragraph (3)(a), the earned income of the child's parent subsequently exceeding the applicable amount.

(10) In this regulation—

- (a) "child tax credit" means child tax credit under section 1(1)(a) of the Tax Credits Act 2002⁽⁹⁾;
- (b) "earned income" means income for the purposes of Chapter 2 of Part 6 of the Universal Credit Regulations 2013⁽¹⁰⁾;
- (c) "income-based jobseeker's allowance" has the meaning given by section 1(4) of the Jobseekers Act 1995⁽¹¹⁾;
- (d) "income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act 2007⁽¹²⁾;
- (e) "income support" means income support under section 124 of the Social Security Contributions and Benefits Act 1992⁽¹³⁾;
- (f) the relevant assessment period and the applicable amount are those referred to in the following sub-paragraphs as applicable—

⁽⁶⁾ Section 8(1) was amended by section 12 of the 2014 Act.

⁽⁷⁾ [S.I. 2010/959](#). Paragraph 2 of Schedule 1 was amended by [S.I. 2013/706](#) and [2014/1556](#).

⁽⁸⁾ 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.

⁽⁹⁾ [2002 c. 21](#). Section 1 is repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) with savings specified in [S.I. 2019/167](#), article 3.

⁽¹⁰⁾ [S.I. 2013/376](#). Chapter 2 of Part 6 is concerned with earned income for the purposes of calculating an award of universal credit.

⁽¹¹⁾ [1995 c. 18](#). Section 1(4) is repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) on different days and for different areas and purposes. See [S.I. 2013/983](#), [1511](#), [2657](#), [2846](#), [2014/209](#), [1452](#), [1583](#), [2321](#), [3094](#), [2015/33](#), [101](#), [634](#), [1537](#) and [2016/33](#).

⁽¹²⁾ [2007 c. 5](#).

⁽¹³⁾ [1992 c. 4](#).

- (i) except where paragraphs (ii) or (iii) apply, where the parent had earned income which did not exceed £616.67 in the universal credit assessment period⁽¹⁴⁾ immediately preceding the date of the request for early years pupil premium (period 1)—
 - (aa) the relevant assessment period is period 1; and
 - (bb) the applicable amount is £616.67;
- (ii) this paragraph applies where paragraph (i) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 2) immediately preceding period 1 referred to in that paragraph—
 - (aa) the relevant assessment period is the sum of period 1 and period 2 (SAP); and
 - (bb) the applicable amount is £1,233.34;
- (iii) this paragraph applies where paragraph (ii) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 3) immediately preceding period 2 referred to in that paragraph—
 - (aa) the relevant assessment period is the period made up of SAP and period 3; and
 - (bb) the applicable amount is £1,850;
- (g) where the parent referred to in paragraph (3)(a) is—
 - (i) a member of a couple who have jointly made a claim for, and are in receipt of, universal credit; or
 - (ii) a member of a couple but has claimed, and is in receipt of, universal credit as a single person,

references to applicable amounts in paragraphs (i) to (iii) of sub-paragraph (f) as applicable are to be read as references to the combined income of the couple;
- (h) “parent” has the meaning given by section 2(2) of the Childcare Act 2006;
- (i) “state pension credit” means state pension credit under section 1 of the State Pension Credit Act 2002⁽¹⁵⁾, and the “guaranteed element” of state pension credit means the guarantee credit under section 2 of that Act;
- (j) “universal credit” means universal credit under section 1 of the Welfare Reform Act 2012⁽¹⁶⁾;
- (k) “working tax credit” means working tax credit under section 1(1)(b) of the Tax Credits Act 2002.

Disability access fund

25.—(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,

⁽¹⁴⁾ An assessment period is prescribed by regulation 21(1) of the Universal Credit Regulations 2013 as a period of one month beginning with the first day of entitlement and each subsequent period of one month during which entitlement subsists.

⁽¹⁵⁾ 2002 c. 16.

⁽¹⁶⁾ 2012 c. 5.

a local authority must include in the amount to be allocated a single amount of at least £800 for each disabled child who is in receipt of funded early years provision by virtue of regulation 3(3) of the 2014 Regulations.

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

(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(17).

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

Risk protection arrangement

26.—(1) Paragraph (2) applies if a local authority has not removed any expenditure referred to in paragraph 47 of Schedule 2 from a school's budget share under regulation 11(5).

(2) In determining (including redetermining) budget shares for schools maintained by it a local authority must include—

(a) a factor which enables the local authority to deduct the amount (£23 x Z/365) per pupil from the budget share of a primary or secondary school, (other than a special school or pupil referral unit), if the governing body of that school has entered into a risk protection arrangement with the Secretary of State which is still in force, or enters into such an arrangement which commences on or after 1st April 2023; and

(b) a factor which enables the local authority to deduct the amount (£23 x Z/365) per place from the budget share of a special school or pupil referral unit if—

(i) the governing body of that school; or

(ii) in the case of a pupil referral unit, the local authority,

has entered into a risk protection arrangement with the Secretary of State which is still in force, or enters into such an arrangement which commences on or after 1st April 2023.

(3) In paragraph (2)(a) and (b), Z is the number of days that the school or pupil referral unit is subject to a risk protection arrangement with the Secretary of State, beginning with 1st April 2023, or with the day on which that arrangement commences, if later, and ending with 31st March 2024.

Differential funding

27.—(1) For the purpose of determining (including 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.

(17) 1992 c. 4.

Additional requirements, factors or criteria

28.—(1) In order to determine the budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority—

- (a) must comply with the requirement for minimum per pupil funding set out in regulation 30; and
- (b) may take into account in its formula any or all of the requirements, factors or criteria mentioned in Part 1 of Schedule 3.

(2) For the purposes of complying with the requirement mentioned in paragraph (1)(a), the date for ascertaining pupil numbers or proportions is 6th October 2022, unless these Regulations provide otherwise.

(3) Subject to regulation 33, 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.

(4) The requirements, factors and criteria set out 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.

(5) Subject to paragraphs (7) and (8), 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.

(6) In paragraph (5) “redetermined adjusted budget share for the previous funding period” and “redetermined adjusted budget share” have the same meanings as in Schedule 4.

(7) Where the local authority decides to take one or both of the actions described in paragraph (5) (a) and (b)—

- (a) this must be applied to the budget shares of all schools in the local authority’s area; and
- (b) the local authority must ensure that no school in the area receives a budget share that is less than the amount it would receive under regulation 30 (the minimum per pupil amount).

(8) Paragraph (5) does not apply to the determination of budget shares for—

- (a) special schools;
- (b) pupil referral units;
- (c) nursery schools; and
- (d) any school that has opened since 1st April 2016 and does not yet have pupils in each year group for which it proposes to provide education.

Requirements relating to the calculation of the local authority funding formula

29.—(1) In determining budget shares for primary and secondary schools (other than special schools, pupil referral units, and nursery schools), a local authority must set single per pupil amounts

or, as the case may be, single sums or lump sums for the factors referred to in regulations 13, 15, 17, 18, 19, 20 and 22 as follows—

A is the value of the factor in the local authority’s funding formula (the “local factor value”) for the previous funding period except—

- (a) where a local authority did not use this factor in its formula for the previous funding period, in which case A should be taken as £0; or
- (b) in the case of the factor relating to English as an additional language, if—
 - (i) in the previous funding period, the local authority used the EAL1 version of the factor relating to English as an additional language, then $A = \text{the local factor value} \times 0.333$;
 - (ii) in the previous funding period, the local authority used the EAL2 version of the factor relating to English as an additional language, then $A = \text{the local factor} \times 0.667$;

B is the national funding formula factor value for the previous funding period(18), adjusted to account for geographical variations in labour market costs (the “area cost adjustment” or “ACA”(19)), except where a local authority is in the London fringe area, where B = the national funding formula factor value for the previous funding period, adjusted by the lowest ACA applied within that local authority;

C is the absolute value of $A - B$;

D is the local factor value for this funding period;

E is the national funding formula factor value in this funding period(20), adjusted to account for geographical variations in labour market costs (the “area cost adjustment” or “ACA”(21)), except where a local authority is in the London fringe area, where E = the national funding formula factor in this funding period, adjusted by the lowest ACA applied within that local authority;

F is the absolute value of $D - E$;

- (2) The local authority must set D so that—
 - (a) F is equal to or smaller than $(C \times 0.9)$; or,
 - (b) D is equal to or greater than $(E \times 0.975)$; and
 - (c) D is equal to or smaller than $(E \times 1.025)$.
- (3) If A is smaller than B, the local authority must set D to be equal to, or smaller than $(E \times 1.025)$.

(18) The national funding formula factor values for the previous funding period can be found in the document entitled “The national funding formulae for schools and high needs 2022 – 23” published in July 2021. The document can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003492/2022-23_NFF_Policy_Document.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT upon request.

(19) The area cost adjustment (ACA) for 2022 – 23 can be found in the document entitled “Schools block national funding formula: technical note” published in July 2021. The document can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003310/2022-23_NFF_schools_block_technical_note.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT upon request.

(20) The national funding formula factor values for this funding period can be found in the document entitled “The national funding formulae for schools and high needs 2023 – 24” published in July 2022. The document can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091988/2023-24_NFF_Policy_Document.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT upon request.

(21) The area cost adjustment (ACA) for 2023 – 24 can be found in the document entitled “Area cost adjustment for national funding formula: technical note” published in July 2022. The document can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091865/2023-24_NFF_area_cost_adjustment_technical_note.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT upon request.

(4) If A is greater than B, the local authority must set D to be equal to, or greater than (E x 0.975).

(5) In this regulation—

“the absolute value” of a number means that number expressed as a positive number;

“EAL1” means the version of the factor relating to English as an additional language that is applied only in respect of a pupil who—

- (a) has English as an additional language; and
- (b) was not recorded as attending a school or schools in England on any school census before 7th October 2021;

“EAL2” means the version of the factor relating to English as an additional language that is applied only in respect of a pupil who—

- (a) has English as an additional language; and
- (b) was not recorded as attending a school or schools in England on any school census before 1st October 2020;

“the London fringe area” has the meaning given to that expression in regulation 21(2).

Minimum per pupil amount

30.—(1) Where the per pupil amount for a school is less than the minimum per pupil amount, the authority must determine (including redetermine) that school’s budget share based on the minimum per pupil amount.

(2) In this regulation, the per pupil amount for a school is—

$$\frac{X}{Y}$$

where—

X is the notional budget share that the school would receive under the formula referred to in regulation 10(1), but for the operation of this regulation.

Y is the number of pupils at the school.

(3) In calculating X, the authority must—

- (a) deduct any premises factor allocation from the amount;
- (b) add any amount that is deducted under regulation 11(5) or (6), 26(2), 37 or 38(1);
- (c) deduct any amount that is added under regulation 37 or 38(1).

(4) The minimum per pupil amount for a school is—

$$\frac{(A \times D) + (B \times E) + (C \times F)}{G}$$

where—

A is the number of primary-age year groups in the school.

B is the number of key stage 3 year groups in the school.

C is the number of key stage 4 year groups in the school.

D is the primary-age year group value of £4,405.

E is the key stage 3 year group value of £5,503.

F is the key stage 4 year group value of £6,033.

G is the total number of year groups in the school.

(5) Where authorised to do so by the Secretary of State under regulation 39 (alternative arrangements), a local authority may—

- (a) vary the year group values D, E or F set out in paragraph (4) for all the schools that are subject to the formula decided by the authority under regulation 10(1); and
- (b) alter the operation of this regulation in respect of particular schools.

Minimum funding guarantee

31.—(1) Except as provided for in this regulation, in determining (including 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 (minimum funding guarantee).

(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) Where authorised to do so by the Secretary of State under regulation 39 (alternative arrangements), a local authority may alter the operation of this regulation and Schedule 4 in determining (including redetermining) budget shares.

Early years 95 per cent requirement

32.—(1) In making determinations under regulation 11(9), a local authority must comply with the formula set out in paragraph (2).

(2) The formula is $(A - B) / C$ is no less than 95 per cent 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 27 of Schedule 2; and
 - (iii) any amount of the fund established under paragraph 32 of Schedule 2, 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 23(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.

12 per cent early years discretionary funding cap

33.—(1) A local authority must ensure that the total amount of discretionary funding does not exceed 12 per cent of early years allocations.

(2) For the purposes of paragraph (1), “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 16 (social deprivation for early years); and
- (b) the requirements, factors and criteria set out in Part 2 of Schedule 3 which by virtue of regulation 28(3) a local authority may take into account in its formula.

(3) For the purposes of paragraph (1), early years allocations means 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

34.—(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

35.—(1) Where in the funding period, but excluding 1st April 2023, 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 2016 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 2023 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 2023, 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 regulation 17 (lump sums for primary and secondary schools) 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 regulation 17.

(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 2023, 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 2023 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 2023, 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 regulation 17 if the school had not been discontinued.

(9) Where in the funding period, but excluding 1st April 2023, 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 39 (alternative arrangements).

Federated schools

36.—(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.