

EXPLANATORY MEMORANDUM TO

THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2023

2023 No. 59

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 These Regulations provide instructions on how local authorities are to set their education budgets in the 2023-24 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 by local authorities. They also set out how local authorities are to allocate funding to maintained schools and private, voluntary and independent early years provision through locally-determined funding formulae.
- 2.3 The Department for Education makes these regulations annually; the 2023 Regulations will only apply to budgets for the 2023-24 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 These Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 ("SSFA 1998"), which concerns the financing of maintained schools. They relate to the 2023-24 financial year and need to be made because the School and Early Years Finance (England) Regulations 2022 ("the 2022 Regulations") apply only up to the end of the 2022-23 financial year. The Department for Education makes these regulations annually.

7. Policy background

What is being done and why?

- 7.1 These 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 Spending Review 2021, the government planned for core funding for schools and high needs through the DSG to increase by £1.5bn in 2023-24, compared to 2022-23. The DSG for 2023-24 can be found here: <https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2023-to-2024>.
- 7.3 The 2022 Autumn Statement announced that the core schools budget will increase by another £2.0bn in 2023-24, over and above totals announced at Spending Review 2021. This additional funding for mainstream schools is being paid as a separate grant and is not part of the DSG in 2023-24 (and this new grant 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 majority of the DSG is allocated to local authorities through the schools NFF – for mainstream primary and secondary school funding. 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 2023-24, the Department for Education has allocated an average per pupil increase of 1.9% for every mainstream school through the NFF. Every primary school will receive a minimum of £4,405 and every secondary school a minimum of £5,715.
- 7.5 We have announced that we plan to implement a ‘direct’ schools NFF, whereby schools receive what they attract through the national formula, rather than through different local authority funding formulae. In 2023-24, local authorities will continue to determine schools’ budget allocations at a local level, through a local funding formula. However, 2023-24 will be the first year of transition towards a direct schools NFF. Accordingly, in these Regulations, we place requirements on local formulae so that schools’ allocations through local formulae move closer to the NFF distribution, ensuring a smooth transition towards the direct NFF and delivering a more consistent funding system.
- 7.6 The 2023-24 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 2023-24 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 2022 Regulations are set out below:

Bringing local funding formulae for mainstream schools closer to the NFF.

- 7.8 The Department for Education has confirmed that it plans to implement a direct formula, whereby mainstream schools would receive what they attract through the national formula, rather than through different local authority funding formulae. Since the introduction of the schools NFF in 2018, we have seen a general movement of local authority formulae towards the NFF, and an increasing number of local authorities are now “mirroring” the NFF in their local funding formulae. However, some local formulae remain significantly different from the NFF. We are taking a measured approach, setting a minimum level of movement towards the NFF for local authority funding formula in 2023-24, as our first year of transition to the direct NFF. These restrictions will bring local funding formulae closer to the NFF - we have published an analysis on the expected impact of this here: <https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs>. We will analyse the actual impact of the tightening requirements once local authority funding formulae for 2023-24 have been set, and use that analysis to inform further tightening from 2024-25 onwards.
- 7.9 First, we are requiring local authorities to use all NFF factors, and only these factors, in their local funding formulae – with the exception of a small number of locally determined factors as set out in Schedule 3 Part 1. Locally determined factors relate to additional costs that schools incur because of aspects of their school sites/estates, and will remain discretionary for local authorities to use in their funding formulae.
- 7.10 Second, for the factors that local authorities are required to include in their local funding formulae, local authorities must move their factor values at least 10% closer to the NFF value (as adjusted by the Area Cost Adjustment, reflecting differences in labour market costs across the country), compared to their distance from the NFF in 2022-23. This requirement does not apply if a local authority’s factor value is already so close to the NFF value in 2022-23 that it is classed as “mirroring” the NFF (if a local authority’s local factor value was within 2.5%, either above or below, the NFF factor in 2022-23). LAs will also not be allowed to “overshoot” the NFF value by more than 2.5%. So, if a local formula factor value is below the NFF factor value in 2022-23, then the LA would not be allowed to move the local formula factor to be higher than 2.5% above the NFF factor value in 2023-24, and vice versa if the local formula factor is above the NFF factor value in 2022-23.
- 7.11 These changes are being reflected in Part 3 of the Regulations, including a new regulation (regulation 29).

Revising the calculation of the minimum funding guarantee

- 7.12 The minimum funding guarantee (“MFG”) protects schools from sudden drops in their per-pupil funding levels in cases where local factor values decrease.
- 7.13 We are introducing a change to how the baseline for the MFG for mainstream schools is calculated to ensure that their funding is appropriately protected. In 2022-23, schools were allocated funding through a schools supplementary grant (“SSG”) - <https://www.gov.uk/government/publications/schools-supplementary-grant-2022-to-2023> - as well as the local funding formulae set by local authorities to distribute their DSG funding to primary and secondary schools. The baseline used for the MFG should, therefore, account for the SSG funding allocated to schools – not to include this funding in the baseline would “under-protect” schools against reductions in

funding in 2023-24, by taking their 2022-23 funding to be substantially lower than it really is.

- 7.14 This change is being made in Schedule 4.

Accounting for the 2022 assessment data in the low prior attainment factor

- 7.15 The low prior attainment factor is used in the NFF to direct more funding towards pupils with additional needs and is mandatory for local authorities to use from 2023-24. It must be applied for primary pupils identified as not achieving the expected level of development in the early years foundation stage profile (EYFSP) and secondary pupils not reaching the expected standard in Key Stage 2 at either reading or writing or maths. Following cancelled assessments in 2020 and 2021 due to the COVID-19 pandemic, assessment data for 2019 was used as a proxy in both the 2021-22 and 2022-23 schools NFF, as outlined in the 2021 and 2022 Regulations.
- 7.16 The EYFSP and Key Stage 2 assessments went ahead as usual in summer 2022. Local authorities therefore have usable 2022 data as part of setting a low prior attainment factor in their 2023-24 local funding formula for the 2022/23 year 1 and year 7 cohorts. However, we still require local authorities to use the 2019 assessment data for the two cohorts with missing assessment data, for schools which have pupils who took the 2019 assessments. For schools which no longer have pupils who took the 2019 assessments, local authorities have flexibility over whether to use the 2019 assessments when the school last had pupils in that cohort, the average proportion of pupils who did not meet the expected standard in 2019 in the local authority as a whole, or 2022 assessment data.
- 7.17 In response to changes to Key Stage 2 assessment in 2016, which significantly increased the number of pupils who did not achieve the expected standard in KS2, we have been weighting some of the data for this factor so that year groups assessed under the newer tests do not skew a school's allocation. Each year we calculate a new weighting for the new year 7 cohort. These Regulations include that new weighting.
- 7.18 Regulation 18 reflects these changes on the low prior attainment factor.

12% early years discretionary funding cap

- 7.19 When setting their local funding formulae for funding early years providers, local authorities use supplements to pay providers additional funding, on top of the base rate, to reflect local needs or policy objectives. The total planned value of funding supplements is capped, as set out in Regulation 25. Previously this cap was set at 10% of the total value of planned formula funding to providers.
- 7.20 Between 4 July 2022 and 16 September 2022, the Government held a consultation on reforms to the early years funding formulae which included proposals to mainstream the early years element of the Teachers' Pay Grant and the Teachers' Pension Employer Contribution Grant into 3-and-4-year-old entitlements funding (<https://www.gov.uk/government/consultations/early-years-funding-formulae>) We proposed to encourage local authorities to use their quality supplement, which is a discretionary supplement that local authorities can choose to include within their local formulae, to use the rolled-in funding to continue to support some of the costs for which the grants were introduced. In response to the consultation, some local authorities raised concerns about the cap on supplements remaining at 10% in light of this proposal. In order to ensure that local authorities can channel additional funding through the quality supplement without having to change their existing approach to

other supplements we have increased the cap to 12%. We would only expect a small minority of local authorities to need this additional flexibility, and as before, this cap on supplements should not be considered a target for local authorities to meet.

7.21 Regulation 33 has been updated accordingly.

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 recently conducted two public consultations; one for the main substantive change in the Regulations on our proposals for next steps to transition to a directly applied NFF for schools; and one on proposals to update the early years funding formulae for 2023-24.

10.2 Over a twelve-week period, between 8 July 2021 and 30 September 2021, the Government held a consultation on: “Fair school funding for all: completing our reforms to the National Funding Formula”. The consultation sought views on the implementation of a directly applied schools NFF and how we would transition from the current system to achieve this. The consultation received 359 responses, mainly from schools, local authorities, multi-academy trusts, and sector organisations. These responses were carefully considered when deciding on our approach to transition. The response to our proposals on bringing local authorities’ funding formulae gradually closer to the NFF was broadly positive. The Government Response to the consultation can be found here: <https://www.gov.uk/government/consultations/fair-school-funding-for-all-completing-our-reforms-to-the-national-funding-formula>.

10.3 Between 4 July 2022 and 16 September 2022, the Government held a consultation on proposals to update the early years funding formulae for 2023-24 and to continue doing that each year going forward. The reforms will ensure the funding system remains fair, effective and responsive to changing levels of need across different areas. We also consulted on reforms to create a fairer distribution of maintained nursery school supplementary funding. The consultation received 412 responses, which have been carefully considered in deciding the outcome of the consultation. The government response can be found here: <https://www.gov.uk/government/consultations/early-years-funding-formulae>.

10.4 For the more technical changes to the allocation of funding (accounting for the 2022 assessment data for the low prior attainment factor and revising the calculation of the minimum funding guarantee), 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.

11. Guidance

- 11.1 Operational guidance for 2023-24 on schools funding is 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>.
- 11.2 Operational guidance for local authorities for 2023-24 on high needs funding is available at: <https://www.gov.uk/government/publications/high-needs-funding-arrangements-2023-to-2024/high-needs-funding-2023-to-2024-operational-guide>.
- 11.3 Operational guidance for local authorities for 2023-24 early years funding is available at: <https://www.gov.uk/government/publications/early-years-funding-2023-to-2024/early-years-entitlements-local-authority-funding-operational-guide-2023-to-2024>.

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 A full 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 approach to monitoring of this legislation is 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.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Christine Kelsey at the Department for Education, Christine.KELSEY@education.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Tom Goldman, Deputy Director for Funding Policy Unit, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nick Gibb at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.