
STATUTORY INSTRUMENTS

2024 No. 66

**The School and Early Years Finance and Childcare
(Provision of Information About Young Children)
(Amendment) (England) Regulations 2024**

PART 3

Determination of budget shares etc.

CHAPTER 2

Criteria taken into account – early years provision

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

31.—(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.

(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 with 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 with 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 (provision of services for children in need, their families and others)(1).

Social deprivation for early years

32.—(1) This regulation is subject to regulation 37 (12% early years discretionary cap).

(2) In determining—

(1) Section 17 was amended by section 4 of, and paragraph 108(a) of Schedule 2 to, the Social Security (Consequential Provisions) Act 1992 (c. 6), section 7(1) and (2) of the Children (Leaving Care) Act 2000 (c. 35), section 47 of, and paragraphs 15 and 16 of Schedule 3 to, the Tax Credits Act 2002 (c. 21), section 116(1) of the Adoption and Children Act 2002 (c. 38), section 53(1) of the 2004 Act, section 28(1) of, and paragraph 6(1) and (2) of Schedule 3 to, the 2007 Act, sections 8(2) and 24 of, and paragraph 1 of Schedule 1 to, the Children and Young Persons Act 2008 (c. 23) (“the 2008 Act”), section 31 of, and paragraph 1(a) of Schedule 2 to, the 2012 Act and S.I. 2016/413.

- (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,

in respect of three and four year olds, 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 in its area.

(3) 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,

in respect of working parent under two year olds, working parent two year olds, and disadvantaged two year olds, 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 in its area.

Early years pupil premium

33.—(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 those budget shares or amounts an amount equivalent to at least a rate of 68 pence multiplied by each hour of funded early years provision, up to a maximum of 570 hours, that a child eligible for early years pupil premium is to receive.

(2) A child is eligible for early years pupil premium if the child receives at least one hour of funded early years provision and either—

- (a) the child's parents are receiving one or more of the benefits in paragraph (3); or
- (b) the child was a looked after child but is no longer so as a result of the making of an order mentioned 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(2);
- (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

(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 child eligible for early years pupil premium continues to be so eligible notwithstanding any change in circumstances which would otherwise result in paragraph (2)(a) 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.

(6) When determining the budget shares and amounts referred to in paragraph (1), a local authority must include an amount equivalent to a rate of at least 68 pence multiplied by 570 hours (irrespective of how many hours of early years provision the child actually receives) for each looked after child who receives at least one hour of funded early years provision.

(7) Where, after the local authority has determined the budget shares or amounts referred to in paragraph (1), either—

(a) a child becomes eligible for early years pupil premium in accordance with paragraph (2); or

(b) a child becomes a looked after child who receives at least one hour of funded early years provision,

the authority must redetermine the budget share or amount allocated to the early years provider concerned in accordance with paragraph (8).

(8) The amount to be included by a local authority under paragraph (7) is—

(a) in the case of child falling under paragraph (7)(a), an amount equivalent to a rate of at least 68 pence multiplied by each hour of funded early years provision that the child is to receive, up to a maximum of 570 hours; and

(b) in the case of a child falling under paragraph (7)(b), an amount equivalent to a rate of at least 68 pence multiplied by 570 hours.

(9) A local authority must use the same rate, which must be at least 68 pence, for all determinations and redeterminations under this regulation.

(10) A local authority must not include an amount under this regulation in respect of a particular child that is more than an amount equivalent to the rate used by the authority for the purposes of this regulation multiplied by 570 hours.

(11) A local authority must ensure that any amount included in a budget share or amount allocated under this regulation in respect of a looked after child is used for the benefit of the child in accordance with—

(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. 38) and amended by section 38 of the 2008 Act and section 12(4) of, and paragraph 24 of Schedule 2 to, the 2014 Act.

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

- (a) any directions or advice given by the local authority’s virtual schools head; and
 - (b) the child’s personal education plan.
- (12) In this regulation—
- (a) “child tax credit” means child tax credit under section 1(1)(a) of the Tax Credits Act 2002(7);
 - (b) “earned income” means income for the purposes of Chapter 2 of Part 6 of the Universal Credit Regulations 2013(8);
 - (c) “income-based jobseeker’s allowance” has the meaning given by section 1(4) of the Jobseekers Act 1995(9);
 - (d) “income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007(10);
 - (e) “income support” means income support under section 124 of the Social Security Contributions and Benefits Act 1992(11);
 - (f) “looked after child”, or in relation to a child, “looked after”, has the meaning given by—
 - (i) section 22(1) of the 1989 Act(12); or
 - (ii) section 74(1) of the Social Services and Well-being (Wales) Act 2014(13);
 - (g) the relevant assessment period and the applicable amount are those referred to in the following sub-paragraphs as applicable—
 - (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

(7) 2002 c. 21. Section 1 is repealed by Part 1 of Schedule 14 to the 2012 Act with savings specified in [S.I. 2019/167](#).

(8) [S.I. 2013/376](#). Chapter 2 of Part 6 is concerned with earned income for the purposes of calculating an award of universal credit. Chapter 2 was amended by [S.I. 2013/1508](#), [2014/2888](#) and [3255](#), [2015/67](#), [345](#) and [1754](#), [2018/65](#), [2019/1152](#) and [1249](#), [2020/354](#) and [1138](#), [2021/1238](#).

(9) 1995 c. 18. Section 1(4) is repealed by section 147 of, and Part 1 of Schedule 14 to, the 2012 Act on different days and for different areas and purposes and remains partially in force. (See [S.I. 2013/983](#), [1511](#), [2657](#), [2846](#), [2014/209](#), [1452](#), [1583](#), [2321](#), [3094](#), [2015/33](#), [101](#), [634](#), [1537](#) and [2016/33](#)). Section 1(4) is amended by sections 59 and 88 of, and paragraph 2 of Schedule 7 and Part V of Schedule 13 to, the Welfare Reform and Pensions Act 1999 (c. 30), by section 4 of the Welfare Reform Act 2009 (c.24) and by section 254(1) of the Civil Partnership Act 2004 (c. 18).

(10) 2007 c. 5.

(11) 1992 c. 4. Section 124 is repealed by 147 of, and Part I of Schedule 14 to, the 2012 Act 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](#). Section 124 is amended by section 41(4) and (5) of, paragraph 30 of Schedule 2 to, and Schedule 3 to the Jobseekers Act 1995, section 70 of, and paragraph 28 of Schedule 8 to, the Welfare Reform and Pensions Act 1999, sections 14 and 21 of, and paragraphs 1 and 2 of Schedule 2 and Schedule 3 to, the State Pension Credit Act 2002 (c. 16), and section 254(1) of, and paragraph 42 of Schedule 24 to, the Civil Partnership Act 2004, section 28(1) and 67 of, and paragraph 9(1), (9) and (10) of Schedule 3 and Schedule 8 to, the 2007 Act, section 3(1) of the Welfare Reform Act 2009 and section 147 of, and paragraph 14(1) of Schedule 14 to, the Welfare Reform Act 2012.

(12) Section 22(1) was amended by section 107 of, and paragraph 19 of Schedule 5 to, the Local Government Act 2000 (c. 22), section 2(1) and (2) of the Children (Leaving Care) Act 2000 (c. 35), section 116(2) of the Adoption and Children Act 2002 (c. 38) and [S.I. 2016/413](#).

(13) 2014 anaw. 4.

(14) An assessment period is prescribed by regulation 21(1) of the Universal Credit Regulations 2013 ([S.I. 2013/376](#)) as a period of one month beginning with the first day of entitlement and each subsequent period of one month during which entitlement subsists. Regulation 21(1) was amended by [S.I. 2018/65](#).

- (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;
- (h) where the parent referred to in paragraph (3)(b) 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 subparagraph (g) as applicable are to be read as references to the combined income of the couple;
- (i) “parent” has the meaning given by section 2(2) of the Childcare Act 2006 (meaning of early childhood services);
- (j) “personal education plan” has the same meaning as in regulation 5(1)(b)(ii) of the Care Planning, Placement and Case Review (England) Regulations 2010⁽¹⁵⁾;
- (k) “state pension credit” means state pension credit under section 1 of the State Pension Credit Act 2002⁽¹⁶⁾, and the “guaranteed element” of state pension credit means the guarantee credit under section 2 of that Act;
- (l) “universal credit” means universal credit under section 1 of the Welfare Reform Act 2012⁽¹⁷⁾;
- (m) “virtual schools head” means a person appointed by a local authority under section 22(3B) of the 1989 Act⁽¹⁸⁾ 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);
- (n) “working tax credit” means working tax credit under section 1(1)(b) of the Tax Credits Act 2002.

Disability access fund

34.—(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, subject to paragraph (6), include in the budget share or amount to be allocated a single amount of at least £910 for each eligible child.

(2) Where a child becomes an eligible child after the local authority has determined the budget shares or amounts referred to in paragraph (1), the authority must redetermine the budget share of,

⁽¹⁵⁾ [S.I. 2010/959](#). Paragraph (1) of regulation 5 was renumbered as such by [S.I. 2014/1917](#).

⁽¹⁶⁾ [2002 c. 16](#).

⁽¹⁷⁾ [2012 c. 5](#).

⁽¹⁸⁾ Section 22(3A) was inserted by section 52 of the 2004 Act; section 22(3B) was inserted by section 99 of the 2014 Act and amended by [S.I. 2016/413](#).

or amount allocated to, the early years provider concerned to include a single amount of at least £910 in respect of that child.

(3) A local authority must include the same amount under paragraphs (1) and (2) in respect of each eligible child.

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

(5) For the purposes of this regulation, a child is an eligible child if they are paid or entitled to disability living allowance by virtue of section 71 of the Social Security Contributions and Benefits Act 1992⁽¹⁹⁾ and they receive at least one hour of funded early years provision.

(6) This regulation does not apply in respect of early years provision which is funded under regulation 14 (places).

Differential funding

35.—(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.

(3) In paragraph (1), “unavoidable costs” means costs which must be incurred by virtue of a statutory requirement.

Early years 95% requirement

36.—(1) In determining budget shares and amounts allocated in accordance with regulation 11(9), a local authority must comply with the formula set out in paragraph (2) separately for each group.

(2) The formula is $(A - B) / C$ is no less than 95% of D, where—

- (a) A is the total of—
 - (i) all budget shares and amounts determined by the authority under regulation 11(9) in respect of the relevant group;
 - (ii) any amount deducted by the authority under paragraph 27 of Schedule 2, which the authority intends to distribute to early years providers in respect of the relevant group; and
 - (iii) any amount of the authority’s special educational needs inclusion fund, which the authority intends to distribute to early years providers in respect of the relevant group.
- (b) B is the total of—
 - (i) where the calculation is being made in respect of three and four year olds, the maintained nursery school supplement;

⁽¹⁹⁾ 1992 c. 4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 and by [S.I. 2021/804](#) and [2022/335](#).

- (ii) any amount included in accordance with regulation 33(1) or (6) (early years pupil premium) in respect of the relevant group; and
 - (iii) any amount included in accordance with regulation 34(1) (disability access fund) in respect of the relevant group;
 - (c) C is the total number of hours of attendance of children in the relevant group predicted by the authority under regulation 31(1) (special arrangements for early years pupils and children); and
 - (d) D is the hourly unit funding rate in relation to the relevant group, notified to the local authority in the early years block.
- (3) A local authority may alter the operation of this regulation if authorised to do so by the Secretary of State under regulation 41(1)(q).

12% early years discretionary funding cap

37.—(1) A local authority must ensure that the total amount of discretionary funding in relation to each relevant group (calculated separately for each) does not exceed 12% of early years allocations in respect of that relevant group.

(2) For the purposes of paragraph (1), “discretionary funding” means funding in respect of a relevant group that is attributable to—

- (a) the factors based on the incidence of social deprivation in pupils or children referred to in regulation 32 (social deprivation for early years); and
- (b) the criteria set out in regulation 38(2) (additional criteria and disadvantaged two year olds requirement: early years) which by virtue of regulation 38(1) 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 allocated in relation to each of the relevant groups, 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,

excluding any of the amounts specified in paragraph (4).

(4) The amounts are—

- (a) where a calculation is made in respect of three and four year olds, the maintained nursery school supplement;
- (b) amount included in accordance with regulation 33(1) or (6) (early years pupil premium) in respect of the relevant group for which the calculation is being made; or
- (c) any amount included in accordance with regulation 34(1) (disability access fund) in respect of the relevant group for which the calculation is being made; and
- (d) any amount included in accordance with regulation 38(4) (additional criteria and disadvantaged two year olds requirement: early years).

Additional criteria and disadvantaged two year olds requirement: early years

38.—(1) Subject to regulation 37, 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;
- (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 criteria specified in paragraph (2).

(2) The criteria which a local authority may take into account for the purposes of paragraph (1) are—

- (a) the rurality or sparsity of the population of the area;
- (b) pupils and children whose first language is not English;
- (c) the qualifications of staff;
- (d) the estimated cost of sharing expertise with other early years providers;
- (e) the degree to which providers offer flexible provision to parents.

(3) Paragraph (4) applies where a local authority's per child amount for a provider in respect of disadvantaged two year olds is less than the authority's per child amount for the same provider in respect of working parent two year olds.

(4) 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;
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

in respect of disadvantaged two year olds, a local authority must, in its formula, take into account a factor that has the effect of ensuring the per child amount a provider receives in respect of disadvantaged two year olds is equal to, or more than, the per child amount the same provider receives in respect of working parent two year olds.

(5) In this regulation, the "per child amount" is X/Y , where—

- (a) X is a local authority's notional budget share for a provider or notional amount to be allocated to a provider in respect of disadvantaged two year olds or working parent two year olds, as the case may be, which would be determined under regulation 11(9), but for the operation of paragraph (4);
- (b) Y is the predicted total number of hours of attendance of pupils or children who are disadvantaged two year olds or working parent two year olds, as the case may be, used by the authority to determine the provider's notional budget share or notional amount to be allocated under regulation 11(9) in accordance with regulations 10(5) and 31(1).

(6) In calculating X, the authority must deduct any amount of funding attributable to—

- (a) regulation 33(1) (early years pupil premium);
- (b) regulation 34(1) (disability access fund); and
- (c) regulation 35(1) (differential funding),

in respect of disadvantaged two year olds or working parent two year olds, as the case may be.

(7) A local authority may disregard the requirement under paragraph (4) if authorised to do so by the Secretary of State under regulation 41(1)(r).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
