
STATUTORY INSTRUMENTS

2011 No. 371

The School Finance (England) Regulations 2011

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School Finance (England) Regulations 2011 and come into force on 15th March 2011.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2011.

(3) These Regulations apply only in relation to England.

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996⁽¹⁾;

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2000 Act” means the Learning and Skills Act 2000⁽²⁾;

“the 2002 Act” means the Education Act 2002;

“the 2005 Act” means the Education Act 2005⁽³⁾;

“the 2006 Act” means the Education and Inspections Act 2006⁽⁴⁾;

“the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009⁽⁵⁾;

“the 2008 Regulations” means the School Finance (England) Regulations 2008⁽⁶⁾;

“admission number” means the number of pupils in any relevant age group intended to be admitted in any school year as determined or, where the context requires, proposed to be determined by an admission authority in accordance with section 88D of the 1998 Act;

“advanced skills teacher” is defined in section 2 of the School Teachers’ Pay and Conditions Document 2010 and Guidance on School Teachers’ Pay and Conditions (referred to in [S.I. 2010/1979](#)), which document can be found at www.education.gov.uk;

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003⁽⁷⁾;

“CRC” means the CRC Energy Efficiency Scheme operated by the Environment Agency;

(1) 1996 c.56.

(2) 2000 c.21.

(3) 2005 c.18.

(4) 2006 c.40.

(5) 2009 c.22.

(6) [S.I. 2008/228](#), amended by [S.I. 2010/210](#).

(7) 2003 c.26. Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 ([S.I. 2003/3146](#), as amended by [S.I. 2004/534](#), [2004/3055](#) and [2007/573](#)).

“central expenditure” means the total amount deducted by a local authority from their schools budget;

“CERA” means capital expenditure which an authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003;

“children in need” means children in respect of whom the local authority in whose area they reside must provide a range and level of services appropriate to their needs under section 17 of the Children Act 1989⁽⁸⁾;

a “combined service” is a service funded partly from central expenditure, and partly from other budgets of the authority or contributions from other bodies;

“Dedicated Schools Grant” is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act;

a reference to a determination or redetermination of a budget share or amount to be allocated is for the funding period, unless otherwise stated;

“early years provision” has the meaning assigned to it in section 20 of the Childcare Act 2006⁽⁹⁾;

“expenditure on the schools specific contingency” is central expenditure deducted for the purpose of ensuring that monies are available to enable increases in a school’s budget share after it has been allocated where it subsequently becomes apparent that—

- (a) a governing body have incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share,
- (b) an increase in the school’s budget share is due in accordance with the local authority’s formula,
- (c) a determination or redetermination of the school’s budget share authorised by the schools forum or the Secretary of State has led to such an increase, or
- (d) such an increase is necessary to correct errors,

and where such circumstances were unforeseen when initially determining the school’s budget share;

“funding period” means the financial year beginning on 1st April 2011;

“gifted and talented pupils” means pupils in primary or secondary schools identified as such by a local authority by virtue of the fact that they are demonstrating, or have the potential to develop, ability in one or more subjects, leadership skills or organisational skills at a level significantly ahead of other children in their year group;

“institution within the further education sector” has the meaning given in section 91(3) of the Further and Higher Education Act 1992⁽¹⁰⁾;

“key stage 4” means the fourth key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 85 and 85A of the 2002 Act⁽¹¹⁾;

a “local authority’s formula” has the meaning in regulation 9;

a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or a community or foundation special school includes a proposed school which, on implementation of proposals for the establishment of the school, will be such a school, and which has a temporary governing body;

⁽⁸⁾ 1989 c.41.

⁽⁹⁾ 2006 c.21.

⁽¹⁰⁾ 1992 c.13.

⁽¹¹⁾ Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools includes such expenditure of that class or description as the authority may incur in relation to Academies, and to pupils registered at Academies;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988⁽¹²⁾;

“Performance Reward Grant” is a grant of that name paid to a local authority under section 31 of the Local Government Act 2003 to reward the authority for improvements in local services;

“PFI scheme unitary payment” means a charge payable by a local authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997⁽¹³⁾;

“practical and applied learning” means education provided to pupils at key stage 4 in a secondary school or elsewhere which prepares them for employment or for a qualification related to a particular employment sector;

“prescribed early years provision” means early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006;

“previous funding period” means the financial year beginning on 1st April 2010;

“primary or secondary school” means a primary or secondary school which is a community, foundation, voluntary or maintained nursery school;

“proper practices” means those accounting practices which a local authority are required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment are generally regarded, whether by reference to any generally recognised published code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned⁽¹⁴⁾;

“provider”, in relation to prescribed early years provision, may be a governing body of a school or a relevant early years provider;

“prudential borrowing” means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings that will be achieved are equal to or more than the expenditure that will be incurred in borrowing the money;

“relevant early years provider” means a provider of prescribed early years provision, other than the governing body of a maintained school;

“relevant early years provision” means prescribed early years provision provided by a relevant early years provider;

“school year” has the meaning given in section 579(1) of the 1996 Act⁽¹⁵⁾;

a reference to “special educational needs transport costs”, for the purposes of paragraph 37(e) of Schedule 2, is a reference to the costs of home to school transport for pupils with special educational needs in schools maintained by a local authority where the authority are meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by them are equal to, or greater than, the cost of such transport;

⁽¹²⁾ 1988 c.41.

⁽¹³⁾ S.I. 1997/319. These Regulations have lapsed but article 11 of the Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains a savings provision for regulation 16 of the 1997 Regulations.

⁽¹⁴⁾ This definition is taken from section 21 of the Local Government Act 2003 and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

⁽¹⁵⁾ Section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44) inserted this definition.

“specific grant” means any grant (other than the Dedicated Schools Grant or any grant made by the YPLA under section 61 of the 2009 Act) paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used;

“summer term” means the third term of the school year where a school has three terms, or the fifth and sixth terms where a school has six terms;

a reference to “termination of employment costs”, for the purposes of paragraph 37(b) of Schedule 2, is a reference to expenditure relating to the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school;

“unavoidable costs” means costs which must be incurred by virtue of a statutory requirement;

“YPLA” is the Young People’s Learning Agency for England.

(5) In these Regulations, a reference to “a mainstreamed grant” means a specific grant which has been merged into the Dedicated Schools Grant for the financial year commencing 1st April 2011 but was paid to local authorities by the Secretary of State as a separate grant under section 14 of the 2002 Act, in addition to the Dedicated Schools Grant, for the financial year commencing 1st April 2010 and includes any of the following grants—

- (a) School Standards Grant,
- (b) School Standards Grant (Personalisation),
- (c) School Development Grant (Standards Fund only),
- (d) School Lunch Grant,
- (e) Ethnic Minority Achievement Grant (EMAG),
- (f) 1-2-1 Tuition Grant,
- (g) Extended Schools – Sustainability Grant,
- (h) Extended Schools – Subsidy Grant,
- (i) Targeted Support for the Primary National Strategy allocated to schools (consisting of Universal and Targeted elements, Every Child elements, Leading Teachers element, Early Years Foundation Stage element and Modern Foreign Languages element),
- (j) Targeted Support for the Secondary National Strategy allocated to schools (consisting of Universal and Targeted elements and Leading Teachers element),
- (k) Diploma Formula Grant,
- (l) London Pay Addition Grant.

Revocation of previous Regulations

2. The School Finance (England) Regulations 2006⁽¹⁶⁾ and the School Finance (Amendment) (England) Regulations 2007⁽¹⁷⁾ are revoked on 1st April 2011.

⁽¹⁶⁾ S.I. 2006/468.

⁽¹⁷⁾ S.I. 2007/365.

PART 2

Action to be Taken by a Local Authority

CHAPTER 1

Appropriation of the Non-Schools Education Budget

The Non-Schools Education Budget

3. The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's non-schools education budget, subject to the exceptions in regulation 6—

- (a) those specified in Schedule 1; and
- (b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 5 and Schedule 2 (the schools budget).

CHAPTER 2

Determination of Schools Budgets, Individual Schools Budgets, and Budget Shares

Initial determination of a local authority's schools budget

4. A local authority must not later than 31st March 2011—
- (a) make an initial determination of their schools budget; and
 - (b) give notice of that determination to the governing bodies of the schools they maintain.

The schools budget

5.—(1) The classes or descriptions of local authority expenditure specified in sub-paragraphs (a) to (d) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget, subject to paragraph (2) and the exceptions in regulation 6—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local authority;
- (c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraph (a) or (b); and
- (d) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraph (a), (b) or (c).

(2) Where a local authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 37(c) of Schedule 2 is only expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget where that expenditure is incurred in providing an educational benefit to those pupils.

Exceptions

6. A local authority's non-schools education budget or schools budget must not include the following classes or descriptions of expenditure—

- (a) capital expenditure, other than—
 - (i) CERA,
 - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred—
 - (i) on prudential borrowing,
 - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph (a)(ii); and
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984⁽¹⁸⁾ (arrangements for patrolling school crossings).

Determination of the individual schools budget for the funding period and limit on increase in central expenditure

7.—(1) Subject to paragraphs (2) to (4), not later than 31st March 2011, a local authority must deduct from their schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 (“the central expenditure”) as they propose to deduct, in order to determine their individual schools budget.

- (2) In deducting the central expenditure under paragraph (1), a local authority must ensure that—
 - (a) where the authority's schools budget increases from the previous funding period to the funding period, the percentage of any increase in the central expenditure does not exceed the percentage of the increase in the schools budget,
 - (b) where the authority's schools budget decreases from the previous funding period to the funding period, the central expenditure decreases and that the percentage of the decrease is not less than the percentage of the decrease in the schools budget,

unless they obtain authorisation to exceed these limits from their schools forum under regulation 13(1)(a) or the Secretary of State under regulation 13(3).

(3) In deducting the central expenditure referred to in paragraph 37 of Schedule 2, a local authority must not exceed the limit referred to in that paragraph, unless they obtain authorisation to do so from their schools forum under regulation 13(1)(c) or the Secretary of State under regulation 13(3).

(4) Where a local authority carries forward a deficit in the central expenditure from the previous funding period to the funding period, which reduces the amount of the schools budget available, the funding of this deficit from the schools budget must be authorised by their schools forum under regulation 13(1)(d) or the Secretary of State under regulation 13(3).

(5) References to planned expenditure in this regulation are references to that expenditure net of—

- (a) all related specific grants;
- (b) all related fees, charges and income; and
- (c) any funding received from the Secretary of State in respect of PFI scheme unitary payments.

⁽¹⁸⁾ 1984 c.27. Section 26 was amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), sections 288 and 423 of, and Schedule 34 to, the Greater London Authority Act 1999 (c.29) and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

(6) For the purposes of this regulation, a local authority must adjust the schools budget for the previous funding period to include any mainstreamed grant.

Consultation

8.—(1) A local authority may make changes to the formulae they have used in the financial years beginning 1st April 2008, 1st April 2009 and 1st April 2010.

(2) Subject to paragraph (3), a local authority must consult their schools forum about any proposed changes under paragraph (1), in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(3) Paragraph (2) does not apply to changes made relating to matters referred to in regulation 20 (sixth form funding) or 23 (excluded pupils).

Formulae for determination of budget shares etc

9.—(1) A local authority must, before the beginning of the funding period and after consulting their schools forum about the matter, decide upon the formula which they will use to determine and redetermine the budget shares for schools maintained by them (other than nursery schools).

(2) Subject to paragraph (3), a local authority must use the formula determined under paragraph (1) in all determinations and redeterminations of school budget shares in respect of the funding period.

(3) A local authority must, before the beginning of the funding period and after consulting their schools forum about the matter, decide upon the formula they will use to determine and redetermine—

- (a) the budget shares for nursery schools maintained by them;
- (b) the amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) the amounts to be allocated to relevant early years providers in their area.

(4) A local authority may not make changes to their formulae after the funding period has commenced.

Determination of allocation of budget shares etc for the funding period

10.—(1) Not later than 31st March 2011, a local authority must determine—

- (a) the budget share for each of the schools maintained by them (other than nursery schools), using the formula referred to in regulation 9(1); and
- (b) the budget share for each of the nursery schools maintained by them, the amount to be allocated in respect of each nursery class in schools maintained by them and the amount to be allocated to each relevant early years provider in their area, using the formula referred to in regulation 9(3),

in accordance with Part 3 of these Regulations.

(2) Not later than 31st March 2011, a local authority must give notice of each budget share or amount determined under paragraph (1) to the governing body of the school or the relevant early years provider concerned.

Delegated budgets for new schools

11.—(1) A new school must have a delegated budget from the appropriate date.

(2) Subject to paragraphs (3) and (6), the appropriate date is either—

- (a) the date which is fifteen calendar months before the opening date of the new school; or

- (b) the date upon which a temporary governing body is constituted for that school, whichever is the later.
- (3) On the application of a local authority, their schools forum may—
- (a) vary the appropriate date to a date proposed by the authority;
 - (b) vary the appropriate date to a different date; or
 - (c) refuse to vary the appropriate date.
- (4) Where—
- (a) a schools forum—
 - (i) vary the appropriate date to a different date, or
 - (ii) refuse to vary the appropriate date; or
 - (b) a local authority are not required to establish a schools forum for their area⁽¹⁹⁾, the authority may make an application to the Secretary of State for variation of the appropriate date.
- (5) On the application of a local authority, the Secretary of State may—
- (a) vary the appropriate date to a date proposed by the authority;
 - (b) vary the appropriate date to a different date.; or
 - (c) refuse to vary the appropriate date.
- (6) A local authority must determine the amount of a new school’s delegated budget for the period from the appropriate date to the opening date as an amount which is sufficient to fund the appointment of staff and to enable the purchase of any goods and services necessary in order to admit pupils.
- (7) After the opening date, a school’s delegated budget must be determined in accordance with the local authority’s formula.

CHAPTER 3

Redetermination of Schools Budgets, Individual Schools Budgets and Schools’ Budget Shares

Redetermination of schools budgets and individual schools budgets

- 12.**—(1) Subject to paragraph (2), a local authority may redetermine their schools budget and individual schools budget at any time before or during the funding period.
- (2) In making any redetermination under paragraph (1), a local authority—
- (a) may only reduce the amount of their schools budget where they receive an amount of Dedicated Schools Grant which is lower than the amount on which they based their determination under regulation 7;
 - (b) must not reduce their individual schools budget by making further deductions of central expenditure from their schools budget unless they obtain authorisation to do so from their schools forum under regulation 13(1)(b) or the Secretary of State under regulation 13(3);
 - (c) must comply with the limits referred to in paragraph 37 of Schedule 2 and imposed by regulation 7(2) unless they obtain authorisation to vary those limits from their schools forum under regulation 13(1)(c) or the Secretary of State under regulation 13(3).

⁽¹⁹⁾ Section 47A(2) of the 1998 Act provides that the requirement in section 47A(1) of that Act to establish a schools forum for their area does not apply to the Common Council of the City of London or the Council of the Isles of Scilly.

(3) Before the beginning of the funding period, a local authority must advise schools of any circumstances they are aware of which make it likely that a redetermination will be made in respect of the funding period, and the nature of any redetermination likely to be made in particular circumstances.

(4) Where a local authority makes a redetermination under paragraph (1), they must give notice of that redetermination to the governing bodies of the schools maintained by them within 28 days of making the redetermination.

CHAPTER 4

Further Deductions and Variations to Limits Authorised by Schools Forums or the Secretary of State

Applications to the schools forum and the Secretary of State

13.—(1) Subject to paragraph (2), on the application of a local authority, their schools forum may authorise—

- (a) the making of further deductions from their schools budget of any central expenditure under regulation 7(1), in excess of the limit imposed by regulation 7(2);
- (b) the reduction of their individual schools budget by making further deductions of central expenditure from their schools budget under regulation 12(1), pursuant to regulation 12(2)(b);
- (c) the varying of any limit referred to in paragraph 37 of Schedule 2; or
- (d) the funding of any deficit in their central expenditure from the schools budget under regulation 7(4).

(2) Where—

- (a) a schools forum does not authorise any of the matters referred to in paragraph (1); or
- (b) a local authority are not required to establish a schools forum for their area,

the authority may make an application to the Secretary of State for such authorisation.

(3) On the application of a local authority under paragraph (2), the Secretary of State may authorise the matters referred to in paragraph (1).

PART 3

Formulae for Determination of Budget Shares etc

CHAPTER 1

Factors and Criteria Taken into Account

Pupil numbers

14.—(1) Subject to regulation 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision) and paragraph (2), in determining and redetermining budget shares for primary and secondary schools, a local authority must ascertain and take into account in their formula the number of registered pupils at those schools on the date specified in paragraph (5), weighted, if the authority consider it appropriate, in accordance with paragraph (4).

(2) For the purposes of paragraph (1), the number of registered pupils does not include pupils—

- (a) in places—

- (i) in primary or secondary schools which the authority have reserved for children with special educational needs, and
 - (ii) in boarding accommodation at boarding schools other than special schools, where the authority exercise their discretion to take these places into account under regulation 15(1)(b) or (c);
 - (b) in respect of whom grant is payable to the authority by the YPLA (sixth form pupils); or
 - (c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 33 of Schedule 3.
- (3) Where a local authority exercise their discretion under regulation 15(1) to take into account places, they may also take into account in their formula the number of registered pupils in special schools or schools with boarding accommodation, or in reserved places at primary or secondary schools, as referred to in that paragraph, on the date specified in paragraph (5).
- (4) A local authority may weight pupil numbers according to any or all of the following factors—
- (a) age, including weighting according to key stage or year group;
 - (b) in the case of pupils aged under five, their exact age when admitted to the school;
 - (c) in the case of pupils aged under five, hours of attendance;
 - (d) whether a pupil has special educational needs;
 - (e) whether the pupil is attending a middle school;
 - (f) whether the pupil is at key stage 4, and is accessing practical and applied learning;
 - (g) whether the pupil, although registered at a school, is also attending an institution within the further education sector or a course delivered by any training provider;
 - (h) whether the pupil is in an infant class (in cases where an infant class is not taken into account as an additional factor under paragraph 33 of Schedule 3);
 - (i) whether the pupil is registered at more than one maintained school.
- (5) The date for ascertaining pupil numbers is 20th January 2011.
- (6) Subject to paragraph (7), where a primary school—
- (a) operates a policy of admitting children into reception classes in the summer term; and
 - (b) will admit pupils into such classes in the summer term in 2011,
- a local authority may determine a number representing the number of pupils who will be admitted in that summer term, and take such number into account in their formula.
- (7) In determining the number of pupils they will take into account under paragraph (6), a local authority—
- (a) must not determine any number which exceeds the number of pupils admitted in the summer term in 2010; and
 - (b) must make any such determination before the beginning of the funding period.
- (8) A local authority may adjust the number of registered pupils used to determine or redetermine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly, the permanent exclusion of a pupil from the school or the admission of a pupil to the school following permanent exclusion from another school.

Places

15.—(1) In determining and redetermining budget shares, a local authority may take into account the number of places they wish to fund in—

- (a) special schools;
- (b) primary or secondary schools with places which the authority have reserved for children with special educational needs; and
- (c) schools with boarding accommodation.

(2) In determining and redetermining budget shares a local authority may take into account the nature of any special educational needs when funding places under paragraph (1)(a) or (b).

(3) If a local authority take into account any places in accordance with paragraph (1)(a), the number must be no fewer than the number of registered pupils at the school on the relevant date in regulation 14(5).

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

16.—(1) Subject to paragraphs (5) and (6), in determining—

- (a) budget shares for nursery schools maintained by them,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, as the case may be, using as a basis for the calculation the most recent data available about the actual numbers of registered pupils or children.

(2) A local authority must review the budget share for each maintained nursery school and the amount allocated in respect of each nursery class when further information about the hours of attendance becomes available, taking into account—

- (a) in the case where the local authority decide to fund only prescribed early years provision—
 - (i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive prescribed early years provision during the period (using as a basis for the calculation 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;
- (b) in the case where the local authority decide to fund early years provision in excess of that which is prescribed—
 - (i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive early years provision during the period (using as a basis for the calculation 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; and

redetermine that budget share or amount allocated, as the case may be.

(3) A local authority must review the amount allocated to each relevant early years provider, when further information about hours of attendance becomes available, taking into account—

- (a) the predicted total number of hours of attendance of children who will receive prescribed early years provision from the relevant early years provider during the period (using as a basis for the calculation the actual hours of such attendance in at least three sample weeks); or
- (b) the actual total numbers of hours of such attendance for the period; and

redetermine the amount allocated.

(4) Where a local authority make any redetermination pursuant to paragraph (2) or (3) they must give notice to the governing body of the school or the relevant early years provider concerned of the redetermination and the date on which it will be implemented, within 28 days of the redetermination.

(5) When determining budget shares for maintained nursery schools, amounts to be allocated in respect of nursery classes and amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, according to the special educational needs of any such pupils or children.

(6) When determining budget shares for amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of children receiving prescribed early years provision from the relevant early years provider, according to whether any children have been admitted to the relevant early years provider in excess of the number agreed with the authority.

(7) When determining—

- (a) budget shares for maintained nursery schools,
- (b) amounts to be allocated in respect of nursery classes maintained by them and
- (c) amounts to be allocated to relevant early years providers,

a local authority may take into account in their formula the number of places they wish to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where those places have been reserved by the authority for children with special educational needs or children in need.

(8) When determining budget shares for schools maintained by them which provide nursery classes, a local authority may reduce the amount payable to each such school under the formula referred to in regulation 9(1) by a sum representing the amount to be allocated in respect of the nursery class in that school under the formula referred to in regulation 9(3).

Differential funding

17.—(1) For the purpose of determining budget shares, a local authority must use factors or criteria which differentiate between different categories or descriptions of school in so far as the functions of the governing bodies of those schools justify such differentiation, but may not otherwise do so except as required or expressly permitted by these Regulations.

(2) A local authority must use factors or criteria which differentiate between a school and other schools of the same category or description if such differentiation is justified by reference to the choice made by that school's governing body as to the inclusion in their school's budget share of funding in respect of expenditure of the kinds referred to in paragraphs 14 (admissions), 16(a) and (b) (meals), 28 (insurance) and 30 (library services) of Schedule 2.

(3) A local authority may use factors or criteria in their formula which differentiate between maintained nursery schools, primary schools, secondary schools and special schools, or between schools whose pupils are in different age ranges.

(4) For the purpose of determining or redetermining—

- (a) budget shares for maintained nursery schools,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them and
- (c) amounts to be allocated to relevant early years providers in their area,

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.

Additional factors or criteria

18.—(1) Subject to paragraph (2) and regulation 17 (differential funding), in determining budget shares, a local authority may take into account in their formula any or all of the factors or criteria set out in Part 1 of Schedule 3.

(2) In determining budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools maintained by them and amounts to be allocated to relevant early years providers in their area, a local authority—

- (a) must not take into account in their formula any of the factors or criteria set out in paragraphs 23 and 33 in Part 1 of Schedule 3; but
- (b) may take into account in their formula any or all of the factors or criteria set out in Part 2 of Schedule 3.

(3) In determining—

- (a) budget shares for maintained nursery schools,
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at the nursery school or in the nursery class or among children receiving relevant early years provision from the provider, if they have no factor elsewhere in their formula which is based on such incidence.

(4) In determining budget shares for primary and secondary schools, a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at each school if they have no factor elsewhere in their formula which is based on such incidence.

(5) A factor included in a local authority's formula pursuant to paragraph 17 of Schedule 3 (school milk, meals and refreshment) is not, for the purposes of paragraphs (3) and (4), a factor based on the incidence of social deprivation among pupils registered at schools or children receiving relevant early years provision.

(6) The 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.

(7) Where a local authority make changes to the factors or criteria taken into account in any of their formulae from the previous funding period for the funding period, they may make such transitional provision as they consider reasonable.

Minimum funding guarantee

19.—(1) Subject to paragraph (3), in determining and redetermining budget shares for schools maintained by them, a local authority must ensure—

- (a) in respect of primary and secondary schools, that an amount equal to the guaranteed funding level is included, calculated in accordance with paragraphs 1–4 of Schedule 4;
- (b) in respect of special schools, that the formula must provide for a minimum amount of funding, calculated in accordance with paragraph 5 of Schedule 4.

(2) For the purposes of determining budget shares, paragraph (1) does not apply to any school—

- (a) opening during the funding period, except in the circumstances set out in paragraph 4 of Schedule 4;
- (b) closing during the funding period in circumstances where a local authority have redetermined that school's budget share during that period.

(3) A local authority may make changes to the operation of this regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State or their schools forum under regulation 25 (additional arrangements).

Sixth form funding

20.—(1) A local authority must include in a secondary school's budget share an amount equal to any sum notified to the local authority by the YPLA as being the allocation in respect of that school's sixth form.

(2) A local authority may, in determining budget shares, use a factor which allocates funding in respect of sixth forms.

(3) A local authority may, in determining budget shares for schools with sixth forms, reduce the amount payable to each such school under their formula by a sum representing any element which has been duplicated in the YPLA's allocation.

(4) A local authority must redetermine the budget share of a secondary school before the end of the funding period where the authority receive a written notification from the YPLA of a revised allocation in respect of the sum referred to in paragraph (1).

New, reorganised and closing schools

21.—(1) A local authority must include factors or criteria in their formula which enable them to determine, or redetermine, a school's budget share so as to take into account the particular needs of that school in the cases of—

- (a) a proposed school;
- (b) a school, proposals for the establishment of which have not been fully implemented;
- (c) a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act;
- (d) a school which is to be discontinued; and
- (e) a school which is to be the subject of a significant change, as determined by the authority.

(2) In the case of schools falling within paragraph (1)(c), such factors or criteria may not be used for a period of more than seven years after the date of implementation of the prescribed alteration.

(3) For the purposes of these Regulations, proposals for the establishment of a school have been fully implemented when the number of pupils admitted to the school in each age group has, in the opinion of the local authority, reached either—

- (a) the number of pupils indicated, when proposals for the establishment of the school were published, as the number of pupils to be admitted to each age group when the proposals would be fully implemented; or
- (b) if no such number was indicated, such number as the authority may determine.

Federated schools

22.—(1) Subject to paragraph (2), where two or more schools are federated under section 24 of the 2002 Act, the local authority may treat them as a single school for the purposes of these Regulations and, accordingly, allocate a single budget share to the governing body of the federation.

(2) Where the local authority decide to allocate a single budget share to the governing body of a federation under paragraph (1) and the amount of that share ('X') would be less than would have been allocated to the governing body had the authority allocated a budget share for each school within the federation ('Y'), the authority must adjust X by adding to it an amount which equates to the difference between Y minus X.

CHAPTER 2

Adjustments, Correction of Errors, and Additional Arrangements Authorised by Schools Forums or the Secretary of State

Pupils permanently excluded from, or leaving, maintained schools

23.—(1) Where a pupil is permanently excluded from a school maintained by a local authority, the authority must redetermine the school's budget shared in accordance with paragraph (2).

(2) The school's budget share must be reduced by the amount $A \times (B / 52)$ where—

- (a) A is the amount determined by the authority in accordance with this Part, that would be attributable to a registered pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority for the full funding period; and
- (b) B is the number of complete weeks remaining in the funding period calculated from the relevant date, except that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date.

(3) Where a pupil who has been permanently excluded from a school maintained by a local authority is admitted to another school maintained by a local authority ("the admitting school") in the funding period, the authority must redetermine the admitting school's budget share in accordance with paragraph (4).

(4) The admitting school's budget share must be increased by an amount which may not be less than the amount $D \times (E / F)$ where—

- (a) D is the amount by which the authority reduce the budget share of the school from which the pupil was permanently excluded, or would have reduced it had that school been maintained by the authority;
- (b) E is the number of complete weeks remaining in the funding period during which the pupil is a registered pupil at the admitting school; and
- (c) F is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act, the school's budget share must be increased by an amount which is no less than $G \times (H / I)$ where—

- (a) G is the amount by which the authority has reduced the school's budget share;
- (b) H is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c) I is the number of complete weeks remaining in the funding period calculated from the relevant date.

(6) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school for reasons other than permanent exclusion, and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(7) For the purposes of paragraph (2)(a), the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula, by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect

of whom grant is payable to the authority by the YPLA under section 61 of the 2009 Act, the amount attributable to that pupil is £3,232 for the funding period).

(8) For the purposes of this regulation, “the relevant date” is the sixth school day following the date on which the pupil has been permanently excluded.

Correction of errors and changes in non-domestic rates

24.—(1) A local authority may, at any time during the funding period, redetermine a school’s budget share or any earlier funding period in order to correct an error in a determination or redetermination under these or any previous Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise, provided the error is of a kind not provided for by any specific error correction provision in the authority’s formula.

(2) A local authority may redetermine a school’s budget share to take into account any changes in that school’s non-domestic rate liability in relation to the funding period or any earlier funding period.

(3) In so far as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the regulations in force during the funding period in which the error occurred.

Additional arrangements approved by the schools forum or the Secretary of State

25.—(1) Subject to paragraph (2), on application by a local authority to the Secretary of State for any authorisation or authorisations to determine or redetermine budget shares, the Secretary of State may authorise the authority to determine or redetermine budget shares to such extent as the Secretary of State may specify in accordance with arrangements approved by him in place of the arrangements provided for by these Regulations.

(2) The Secretary of State may not authorise a local authority to determine or redetermine budget shares in the cases referred to in paragraph (3) unless—

- (a) the authority have first made an application to their schools forum for such authorisation which has been refused; or
- (b) the authority is not required to establish a schools forum for their area.

(3) In determining or redetermining budget shares for schools which they maintain, a local authority may, when calculating the guaranteed funding level—

- (a) replace the figure of 0.985 referred to in paragraphs 2, 3 and 5 of Schedule 4 with a higher figure,
- (b) exclude the—
 - (i) Diploma Formula Grant,
 - (ii) targeted elements of the Targeted Support for the Primary National Strategy allocated to schools,
 - (iii) targeted elements of the Targeted Support for the Secondary National Strategy allocated to schools,

from the redetermined adjusted budget share for the previous funding period,

where authorised to do so by their schools forum.

(4) In determining or redetermining budget shares for nursery schools which they maintain or the amounts to be allocated in respect of nursery classes in schools which they maintain, a local authority may disregard regulation 19, where authorised to do so by their schools forum, provided the share or amount allocated includes a notional amount per pupil in respect of mainstreamed grants

which is not less than 98.5% of the amount per pupil that was paid to the nursery school or in respect of the nursery class for the previous funding period from any mainstreamed grant.

(5) Unless the contrary intention appears in any authorisations given by the schools forum or the Secretary of State or any arrangements approved by the Secretary of State under any previous regulations, such authorisations or arrangements, as the case may be, continue to apply in relation to the funding period.

PART 4

Schemes

Required content of schemes

26. A scheme prepared by a local authority under section 48(1) of the 1998 Act must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

Approval by the schools forum or the Secretary of State of proposals to revise schemes

27.—(1) Where a local authority submit a copy of their proposals to revise their scheme to their schools forum for approval pursuant to paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, the schools forum may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(2) Where the schools forum approve the proposals to revise the scheme, they may specify the date upon which the revised scheme is to come into force.

(3) Where—

- (a) the schools forum refuse to approve proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, or approve any such proposals subject to modifications which are not acceptable to the local authority; or
- (b) the local authority are not required to establish a schools forum for their area,

the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(5) When approving proposals to revise the scheme, the Secretary of State may specify the date upon which the revised scheme is to come into force.

(6) No revised scheme is to come into force unless approved by the schools forum or the Secretary of State in accordance with this regulation.

Publication of schemes

28.—(1) A local authority—

- (a) must publish their scheme on a website which is accessible to the general public; and
- (b) may publish it elsewhere, in such manner as they see fit.

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

(2) Whenever a local authority revise the whole or part of their scheme they must publish the scheme as revised on a website which is accessible to the general public by the date that the revisions are due to come into force, together with a statement that the revised scheme comes into force on that date.

11th February 2011

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