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STATUTORY INSTRUMENTS

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**2012 No. 2991**

**The School and Early Years Finance  
(England) Regulations 2012**

**PART 2**

Action to be Taken by a Local Authority

**CHAPTER 1**

Appropriation of the Non-Schools Education Budget

**The Non-Schools Education Budget**

**4.** The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's non-schools education budget, subject to the exceptions in regulation 7—

- (a) those specified in Schedule 1, including expenditure on associated administrative costs and overheads; and
- (b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 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**

**5.** A local authority must not later than 15th March 2013—

- (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**

**6.—(1)** The classes or descriptions of local authority expenditure specified in sub-paragraphs (a) to (e) 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 7—

- (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);
- (d) expenditure on the education of—
  - (i) pupils or students up to the age of 25 with special educational needs,
  - (ii) persons provided with further education who are aged under 19 and have learning difficulties, and
  - (iii) persons provided with further education who are aged 19 or over but under 25 and are subject to learning difficulty assessment,
 in so far as that expenditure does not fall within sub-paragraphs (a) to (c); and
- (e) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraphs (a) to (d).

(2) Where a local authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 36(c) of Schedule 2 to the 2012 Regulations 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**

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

- (a) capital expenditure, other than—
  - (i) CERA,
  - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred—
  - (i) on prudential borrowing,
  - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph (a)(ii); and
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(1)</sup> (arrangements for patrolling school crossings).

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

8.—(1) Subject to paragraphs (2) to (8), not later than 15th March 2013, 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) Central expenditure referred to in paragraphs 3 and 4 of Part 1 (Central Services) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken in previous funding periods that commit the authority to incur expenditure in the funding period.

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(1) 1984 c.27. Section 26 was amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), sections 288 and 423 of, and Schedule 34 to, the Greater London Authority Act 1999 (c.29) and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

(3) In deducting the central expenditure referred to in Part 1 (Central Services) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 5 of Schedule 2, unless they are authorised to do so under regulation 25.

(4) A local authority must not deduct the central expenditure referred to in paragraphs 8 or 9 of Schedule 2 without authorisation from their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3), of the criteria for determining the expenditure.

(5) A local authority must not deduct the central expenditure referred to in Part 1 (Central Services), Part 2 (Central Schools Expenditure), Part 3 (Central Early Years Expenditure) or Part 5 (Items That May Be Removed From Maintained Schools' Budget Shares) of Schedule 2 without authorisation from their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3).

(6) 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 12(1), or the Secretary of State under regulation 12(3).

(7) A local authority may apply to the Secretary of State for authorisation under regulation 25(1) to deduct from their schools budget any expenditure falling outside the classes or descriptions of planned expenditure set out in Schedule 2, in order to determine their individual schools budget.

(8) References to planned expenditure in this regulation and Schedule 2 are references to that expenditure net of—

- (a) all related specific grants;
  - (b) all related fees, charges and income; and
  - (c) any funding received from the Secretary of State in respect of PFI scheme unitary payments,
- and the expenditure referred to in Schedule 2 includes expenditure on associated administrative costs and overheads.

## **Consultation**

**9.—(1)** In determining the formulae under regulation 10 a local authority may make changes to the formulae they determined under regulation 9 of the 2012 Regulations.

(2) Subject to paragraph (4), a local authority must consult their schools forum and schools maintained by them about any proposed changes under paragraph (1), in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(3) Where a local authority proposes to make changes under paragraph (1) which will affect relevant early years providers in their area they must also consult those providers in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

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

(5) A local authority must consult their schools forum before incurring any of the expenditure referred to in paragraphs 8 or 9 of Schedule 2.

## **Formulae for determination of budget shares etc for certain maintained schools and early years providers**

**10.—(1)** A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2), decide upon the formula which they will use to determine the budget shares for schools maintained by them (other than special schools, pupil referral units, nursery schools and in relation to nursery classes in schools maintained by them).

(2) A local authority must use the formula determined under paragraph (1) in all determinations of school budget shares in respect of the funding period.

(3) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2) or 9(3), decide upon the formula they will use to determine—

- (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; and
- (c) the amounts to be allocated to relevant early years providers in their area.

(4) A local authority must use the formula determined under paragraph (3) in all determinations of budget shares for nursery schools maintained by them, the amounts to be allocated in respect of nursery classes in schools maintained by them and the amounts to be allocated to relevant early years providers in their area in respect of the funding period.

(5) 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**

**11.**—(1) Not later than 15th March 2013, a local authority must determine the budget share for each of the schools maintained by them (other than special schools, pupil referral units, nursery schools and in relation to nursery classes in schools maintained by them), using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

(2) When making the determination under paragraph (1) the local authority must identify within each budget share an amount calculated by reference to the requirements, factors and criteria specified in Part 3 which are relevant to pupils with special educational needs.

(3) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (6), the authority may apply to their schools forum under regulation 12(1), or to the Secretary of State under regulation 12(3) for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from the budget shares of—

- (a) all primary schools other than nursery schools,
  - (b) all secondary schools, or
  - (c) all primary schools other than nursery schools, and all secondary schools,
- where the expenditure is instead to be treated as central expenditure.

(4) Not later than 15th March 2013, a local authority must determine the budget share for each of the special schools and pupil referral units maintained by them in accordance with Part 3 of these Regulations.

(5) Not later than 31st March 2013, a local authority must determine 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 10(3) in accordance with Part 3 of these Regulations.

(6) Not later than 31st March 2013, a local authority must give notice of each budget share or amount determined under paragraphs (1), (4) and (5) to the governing body of the school or the relevant early years provider concerned, except where the budget share has been redetermined under paragraph (3) in which case the authority must give notice of the redetermined budget share.

## CHAPTER 3

### 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**

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

- (a) the criteria for determining expenditure referred to in paragraphs 8 or 9 of Schedule 2, under regulation 8(4);
- (b) the making of deductions from the authority's schools budget of certain central expenditure under regulation 8(5);
- (c) the funding of any deficit in the authority's central expenditure from the schools budget under regulation 8(6); or
- (d) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from schools' budget shares where it is instead to be treated by the authority as central expenditure, under regulation 11(3).

(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).