

EXPLANATORY MEMORANDUM TO
THE INTER-AUTHORITY RECOUPMENT (ENGLAND) REGULATIONS 2013

2013 No. 492

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To make new provision for the circumstances in which recoupment is required or permitted between “home authorities” in England and “providing authorities” in England or Wales, the main change being to end recoupment arrangements between local authorities in England for education provided for children with special educational needs.
 - 2.2 To amend the Education (Inter-authority) Recoupment Regulations 1994, (SI 1994/3251) (“the 1994 Recoupment Regulations”) so that they only apply to recoupment from home authorities in Wales.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 The Secretary of State’s powers to make regulations under section 207(1) of the Education Act 2002 only enable him to put obligations on local authorities in England. This enables him to provide that an English home authority must make payments to an English or Welsh providing authority.
 - 3.2 The Secretary of State cannot therefore, in these Regulations, place obligations on Welsh providing authorities in respect of how they make a claim for payment from English home authorities. To ensure that Welsh providing authorities continue to be subject to provisions in respect of any claims for recoupment, regulation 5 of the 1994 Recoupment Regulations (in respect of the form of claims for recoupment) continues to apply to Welsh providing authorities only, whether that relates to recoupment under the 1994 Regulations or under the Inter-authority Recoupment Regulations (England) 2013 (“the 2013 Recoupment Regulations”).
4. **Legislative Context**
 - 4.1 The 1994 Recoupment Regulations apply to both England and Wales and were made under section 51 of the Education Act (No2) 1986 as amended by section 279 of the Education Act 1993. Those provisions have since been replaced by section 207 of the Education Act 2002. The 1994 Recoupment Regulations make provision for recoupment between local authorities where a person belonging to

the area of one authority in England or Wales (the “home authority”) is educated by another authority in England or Wales (the “providing authority”).

- 4.2 The 2013 Recoupment Regulations amend the 1994 Recoupment Regulations so that those regulations only apply to recoupment where the home authority is in Wales.
- 4.3 The 2013 Recoupment Regulations provide for circumstances where recoupment is mandatory between a home authority in England and a providing authority in Wales.
- 4.4 The Regulations also provide for circumstances where recoupment is mandatory between a home authority in England and a providing authority in England. This is in relation to “looked after children” (within the meaning of the Children Act 1989) being provided with certain types of education, where the providing authority incurs costs by making provision for the education of the child in another (third) local authority in England or Wales.
- 4.5 The Regulations also make provision for where recoupment is permitted between a home authority in England and a providing authority in Wales and between two English authorities.
- 4.6 The Regulations also describe how providing authorities should make their claims for recoupment.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The primary legislation pertaining to recoupment between local authorities in England and Wales is contained in section 207 of the Education Act 2002. It provides for regulations requiring the authority to which a pupil belongs (the “home authority”) to pay to an authority making educational provision (the “providing authority”) such amount as the authorities may agree or, failing agreement, such amount as may be determined by or under the regulations.
- 7.2 The legislation applies to primary and secondary education and to education provided under section 562C of the Education Act 1996 (detention of persons with special educational needs).

- 7.3 In the Department for Education document *School Funding Reform, Next Steps towards a fairer system*, published on 26 March 2012, the Secretary of State announced the next steps in reforming the school funding system. Following consultation, the document *School Funding Reform: Arrangements for 2013-14*, published in June 2012 confirmed that the new arrangements would apply from 2013. The aim of these changes is to simplify the local funding system and establish a new approach to funding for pupils and students with high cost special educational needs, learning difficulties and disabilities that will help to improve quality and choice for young people and their families.
- 7.4 Under these reforms to high needs funding the Department is ending recoupment arrangements between local authorities in England, except in limited circumstances. Institutions that provide for pupils and students with high needs will in future get base funding from their maintaining authority, or if they are not a maintained institution from the Education Funding Agency (EFA), while funding above the base level (“top-up funding”) will in future pass directly between the providing local authority and the institution. The Department has made adjustments between the funding of authorities in England in order to make this new system cost-neutral for authorities. The one exception that the Department is making is for looked after children.
- 7.5 The 2013 Recoupment Regulations will ensure that recoupment arrangements will also remain in place for authorities in England in so far as they relate to pupils from England educated in Wales. The 1994 Recoupment Regulations will continue to apply to pupils from Wales educated in England.

8. Consultation outcome

- 8.1 The ending of recoupment was announced in *School Funding Reform, Next Steps towards a fairer system*, published on 26 March 2012 and *School Funding Reform: Arrangements for 2013-14*, published in June 2012. The Department ran a short technical consultation on the 2013 Recoupment Regulations with local authorities and other interested parties between 4 February 2013 and 25 February 2013.
- 8.2 The technical consultation elicited 14 responses, all from local authorities. The majority of responses were concerned about recoupment continuing for looked after children and wanted further clarity on aspects of the Regulations. It was also suggested that a specific arbitration method might be included in the Regulations, for situations in which authorities are unable to agree on the amount of funding. The recoupment arrangements provided for in the Education Act 2002 brought the role of the Secretary of State as arbitrator to an end. Furthermore, the Department would not wish to become involved in decisions that should be made at a local

level, as local authorities are better placed to make decisions that are in the best interests of the children they are providing education for.

9. Guidance

9.1 These Regulations are laid before Parliament in order to outline the statutory requirements for local authorities regarding recoupment for pupils with special educational and other needs.

10. Impact

10.1 These Regulations do not impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is confined to local authorities.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 The Department will keep under review the high needs funding reforms and will monitor the impact of these Regulations at local level, to ensure that they are working effectively.

13. Contact

13.1 Adrian Thompson at the Department for Education Tel: 01325 735609 or email: adrian.thompson@education.gsi.gov.uk, can answer any queries regarding the instrument.