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STATUTORY INSTRUMENTS

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**2017 No. 44**

The School and Early Years Finance  
(England) Regulations 2017

PART 3

Determination of Budget Shares etc

CHAPTER 1

Requirements, and Factors and Criteria Taken into Account

**Pupil numbers**

**13.**—(1) In determining budget shares for primary and secondary schools, except in respect of nursery classes a local authority must ascertain and take into account in its formula the number of pupils at those schools in accordance with paragraph (2) on the date specified in paragraph (3).

(2) For the purposes of paragraph (1), the number of pupils is  $A - (B - C) - D$  where—

- (a)  $A$  is the total number of pupils in the school;
- (b)  $B$  is the number of places in the school which the authority has reserved for children with special educational needs;
- (c)  $C$  is the number of children in places in the school which the authority has reserved for children with special educational needs where those places are occupied by a child in a nursery class, or by a child who is not a pupil at the school; and
- (d)  $D$  is the number of pupils in the school in respect of whom sixth form grant is payable.

(3) The date for ascertaining pupil numbers is 6th October 2016.

(4) Where a primary school had more pupils in reception classes on 21st January 2016 than on 1st October 2015, the local authority may take the number of additional pupils into account in its formula, and where it does so this factor must be applied to all primary schools in the area.

(5) A local authority must include in its formula a single per pupil amount of at least—

- (a) £2,000 for each of the pupils in reception classes and at key stages 1 and 2;
- (b) £3,000 for each of the pupils at key stage 3; and
- (c) £3,000 for each of the pupils at key stage 4.

**Places**

**14.**—(1) In determining budget shares for special schools, a local authority—

- (a) must include £10,000 for each place other than—
  - (i) hospital education places; and

(ii) places for those who are over 18, unless they are aged 19 and are continuing to attend a particular course of secondary education which they began before they reached the age of 18; and

(b) must not include funding for places described in sub-paragraph (a)(ii).

(2) In determining budget shares for primary or secondary schools maintained by the local authority, with places which the authority has reserved for children with special educational needs, a local authority must include £10,000 for each place other than hospital education places.

(3) In determining budget shares for pupil referral units, a local authority must include £10,000 for each place other than hospital education places.

(4) Paragraph (3) applies to places to be commissioned by schools or directly by a local authority.

(5) For each hospital education place referred to in paragraphs (1) to (3) the local authority must include at least the equivalent amount per hospital education place which the authority included in the budget share of the school or pupil referral unit, as the case may be, in the previous funding period.

### **Social deprivation**

**15.**—(1) In determining budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority must take into account in its formula one or more factors based on the incidence of social deprivation in pupils at the schools maintained by it.

(2) The authority must base the incidence of social deprivation referred to in paragraph (1) on one or both of the following—

(a) a pupil’s eligibility for free school meals on 6th October 2016 or a pupil’s eligibility for free school meals recorded in any school census between and including Summer 2010 and Spring 2016;

(b) a pupil’s IDACI score on 6th October 2016,

and where it is based on an IDACI score the authority may use factors which differentiate between different IDACI bands (that is, groupings of IDACI scores set out at Annex 2 to the document published by the Department for Education named “Schools Revenue Funding 2017 to 2018: Operational Guide”<sup>(1)</sup>).

(3) In determining budget shares under paragraph (1), the authority may take into account in its formula a single per pupil amount for each socially deprived pupil in reception classes and at key stage 1 and 2, and a single per pupil amount for each socially deprived pupil at key stage 3 and 4.

(4) In paragraph (3) a reference to a “socially deprived pupil” is to a pupil who has been determined as being such using the criteria in paragraph (2).

(5) Subject to regulation 23, other than in respect of two year olds, in determining—

(a) budget shares for maintained nursery schools;

(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 one or more factors based on the incidence of social deprivation in pupils or children, and the determination of the incidence of social deprivation

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(1) Published in July 2016 and available at: <https://www.gov.uk/government/publications/schools-funding-arrangements-2017-to-2018>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

must be based on the characteristics of the pupils or children and not on the location of the school or provider.

- (6) In respect of two year olds, in determining—
- (a) budget shares for maintained nursery schools;
  - (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 take into account in its formula one or more factors based on the incidence of social deprivation in pupils or children, and the determination of the incidence of social deprivation must be based on the characteristics of the pupils or children and not on the location of the school or provider.

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

- 16.—(1) Subject to 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, basing the calculation on the most recent data available about the actual numbers 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 maintained nursery school, 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 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;
- (b) in the case where the local authority decides to fund 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 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) or (4), 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 under 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 in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17 of the 1989 Act.

### **Early years pupil premium**

**17.—(1)** A local authority must include in the amount to be allocated to each early years provider in its area which has one or more children eligible for the early years pupil premium an amount equivalent to 53 pence per eligible child for each hour of early years provision that the child receives, up to a maximum of 570 hours.

(2) A child is eligible for early years pupil premium if the child—

- (a) is eligible for funded early years provision under regulation 3(3) of the Early Years Provision Regulations 2014;
- (b) receives at least one hour of such provision; and
- (c) either—
  - (i) the child’s parents are receiving one or more of the benefits in paragraph (3), or
  - (ii) the child has previously been looked after by a local authority and is no longer so looked after as a result of the making of an order in paragraph (4).

- (3) The benefits are—
- (a) universal credit;
  - (b) income support;
  - (c) income-based jobseekers' allowance;
  - (d) income-related employment and support allowance;
  - (e) support under Part VI of the Immigration and Asylum Act 1999;
  - (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.
- (4) The orders are—
- (a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002<sup>(2)</sup>;
  - (b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act<sup>(3)</sup>; and
  - (c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act<sup>(4)</sup> 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 local authority must include in the amount to be allocated for relevant early years provision or community early years provision in its area an amount of £302.10 (equivalent to 53 pence multiplied by 570) for each looked after child aged three or four years old in the local authority's area.
- (6) The allocation referred to in paragraph (5) must be managed by the local authority's designated virtual school head for the benefit of the educational needs of the relevant looked after children as described in their personal education plans (that is, plans relating to the children's education and training, including as far as is relevant and reasonably practicable the information in paragraph 2 of Schedule 1 to the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(5)</sup>).
- (7) In paragraph (6), "virtual school head" means a person appointed by a local authority under section 22(3B) of the 1989 Act<sup>(6)</sup> 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).

### **Disability access fund**

**18.**—(1) A local authority must include in the amount to be allocated to an early years provider a single amount of £615 for each disabled child who is in receipt of funded early years provision by virtue of regulation 3(3) of the Early Years Provision Regulations 2014.

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

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(2) 2002 c.38.

(3) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

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

(5) S.I. 2010/959.

(6) Section 22(3A) was inserted by section 52 of the Children Act 2004 (c. 31); section 22(3B) was inserted by section 99 of the 2014 Act.

(3) For the purposes of this regulation, a child is disabled if he or she is paid or entitled to disability living allowance by virtue of section 71 of the Social Security Contributions and Benefits Act 1992(7).

### **Differential funding**

**19.**—(1) For the purpose of determining or 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.

### **Additional requirements, factors or criteria**

**20.**—(1) Subject to paragraph (3), in determining budget shares, a local authority may take into account in its formula any or all of the requirements, factors or criteria in Part 1 of Schedule 3, and where it does the date for ascertaining pupil numbers is 6th October 2016, except where these Regulations provide otherwise.

(2) Subject to regulation 23, 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 may take into account in its formula any or all of the requirements, factors or criteria in Part 2 of Schedule 3.

(3) The requirements, factors and criteria 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.

(4) Subject to paragraphs (5) to (7), where a school would otherwise receive a greater amount of redetermined adjusted budget share per pupil than it did in the previous funding period, the local authority may do one or both of the following—

- (a) determine a percentage beyond which the per pupil amount of redetermined adjusted budget may not increase;
- (b) determine a percentage by which the amount that the per pupil redetermined adjusted budget share would otherwise increase by will be reduced.

(5) In paragraph (4) “redetermined adjusted budget share for the previous funding period” and “redetermined adjusted budget share” have the same meanings as in Schedule 4.

(6) Where the local authority decides to take one or both of the actions described in paragraph (4) (a) and (b), this must be applied to the budget shares of all schools in the local authority area.

(7) Paragraph (4) does not apply to the determination of budget shares for—

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(7) 1992 c.4.

- (a) special schools;
- (b) pupil referral units;
- (c) nursery schools; and
- (d) any school that has opened since 1 April 2010 and does not yet have pupils in each year group for which it proposes to provide education.

### **Schools minimum funding guarantee**

**21.**—(1) Except as provided for in this regulation, in determining and redetermining budget shares for primary and secondary schools maintained by it, a local authority must ensure that an amount equal to the guaranteed funding level is included, calculated in accordance with Schedule 4.

(2) For the purpose of determining budget shares, paragraph (1) does not apply to any school opening during the funding period, except in the circumstances set out in paragraph 3 of Schedule 4.

(3) This regulation does not apply in relation to a redetermination of a budget share under regulation 11(5) or (6).

(4) A local authority may change the operation of this regulation and the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State under regulation 29 (alternative arrangements).

### **Early years 93 per cent requirement**

**22.**—(1) In making determinations under regulation 11(9), a local authority must comply with the formula set out in this regulation.

(2) The formula is  $(A - B) / C$  is no less than 93 percent of D, where—

- (a) A is the total of—
  - (i) all budget shares and amounts determined by the authority under regulation 11(9);
  - (ii) any amount deducted by the authority under paragraph 25 of Schedule 2 to these Regulations; and
  - (iii) any amount of the fund established under paragraph 30 of Schedule 2 to these Regulations, which the authority intends to distribute to early years providers;
- (b) B is the total of—
  - (i) the maintained nursery school supplement, and
  - (ii) any part of the budget share or amount determined by the authority under regulation 11(9) in respect of disadvantaged two year olds;
- (c) C is the total number of hours of attendance of children, predicted by the authority under regulation 16(1), less any predicted hours of attendance of disadvantaged two year olds;
- (d) D is the hourly unit funding rate, notified to the local authority in the early years block.

### **10 per cent early years discretionary funding cap**

**23.**—(1) A local authority must ensure that the total amount of discretionary funding does not exceed 10 per cent of early years allocations.

(2) In this regulation, “discretionary funding” means funding that is attributable to—

- (a) the factors based on the incidence of social deprivation in pupils or children referred to in regulation 15(5) (social deprivation), and
- (b) the requirements, factors and criteria set out in Part 2 of Schedule 3 which by virtue of regulation 20(2) a local authority may take into account in its formula.

(3) In this regulation, early years allocations is the total amount of the following budget shares and amounts 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.

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

(4) The following are not included in early years allocations for the purposes of this regulation—

- (a) any amounts allocated in respect of disadvantaged two year olds; and
- (b) the maintained nursery school supplement.

### **Sixth form funding**

**24.—**(1) A local authority must include in the budget shares of maintained secondary schools and special schools an amount equal to any sum notified to the local authority by the Secretary of State as being the allocation of sixth form grant for that school.

(2) A local authority may also include an additional amount in the budget shares of maintained secondary schools and special schools where permitted to do so under the sixth form grant.

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

### **New schools, merged schools and closing schools**

**25.—**(1) Where in the funding period, but excluding 1st April 2017, a new maintained school opens, and is a replacement for two or more maintained schools that are discontinued during the funding period, a local authority must calculate the budget share of the new school by adding together the budget shares of the schools that have been discontinued.

(2) Except where paragraph (1) applies, a local authority must determine a budget share for—

- (a) any new maintained school in its area, and
- (b) any school that has opened since 1st April 2010 and does not yet have pupils in each year group for which the school proposes to provide education,

from the date of the school's opening on the basis of expected pupil numbers during the funding period estimated by the authority, and regulation 13 does not apply.

(3) Where a school to which paragraph (2) applies was funded on the basis of estimated pupil numbers in the previous funding period, the local authority may take account of any difference between estimated and actual pupil numbers in the previous funding period when estimating pupil numbers for the funding period.

(4) Where in the previous funding period or on 1st April 2017 a new maintained school opened or opens and is a replacement for two or more maintained schools that were discontinued during the previous funding period or on 1st April 2017, a local authority must include in the budget share of the new school an amount equal to 85% of the total amount which the schools that it replaced would have been allocated in their budget shares under paragraphs 1 and 2 of Schedule 3 (single sums) if the schools had not been discontinued.

(5) Where paragraph (4) applies, no single sum is to be included in the new school's budget share under paragraph 1 or 2 of Schedule 3.



(6) A local authority must determine a budget share for any maintained school in its area which is to be discontinued in the funding period up to the date when the school is discontinued in accordance with this Part.

(7) Where in the funding period, but excluding 1st April 2017, a maintained school is subject to a prescribed alteration as a result of a closure of a school, a local authority must redetermine the budget share of the enlarged school by adding to it the budget share of the school that has been discontinued.

(8) Where in the previous funding period or on 1st April 2017 a maintained school is subject to a prescribed alteration as a result of a closure of a school during the previous funding period or on 1st April 2017, a local authority must include in the budget share of the enlarged school an amount equal to 85% of the total amount which the schools whose provision it has replaced would have been allocated in their budget shares under paragraph 1 and 2 of Schedule 3 if the school had not been discontinued.

(9) Where in the funding period, but excluding 1st April 2017, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, a local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.

(10) A local authority may change the operation of this regulation where authorised to do so by the Secretary of State under regulation 29 (alternative arrangements).

(11) In this regulation, “prescribed alteration” means a prescribed alteration within the meaning of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013(8).

### **Federated schools**

**26.**—(1) Subject to paragraphs (2) and (3), where two or more maintained schools are federated under section 24 of the 2002 Act, the local authority must determine a budget share for each school in accordance with Part 3 of these Regulations.

(2) After carrying out the determination under paragraph (1) the local authority may treat the schools as a single school for the purposes of these Regulations and, accordingly, allocate a single budget share to the governing body of the federation.

(3) Where the local authority decides to allocate a single budget share to the governing body of a federation under paragraph (2), it must determine it by combining the budget shares of all the schools that form part of that federation.

(4) Where one or more schools are to leave a federation which has been allocated a single budget share under paragraph (2), the local authority must—

- (a) determine the budget share for each of the leaving schools, and
- (b) redetermine the budget share for the federation,

in accordance with Part 3 of these Regulations.