

## EXPLANATORY MEMORANDUM TO

### THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2018

#### 2018 No. 10

#### 1. Introduction

- 1.1 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 The School and Early Years Finance (England) Regulations 2018 (“the 2018 Regulations”) provide for how local authorities are to set their education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and set out how local authorities are to allocate funding from the individual schools budget (ISB) to maintained schools and private, voluntary and independent providers of free early years provision (relevant early years providers) through a locally determined formula.
- 2.2 The 2018 Regulations relate only to the 2018-19 financial year.
- 2.3 To a large degree, the 2018 Regulations make the same provisions as in the School and Early Years Finance (England) Regulations 2017 (“the 2017 Regulations”) but there are some substantive changes relating to the introduction of the national funding formulae for schools, high needs and central school services and how local authorities are to spend the schools, high needs, central school services and early years blocks of the Dedicated Schools Grant (“DSG”). In particular, local authorities will now have the ability to set a minimum per pupil funding level, and to choose the level of the minimum funding guarantee within a specified range. There are no substantive changes relating to early years funding.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 This entire instrument applies only to England.
- 3.3 This instrument applies only to England because it applies only to Local Authorities in England, who determine the budgets of schools and early years providers in England (see regulation 1(3) of the instrument). The instrument does not have minor or consequential effects outside England.
- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 The 2018 Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 (“SSFA 1998”) which concern the financing of maintained schools. They relate to the 2018-19 financial year and need to be made because the 2017 Regulations apply only up to the end of the 2017-18 financial year. Specifically, the Regulations are made under the powers in sections 45A, 45AA, 47, 46ZA, 47A, 48, 49 and 138, and paragraph 2B of Schedule 14 of SSFA, and section 24 (3) of the Education Act 2002.

#### **5. Extent and Territorial Application**

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies only 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**

##### *What is being done and why*

- 7.1 The Department for Education allocates the DSG to local authorities. This comprises four blocks – for schools, high needs, early years, and the central schools services block. Over the past 5 years, the department has been reforming the school funding system in England so that it is simpler, fairer and more transparent. 2018-19 represents a significant step in this process as it will see the introduction of new national funding formulae for schools, high needs and central school services. The national funding formula for early years was introduced in 2017-18. The national funding formulae will determine how the DSG is allocated to local authorities. The national funding formula for schools means that for the first time, school funding will be distributed to local authorities according to a formula based on the individual needs and characteristics of every school in the country. This will direct resources where they are needed most, and provide transparency and predictability for schools. It is important to note that in 2018-19 and 2019-20 local authorities will retain discretion to determine schools’ budget allocations locally. The Department for Education has consulted extensively on the proposed changes.
- 7.2 As the 2017 Regulations only apply to the 2017-18 financial year, the Department for Education is making the 2018 Regulations to enable local authorities to determine school budgets for 2018-19.
- 7.3 The main changes compared with the 2017 Regulations are set out below.

##### *Minimum funding guarantee*

- 7.4 The Minimum Funding Guarantee (MFG) in local formulae is currently set at -1.5%, so that no school can lose more than 1.5% of its per pupil funding year on year as a consequence of changes to the local formulae. The Department for Education is introducing a new flexibility from 2018-19 so that local authorities can set an MFG between +0.5% and -1.5% (referred to in the Regulations as the ‘Minimum Funding Number’). The second stage of the consultation on the national funding formula

underlined the importance of stability in funding levels for schools. As a result, the national funding formula will allocate a cash gain of at least 0.5% per pupil in respect of every school, and this new MFG flexibility will enable local authorities to pass these gains on to schools if they choose to do so. The new MFG flexibility is set out in paragraph 1(1)(d) of Schedule 4.

*Minimum per pupil funding*

- 7.5 One of the biggest concerns during consultation was whether the national funding formula allocated sufficient funding to the lowest funded schools; there was widespread support for introducing a minimum level of per pupil funding to address this concern.
- 7.6 The Department therefore included a minimum per pupil factor in the schools national funding formula to target funding towards the lowest funded schools. Local authorities will be able to include a minimum per pupil factor in their local formula.
- 7.7 The national funding formula allocates a minimum of £4,800 per pupil for secondary schools in 2019-20, and a minimum of £3,500 per pupil for primary schools in 2019-20, with transitional amounts of £4,600 for secondary schools in 2018-19 and £3,300 for primary schools in 2018-19. Although the formula allocates the transitional amounts in 2018-19, rather than the full amounts, the 2018 Regulations enable local authorities to set their minimum per pupil factor at any value up to the full 2019-20 amounts. This gives them the flexibility to use their local formulae to target more funding to the lowest funded schools if they choose to do so. In 2018-19, local authorities will be able to set the following minimum per pupil funding levels:
- (i) Any figure up to £3,500 for primary schools
  - (ii) Any figure up to £4,800 for secondary schools
  - (iii) For middle schools (those schools with year groups above year 6 but no pupils in years 10 and 11), a weighted average of up to £3,500 for primary school pupils and up to £4,200 for pupils in years 7-9
  - (iv) For all-through schools, a weighted average of up to £3,500 for primary school pupils and up to £4,800 for secondary school pupils
- 7.8 Where a local authority chooses to use this new factor in its local formula, it means that a school that would otherwise have received per pupil funding below the minimum level chosen by the local authority would be ‘topped up’ to this minimum level. Schools receiving money under this factor are exempt from ‘capping and scaling’ (regulation 20(7)), which means their funding cannot be capped back to below the minimum level set by the local authority.
- 7.9 Where a local authority chooses to use the new factor and a school does not receive additional funding to meet the minimum level (because their per pupil funding through the local formula already matches or exceeds the minimum amount set by the local authority), then capping and scaling could apply - but the reduction in funding could not reduce the school’s allocation to below the minimum per pupil level set by the local authority.
- 7.10 Local authorities can choose whether to calculate per pupil funding by dividing the school’s total budget share by the number of pupils in the school, or whether to exclude premises factors from the school’s overall budget share before the calculation.

### ***Removal of Looked After Children funding from schools' baselines***

- 7.11 Where the local authority included a funding factor for Looked After Children (LAC) in the previous year's formula, but has chosen not to include a LAC factor in 2018-19, they can choose to exclude this funding from the school's baseline against which the minimum funding guarantee (MFG) is calculated (Schedule 4).

### ***Low prior attainment indicators***

- 7.12 The indicators for pupils with low prior attainment have been expanded to include a scaling factor for the 2017 KS2 results (Regulation 4, Part 1, Schedule 3).

### ***Deprivation indicators***

- 7.13 The regulations on indicators of deprivation have been changed so that local authorities can choose to use any combination of eligibility for free school meals (FSM), eligibility for free school meals at any point during the past 6 years (Ever6), and the income deprivation affecting children index (IDACI) in their local formulae. This will allow them to replicate the national funding formula, which uses all three indicators (Regulation 15, Part 3). Previously local authorities were required to choose one of these deprivation indicators.

### ***Writing to parents regarding schools with atypical age ranges***

- 7.14 In 2017 the Department made changes to the School Information (England) Regulations 2008, requiring local authorities to write to parents of pupils in the relevant year group about school providers in the local area with atypical age ranges. In 2017, the funding for this was provided through a Section 31 grant, while from 2018-19 funding will be provided through the central school services block. This duty has been included in the list of central services in Part 3 of Schedule 2. By including this new duty in the schools budget, local authorities are now permitted to spend their DSG allocation on the activity.

### ***Pupil numbers and growth***

- 7.15 Regulation 13 has been changed to allow local authorities to estimate increases in pupil numbers where there is planned growth - for example, where there is a change to a school's Pupil Admission Number, or a reorganisation. The change means that local authorities will no longer need to submit a disapplication request to the Secretary of State (under regulation 29) to do this.

### ***Place funding for high needs pupils***

- 7.16 In 2017-18 the calculation through which budget shares for primary and secondary schools are determined included a deduction for places which the local authority has reserved for children with special educational needs (SEN) (regulation 13(2)(b) and (c)). From 2018-19 the only reduction will be the number of pupils in the school in respect of whom sixth form grant is payable (regulation 13(2)). This will mean that 5 to 16 year-old pupils in such places will attract funding to their school through the local formula on the same basis as all other pupils at the school.
- 7.17 As a consequence of this, SEN places in primary and secondary schools that are occupied in October of the previous year by pupils on the roll of the school are to be funded at £6,000 per place. All other SEN places at primary and secondary schools,

and all places at special schools (apart from hospital education places) are to be funded at £10,000 per place. Regulation 14(2) has been changed to reflect this.

***Maintained nursery schools and early years pupil premium (EYPP) and the disability access fund (DAF)***

- 7.18 Regulations 17 (1) and 18 (1) clarify that children who are receiving the 3 and 4 year old childcare entitlement at Maintained Nursery Schools (MNS) are eligible to attract Early Years Pupil Premium and the Disability Access Fund.

***Disability Access Fund***

- 7.19 Local authorities have a duty to allocate a £615 Disability Access Fund payment to early years providers where eligible 3 and 4 year olds are receiving funded provision by virtue of Regulation 3 (3) of the Early Years Provision Regulation 2014. Regulation 18 (4) clarifies that this duty does not apply to place-based funded provision.

***EYPP funding amounts***

- 7.20 Regulation 17 (6) clarifies that where a child is eligible for Early Years Pupil Premium under both Regulations 17 (2) and 17 (5) the early years provider should receive a maximum amount of £302.10.

***Use of supplements***

- 7.21 In determining budget shares, a local authority may, in its formula, take into account certain factors to provide additional funding to the provider to reflect local needs or policy objectives. Regulation 20 (2) clarifies that authorities may not use this power to reduce provider funding.

***Pass-through rate***

- 7.22 Centrally retained expenditure on early years is limited so that most funding is passed through directly to providers. Regulation 22 has the effect of requiring local authorities to ensure that from April 2018 at least 95% of the hourly funding rate for three and four year olds allocated by the Department for Education is passed on to providers through the formula, or other funding paid direct to providers. The rationale behind this policy is to maximise the amount of early years block funding that is passed on to early years providers.

**8. Consultation outcome**

- 8.1 The changes to the regulations give effect to decisions announced following consultation on the introduction of the national funding formulae for schools, high needs and central schools services. Ministers have consulted twice on the introduction of the national funding formulae. The first stage of the consultation was on the principles of the schools and high needs formulae and took place between 7 March and 17 April 2016.
- 8.2 The second stage of the consultation was on the details of the formulae, and took place between 14 December 2016 and 22 March 2017. It received responses from over 26,000 individual respondents and representative organisations. These responses have been carefully considered when designing the final formulae, which will take effect from April 2018.

- 8.3 The final details of the formulae were announced in September 2017 and were set out in a policy document: <https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs> . A full government response to the stage 2 consultation was published on 14 September 2017 at <https://www.gov.uk/government/consultations/schools-national-funding-formula-stage-2> and <https://www.gov.uk/government/consultations/high-needs-national-funding-formula-stage-2> .

#### *Minimum Funding Guarantee*

- 8.4 In response to comments throughout the second stage of consultation which stressed the importance of stability in funding for schools and high needs, the funding floor has increased from -3% at the time of consultation to +0.5% for 2018-19 and 2019-20. The new level of flexibility around the MFG set out in these Regulations will allow local authorities to set the MFG at any value between -1.5% and +0.5%, allowing them to replicate this element of the national funding formula at a local level if they choose to do so.

#### *Minimum per pupil funding level*

- 8.5 The minimum per pupil funding level was not part of the proposals for the national funding formula for schools, so there was no question on this in the consultation. However, there was a consistent message throughout the consultation that the formula must do more to support schools that attract the lowest levels of per-pupil funding. While a range of possible minimum per pupil amounts were quoted, the most common number cited was £4,800 per pupil for secondary schools.
- 8.6 Following the consultation, we announced that funding will be targeted to the lowest funded schools by adding minimum per pupil funding levels for both primary and secondary schools to the final formula. These Regulations introduce an optional minimum factor into local formulae to allow local authorities to implement this change at local level.

### **9. Guidance**

- 9.1 The Regulations and accompanying guidance will be published on [www.gov.uk](http://www.gov.uk).

### **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for two, three and four year olds through the same formula that the local authority will use to determine the funding of this free entitlement in maintained schools. Early years providers will benefit from the requirement that local authorities should pass on at least 95% of their early years funding to providers from 1 April 2018.
- 10.2 The impact on the public sector is that local authorities must comply with these Regulations when allocating their schools budget and determining budget allocations for schools and amounts for early years providers.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses, except for the early years providers referred to in 10.1 and 10.2 above.
- 11.2 The regulation applies to Local Authorities and it is for the Local Authority to determine how they fund their local providers, within the rules set out in these Regulations.

## **12. Monitoring & review**

- 12.1 The changes will be monitored through the usual contact which the School Funding Team within the Department for Education has with schools and local authorities. The team will log and review any correspondence from schools and local authorities relating to the instrument.

## **13. Contact**

- 13.1 Danielle Watson at the Department for Education Telephone: 02073 407286 or email: [Danielle.watson@education.gov.uk](mailto:Danielle.watson@education.gov.uk) can answer any queries regarding the instrument.