

EXPLANATORY MEMORANDUM TO
THE SCHOOL FINANCE (ENGLAND) REGULATIONS 2006

2006 No. 468

- 1.** This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Merits Committee.

2. Description

- 2.1 This instrument governs the scope and operation of funding for local education authorities and maintained schools in England.

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 Sections 45A, 45AA and 47 of the Schools Standards and Framework Act (SSFA 1998) as amended by the Education Acts in 2002 and 2005 make provision to allow the Secretary of State to make regulations governing the operation of the budgets of a local education authority and the framework under which local authorities must provide the schools they maintain with budget shares.
- 4.2 In previous years two sets of regulations have been made annually governing this activity: the LEA Budget, Schools Budget and Individual Schools Budget Regulations (England) (current version SI 2004/3131) and The Financing of Maintained Schools Regulations (England) (current version SI 2004/3130). From April 2006, however, these two sets of regulations are to be amalgamated into this single set and will cover two financial years: 2006-07 and 2007-08.
- 4.3 The provision of regulations covering more than one year has been made possible through amendments to the Schools Standards and Framework Act contained within the Education Act 2005: specifically in section 101 and schedule 16 of that Act. In addition, the amendments in the Education Act 2005 in respect of the SSFA 1998 also provide for regulations to be made that give Schools Forums and the Secretary of State certain powers. These powers are provided within these regulations.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Minister of State for Schools and 14-19 Learners has made the following statement regarding Human Rights:

In my view the provisions of the School Finance Regulations (England) 2006 [] are compatible with the Convention rights

7. Policy background

7.1 These regulations support the Government's policy of providing schools with more certain and predictable budgets than is currently the case. This is to be achieved by a number of changes to the current framework for the operation of local education authority and school budgets and are enabled by the amendments to the School Standards and Framework Act 1998.

7.2 The first of these changes concerns the provision of multiple years of budget information for schools. Amendments to sections 45 and 45AA of the SSFA 1998 allow regulations to specify that local authorities should determine the budget shares of the schools they maintain for each of a specified number of 'funding periods' with the limitation that the earliest date by which a budget share for a funding period may be determined for a school is 48 months prior to the start of that funding period.

7.3 'Funding period' is a new term introduced into the regulations by the 2005 Act. Provision is made to define it in regulation and for the purposes of these regulations two funding periods are defined: 'funding period 1' covers the financial year beginning on 1st April 2006 while 'funding period 2' covers the financial year beginning on 1st April 2007. Schools will receive 2 years of budget data under these regulations (regulation 10).

7.4 Providing schools with budget shares for two or more funding periods requires the overall quantum of resource provided to schools and other educational provision to be set over the funding periods covered by the regulations. This is provided for in regulation 4 which requires a local authority, for each funding period, to set its overall Schools Budget. Regulation 7 then requires it to deduct the funding that is retained centrally for other educational provision such as Pupil Referral Unit expenditure, non-maintained early years expenditure and some SEN expenditure, in order to arrive at the individual schools budgets for each funding period (which are then allocated in the form of budget shares to schools).

7.5 As school funding, in general, follows the principle that it is based on the actual number of pupils present in any one year at local authority and school level, determining the funding for future funding periods necessarily requires the estimation of pupil numbers and, therefore, updating once actual pupil numbers become known. Provision for such updating to occur is provided for in regulations 11 and 12.

7.6 The second main change to the regulations from the current arrangements is contained within regulations 9(3), 13 and 25 which include provisions to give Schools Forums the powers to approve proposals from their local education

authority to vary certain elements of the operation, limits and conditions that are imposed by these regulations. These powers are provided by virtue of amendments in the Education Act 2005 to sections 45(A)(4A) and 47(2)(g) of the SSFA 1998.

- 7.7 These powers are designed to resolve, at local level, certain anomalies or difficulties in the operation of the regulations that cannot be adequately accounted for nationally. Specifically they allow a Schools Forum to agree limited variations to the Minimum Funding Guarantee within individual school budget shares where anomalies arise and set the level of centrally retained funding above that allowed by the regulations. Both these kinds of variations have previously had to come to the Secretary of State for approval. However, providing Schools Forums with the power to approve such proposals will allow them to be resolved locally. Where consensus cannot be reached, however, a local authority may still come to the Secretary of State for a decision on a proposal.
- 7.8 The powers of Schools Forums also enable them to approve a proposal from their local authority to retain expenditure for certain kinds of activity. In particular, Schools Forums have the power to allow a local authority to retain funding under the provision in regulation 5(2). This regulation extends the scope of the Schools Budget to include expenditure on a combined service that is operated for the educational benefit of pupils and where the expenditure is broadly proportionate to the contribution from the Schools Budget. This particular provision is designed, in the main, to enable local authorities to support the broader children's agenda in that they will most likely propose to use such provision to fund multi-agency activity in support of vulnerable children. Again, where Schools Forums do not agree to a local authority's proposal it can refer the proposal to the Secretary of State.
- 7.9 Regulations 14-23 make provisions for the methods, factors and criteria that a local education authority must or may employ in devising the funding formula used in the determination of school budget shares. While, in the main, these provisions have remained the same as under the existing provisions, save for some minor redrafting designed to tidy-them-up, there has been one significant change. This concerns the method by which local authorities are able to take pupil numbers into account in determining school budget shares. At present local authorities are able to use a variety of methods in this respect. Under these regulations a local authority will be required to count the number of pupils as at a single point in time and use that as the basis for determining budget shares for a particular funding period.
- 7.10 While section 47(2) of the SSFA 1998 allowed for this to be stipulated within regulations without amendments to primary legislation, this change is brought to the attention of the committee as it limits the discretion that local authorities have currently in the design of this particular aspect of their funding formula.
- 7.11 The remainder of these regulations are based in large part on the existing provisions but appropriately updated to ensure they operate over two funding periods.

- 7.12 A draft of these regulations was issued for consultation in September 2005. The closing date for responses was 7 November 2005, by which time the Department had received 74 responses. Of these responses, 60 came from local authorities, 10 were from Schools Forums and/or joint local authority and Schools Forums responses and the remaining 4 were from other stakeholders, including head teacher and teacher associations and CIPFA.
- 7.13 The consultation asked for general comments on the draft regulations but also asked questions regarding a number of the specific changes proposed.
- 7.14 The main issue that the consultation addressed was the proposal to use a single pupil count in the calculation of school budgets (see paragraph 7.9 and 7.10 above). This approach arose from discussions between the Department and its external stakeholder group, in particular school representatives, who saw it as a way of introducing a greater degree of stability into school budget shares: at present local authorities adopt a variety of approaches to how they use pupil numbers within the calculation of budget shares. This usually leads to changes in them during a year to reflect, what at times, can be relatively small pupil number fluctuations.
- 7.15 The view of stakeholders was that, beyond the need to adjust the funding for schools where there were significant and planned changes in pupil numbers mid-year (in the case of closing or opening schools for example), using a fixed pupil number throughout the year would be more beneficial in terms of providing stability than making budget changes during the year to exactly reflect minor pupil change.
- 7.16 Of the 74 responses received to the question ‘do you support the proposal to require local authorities to use a single pupil count in the calculation of school budget shares’, 53% were in favour, 42% were opposed while 5% expressed no opinion. While there was a majority in favour of the proposal outright, some of the respondents who opposed the proposal made that point that they supported the principle of a single pupil count but felt that that there should be some flexibility to ensure exceptional circumstances could be accommodated.
- 7.17 In particular they were concerned about the need to ensure that primary schools who operate a staggered intake to their nursery and reception classes were not disadvantaged by the single pupil count, and that significant unplanned changes to pupil numbers that were not known about at the start of a funding period but had an immediate cost implication for schools within a funding period could be recognised.
- 7.18 In response to these concerns provision has been included in the final regulations: regulation 14(7) and (8) make provision to allow a local authority to adjust a primary school’s pupil number to take account of the admission of those nursery and reception pupils not accounted for by the single pupil count. Also, in relation to unplanned and significant pupil number increases, the regulations will allow local education authorities to provide funding from their centrally held resources to meet any specific cost pressures that it would be unreasonable to expect a school’s Governing Body to meet from their normal budget share. While the draft regulations actually provided this power in any case, guidance to local authorities on this aspect will be very explicit.

- 7.19 A number of the consultation questions asked respondents to comment on whether the wording in some aspects within the regulations was clear enough: specifically in relation to combined services (regulation 5(2)) and the provision to allow deductions to be made to schools budget shares where a pupil is removed from their roll to attend alternative educational provision (regulation 23(6)). Respondents provided useful comments in relation to these questions which were taken into account in the final drafting.
- 7.20 The consultation also asked for views on the deletion of what had become superfluous and overly complicated regulations, and the inclusion of some new provisions. Respondents supported the deletions proposed. The new provisions proposed gave Schools Forums the ability to agree to the inclusion of certain types of expenditure within the Schools Budget: in particular the inclusion of premature retirement costs where a local education authority was able to demonstrate savings to the Schools Budget and prudential borrowing costs, again where revenue savings were demonstrable. There was support for the addition of these powers and they are both therefore incorporated into these regulations.
- 7.21 Subsequent to the publication of the draft regulations, it has been proposed to add a further class of expenditure that may be included in the centrally retained portion of the Schools Budget with Schools Forum approval. This relates to expenditure on SEN Transport where such expenditure is no greater than any saving a local education authority has been able to make on the educational provision of pupils with special educational needs. This will apply, in the main, to those pupils with special educational needs who previously may have been placed in very expensive out-of-authority placements but now, as a result of the development of more specialist provision within an authority, can be placed in a maintained school. While this additional provision has not been consulted on formally, it has been raised informally at a number of stakeholder and partnership meetings where it has received broad support.
- 7.22 Finally, the operation of the Minimum Funding Guarantee (MFG) set out in schedule 5 has been amended to cover both pre- and post-16 funding for those schools with sixth-forms. This is a temporary measure that will apply over the next two years and is designed to protect such schools from too much turbulence in their sixth-form funding allocations as a result of changes that the Learning and Skills Council is making to its nationally devised formula for post-16 funding. Local authorities have made a number of responses to the Department opposing this change. It is, however, a Ministerial priority to ensure that unnecessary budget turbulence is avoided for all schools, therefore, this extension to the MFG for a limited period is seen as an appropriate response to the impact of the changes to LSC funding arrangements.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector (ie local education authorities and maintained school governing bodies) is in accordance with good accounting practice and

administration of the public funds they will receive to appropriate to their schools budgets.

9. Contact

Philip Moss at the Department for Education and Skills, Tel: 0207 925 3756 or e-mail: philip.moss@dfes.gsi.gov.uk, can answer any queries regarding the instrument.