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STATUTORY INSTRUMENTS

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**2013 No. 3104**

**EDUCATION, ENGLAND**

**The School and Early Years Finance  
(England) Regulations 2013**

*Made* - - - - *5th December 2013*  
*Laid before Parliament* *9th December 2013*  
*Coming into force* - - *1st January 2014*

The Secretary of State for Education makes the following Regulations in exercise of powers conferred by sections 45A(1), 45AA(2), 47(3), 47ZA(4), 47A(4)(5), 48(1) and (2)(6), 49(2) and (2A)(7), 138(7) of, and paragraph 2B(8) of Schedule 14 to, the School Standards and Framework Act 1998(9) and section 24(3) of the Education Act 2002(10).

**PART 1**

**Introduction**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2013 and come into force on 1st January 2014.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2014.

(3) These Regulations apply only in relation to England.

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- (1) Inserted by section 41(1) of the 2002 Act and amended by section 101 of, and paragraph 3 of Schedule 16 to, the 2005 Act.  
(2) Inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.  
(3) Amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.  
(4) Inserted by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22).  
(5) Section 47A was inserted by section 43 of the 2002 Act and amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2002 Act, section 57 of, paragraph 2 of Schedule 5 to, the 2006 Act, section 165 of the Education and Skills Act 2008 (c.25) and section 194 of the Apprenticeships, Skills, Children and Learning Act 2009.  
(6) Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act, section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.  
(7) Subsections (2) and (2A) were substituted for subsections (2) and (3), as originally enacted, by section 57 of, and paragraph 4 of Schedule 5 to, the 2006 Act.  
(8) Paragraph 2B of Schedule 14 was substituted for paragraph 2, as originally enacted, by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.  
(9) 1998 c.31. For the meaning of “prescribed” and “regulations”, see section 142(1) of the 1998 Act.  
(10) 2002 c.32. For the meaning of “prescribed” and “regulations”, see section 212 of the 2002 Act.

(4) In these Regulations—

- “the 1996 Act” means the Education Act 1996**(11)**;
- “the 1998 Act” means the School Standards and Framework Act 1998;
- “the 2002 Act” means the Education Act 2002;
- “the 2005 Act” means the Education Act 2005**(12)**;
- “the 2006 Act” means the Education and Inspections Act 2006**(13)**;
- “the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009**(14)**;
- “the 2012 Regulations” means the School and Early Years Finance (England) Regulations 2012**(15)**;
- “the 2008 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 19th May 2008**(16)**;
- “the 2012 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 27th March 2012**(17)**;
- “the 2013 Document” means the document entitled “2013 Key Stage 2 Assessment and Reporting Arrangements”**(18)** containing provisions made pursuant to Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003**(19)**, made under section 87(3) of the Education Act 2002;
- “academic year” means any period commencing with 1st August and ending with the next 31st July;
- “all-through schools” means those primary or secondary schools known by this title where pupils may join the school at an age of between three and five years and remain at the school until the age of between 16 and 19 years;
- “capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper accounting practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003**(20)**;
- “central expenditure” means, in respect of the funding period, the total amount deducted by a local authority from their schools budget in accordance with regulation 8, or in respect of the previous funding period, the total amount deducted by a local authority from their schools budget in accordance with regulation 8 of the 2012 Regulations;
- “CERA” means capital expenditure which a local authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003;
- “community early years provision” means prescribed early years provision provided by the governing body of a maintained school under section 27(1) of the 2002 Act to children other than pupils at the school, where the local authority have chosen to fund such provision;
- “the Early Years Foundation Stage Profile” has the meaning given in section 2 of the 2008 Document or the 2012 Document, as the context specifies more particularly;

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**(11)** 1996 c.56.

**(12)** 2005 c.18.

**(13)** 2006 c.40.

**(14)** 2009 c.22.

**(15)** S.I. 2012/2991.

**(16)** Available at: [www.education.gov.uk/publications/eOrderingDownload/00267-2008BKT-EN.pdf](http://www.education.gov.uk/publications/eOrderingDownload/00267-2008BKT-EN.pdf)

**(17)** Available at: [www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012](http://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012)

**(18)** Available at: [http://media.education.gov.uk/assets/files/pdf/2/sta136001\\_2013%20ks2%20ara.pdf](http://media.education.gov.uk/assets/files/pdf/2/sta136001_2013%20ks2%20ara.pdf)

**(19)** S.I. 2003/1038, amended by S.I. 2009/1585, 2010/290, 2011/2392, 2013/1513, there are other amending instruments but none is relevant.

**(20)** 2003 c.26. Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) as amended by S.I. 2004/534, 2004/3055 and 2007/573.

“early years provision” has the meaning given in section 20 of the Childcare Act 2006(21);

“eligibility for free school meals” means eligibility for free lunches under section 512ZB of the 1996 Act(22);

“exempt early years provider” means a provider of exempt early years provision;

“exempt early years provision” means early years provision which is not included in prescribed early years provision for the purposes of section 7(1) of the 2006 Act by virtue of regulation 2(2) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012(23);

“expenditure on the schools specific contingency” is central expenditure deducted for the purpose of ensuring that monies are available to enable an increase in a school’s budget share after it has been allocated and where it subsequently becomes apparent that a governing body have incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share which may include expenditure in relation to—

- (i) schools in financial difficulty,
- (ii) the writing-off of deficits of schools which are discontinued, excluding any associated costs and overheads,
- (iii) new, amalgamating or closing schools, or
- (iv) other expenditure where the circumstances were unforeseen when initially determining the school’s budget share;

“funding period” means the financial year beginning on 1st April 2014;

“home school” means, in respect of a pupil, a school which is the shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

- (i) a selective school,
- (ii) a special school, or
- (iii) an independent school which is not an Academy;

“hospital education” means education provided at a community special school or foundation special school established in a hospital, or under any arrangements made by the local authority under section 19 of the 1996 Act (exceptional provision of education), where the child is being provided with such education by reason of a decision made by a medical practitioner and “hospital education places” shall be read accordingly;

“IDACI” means the Income Deprivation Affecting Children Index referred to in the document named “English Indices of Deprivation 2010” published by the Department for Communities and Local Government(24);

“IDACI bands” means the groupings of IDACI scores as published by the Department for Education in the document named “Schools Block Dataset Technical Specification: 2014 to 2015”(25);

“IDACI score” means the score allocated to a child under IDACI;

“key stage” means the key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 84, 85 and 85A of the 2002 Act(26) and

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(21) 2006 c.21.

(22) Section 512ZB was inserted by section 201(1) of the 2002 Act and amended by section 28 of, and paragraph 16(3) of Schedule 3 to, the Welfare Reform Act 2007 (c. 5), section 26(1)(a) to (e) of the Child Poverty Act 2010 (c. 9) and section 31, and paragraph 39(a) and (b) of Schedule 2 to, the Welfare Reform Act 2012 (c.5).

(23) S.I. 2012/2488.

(24) Available at: [www.gov.uk/government/publications/english-indices-of-deprivation-2010](http://www.gov.uk/government/publications/english-indices-of-deprivation-2010)

(25) Available at: [www.gov.uk/government/publications/2014-to-2015-schools-block-dataset-technical-specification](http://www.gov.uk/government/publications/2014-to-2015-schools-block-dataset-technical-specification)

(26) Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.

“key stage 1”, “key stage 2”, “key stage 3” and “key stage 4” mean the first, second, third and fourth key stages referred to in those sections respectively;

“learning difficulty” means difficulty in learning that a person has that is significantly greater than the majority of persons of his or her age, or a disability which either prevents or hinders the person from making use of facilities of a kind generally provided for further education to persons of his or her age;

“learning difficulty assessment” has the meaning given in section 13(5) of the 1996 Act<sup>(27)</sup>, and a reference to a person being subject to learning difficulty assessment has the meaning given in section 13(4) of the 1996 Act<sup>(28)</sup>;

“looked after child” means a person who, for the purposes of the Children Act 1989, is a child looked after by a local authority, and references to the authority looking after the child are to be read accordingly;

“middle school single sum formula” is  $A \times (B / C) + D \times (E / C)$  where—

- (i) *A* is the amount allocated per school by the authority under paragraph 1(a) of Schedule 3 (primary single sum),
- (ii) *B* is the number of primary-age year groups in the school,
- (iii) *C* is the number of year groups in the school,
- (iv) *D* is the amount allocated per school by the authority under paragraph 2(a) of Schedule 3 (secondary single sum),
- (v) *E* is the number of secondary-age year groups in the school;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988<sup>(29)</sup>;

“prescribed early years provision” means early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006;

“previous funding period” means the financial year beginning on 1st April 2013 and “previous funding periods” means such financial years as the context specifies more particularly;

“proper accounting practices” means those accounting practices which a local authority are required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment are generally regarded, whether by reference to any generally recognised published code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned<sup>(30)</sup>;

“provider”, in relation to prescribed early years provision, includes a governing body of a maintained school or a relevant early years provider;

“prudential borrowing” means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings expected to be achieved as a result are equal to or more than the expenditure expected to be incurred in borrowing the money;

“pupil premium” means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

“pupil premium grant” is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

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<sup>(27)</sup> Subsection (5) of section 13 was inserted by section 59 of, and paragraphs 1 and 2 of Schedule 2 to, the 2009 Act.

<sup>(28)</sup> Subsection (4) of section 13 was inserted by section 59 of, and paragraphs 1 and 2 of Schedule 2 to, the 2009 Act.

<sup>(29)</sup> 1988 c.41.

<sup>(30)</sup> This definition is taken from section 21 of the Local Government Act 2003 and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

“relevant early learning goals” means the early learning goals in the prime areas in section 1 of the 2012 Document and also the early learning goals of reading, writing, numbers and shape, space and measures in section 1 of that document;

“relevant early years provider” means a provider of prescribed early years provision, other than the governing body of a maintained school;

“relevant early years provision” means prescribed early years provision provided by a relevant early years provider;

“school census” means the record of individual pupil information supplied by local authorities to the Secretary of State under section 537A of the 1996 Act<sup>(31)</sup>;

“second closest school” means, in respect of a pupil, a school which is the second shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

- (i) a selective school,
- (ii) a special school, or
- (iii) an independent school which is not an Academy;

“sixth form grant” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of sixth form pupils, on condition that it is passed on to a particular school;

“special Academy” means an Academy which meets the requirements of section 1A(2) of the Academies Act 2010<sup>(32)</sup>;

“specific grant” means any grant paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used other than—

- (i) a grant named “Dedicated Schools Grant”, paid to a local authority by the Secretary of State under section 14 of the 2002 Act, or
- (ii) any sixth form grant;

“teaching assessment of English writing” means the assessment referred to as such in the 2013 Document;

“unavoidable costs” means costs which must be incurred by virtue of a statutory requirement;

“selective school” means a school where all the pupils in the school are selected by ability or by aptitude;

“Year 1” means the school year in which the majority of pupils attain the age of six;

“Year 2” means the school year in which the majority of pupils attain the age of seven;

“Year 3” means the school year in which the majority of pupils attain the age of eight;

“Year 4” means the school year in which the majority of pupils attain the age of nine;

“Year 5” means the school year in which the majority of pupils attain the age of ten;

(5) In these Regulations—

(a) a reference to a determination or redetermination of a budget share or amount to be allocated is a reference to such a determination or redetermination for the funding period, unless otherwise stated;

(b) a reference to an Academy school’s “predecessor school” is a reference to—

- (i) the school that was discontinued and which that Academy school replaced, or

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<sup>(31)</sup> Section 537A was inserted by section 140(1) of, and paragraph 153 of Schedule 30 to, the 1998 Act.

<sup>(32)</sup> 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).

- (ii) the maintained school which converted into that Academy school in accordance with section 4 of the 2010 Act;
- (c) a reference to a “governing body” of a school includes the management committee of a pupil referral unit;
- (d) a reference to an inspection under section 5 of the 2005 Act includes a reference to an inspection under section 8 of that Act (other inspections) which has been treated by the Chief Inspector as an inspection under section 5;
- (e) a reference to the number of pupils at a particular key stage is a reference to the number on 3rd October 2013, unless otherwise stated;
- (f) a reference to “pupils or children” in regulations 15 and 16 is a reference to—
  - (i) in respect of a nursery school, the pupils at the school,
  - (ii) in respect of a nursery class, the pupils in the class,
  - (iii) in respect of a prescribed early years provider, the children receiving prescribed early years provision from the provider,
  - (iv) in respect of a relevant early years provider, the children receiving relevant early years provision from the provider,
  - (v) in respect of an exempt early years provider, the children receiving exempt early years provision from the provider, and
  - (vi) in respect of community early years provision, the children receiving such provision at the school;
- (g) a reference to “pupils” includes only those pupils who are recorded on the school census as either—
  - (i) registered solely at that school, or
  - (ii) registered at more than one school, but attending that school for the majority of their time,
 except in regulations 15(5), 15(6) and 16 where “pupil” means a registered pupil<sup>(33)</sup>;
- (h) a reference to “schools” in Schedules 1 and 2 includes maintained schools and Academies except where the context requires otherwise;
- (i) a reference to “special educational needs transport costs”, for the purposes of paragraph 4(d) of Schedule 2, is a reference to the costs of home to school transport for pupils with special educational needs in schools maintained by a local authority where the authority are meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by them are equal to, or greater than, the costs of such transport; and
- (j) a reference to “termination of employment costs”, for the purposes of paragraph 4(b) of Schedule 2, is a reference to expenditure relating to the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school.

## Revocation

2. The School Finance (England) Regulations 2012<sup>(34)</sup> are revoked on 1st April 2014.

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<sup>(33)</sup> “Registered pupil” is defined in section 434(5) of the 1996 Act.

<sup>(34)</sup> [S.I. 2012/335](#).

## Amendments

- 3.—(1) The Schools Forums (England) Regulations 2012<sup>(35)</sup> are amended as follows.
- (2) In regulation 1(3), after “In these Regulations—”, insert—
- ““16 to 19 provider” means—
- (a) an institution within the further education sector, or
- (b) an educational institution other than one referred to in subparagraph (a) that is principally concerned with providing further education suitable for persons over compulsory school age who have special educational needs or learning difficulties or are subject to learning difficulty assessment,
- where 20% or more of the students at the institution reside in the authority’s area;”.
- (3) In regulation 1(3), in the definition of “representative”, after “save for in”, insert—
- “regulation 7(1)(a) and”.
- (4) In regulation 4(2)(c), after “non-schools members appointed” insert—
- “or elected”.
- (5) For regulation 4(3), substitute—
- “(3) If, for any reason, an election for a schools member under regulation 5(1), an Academies member under regulation 6(1), or person to represent 16 to 19 providers under regulation 7(1)(a) either does not take place by the date (if any) set by an authority or results in a tie between two or more candidates, the authority must appoint the schools member, Academies member or person to represent 16 to 19 providers to their schools forum instead.”
- (6) In regulation 7, for paragraph (1), substitute—
- “(1) The schools forum must include—
- (a) where there is at least one 16 to 19 provider, at least one person to represent 16 to 19 providers, that person to be elected by representatives of the 16 to 19 providers, or if there is only one 16 to 19 provider, by the representatives of that provider; and
- (b) one or more persons appointed by the authority to represent early years providers.”
- (7) In regulation 8, for paragraphs (9A) and (9B), substitute—
- “(9A) Only the schools members of the schools forum who are representatives of primary schools may vote to decide whether or not to authorise the matters referred to in regulation 12(1)(d) of the School and Early Years Finance (England) Regulations 2013 where they relate to primary schools.
- (9B) Only the schools members of the schools forum who are representatives of secondary schools may vote to decide whether or not to authorise the matters referred to in regulation 12(1)(d) of the School and Early Years Finance (England) Regulations 2013 where they relate to secondary schools.”.

## PART 2

### Action to be Taken by a Local Authority

#### CHAPTER 1

##### Determination of the Non-Schools Education Budget, Schools Budget, Individual Schools Budget, and Budget Shares

###### **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).

###### **Initial determination of a local authority's schools budget**

5. A local authority must not later than 28th February 2014—

- (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 paragraph (2) 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 the exceptions in regulation 7.

(2) The classes or descriptions of local authority expenditure are—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils at maintained schools;
- (b) expenditure on the education of children 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 children 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-paragraphs (a) or (b);
- (d) expenditure on the education of—
  - (i) children 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 a learning difficulty; 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).



## 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>(36)</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 (10), not later than 28th February 2014, a local authority must deduct from their schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 as they propose to deduct, in order to determine their individual schools budget.

(2) 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 prior to 1st April 2013 that commit the authority to incur expenditure in the funding period.

(3) In deducting the 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(1)(a).

(4) A local authority must not deduct the expenditure referred to in paragraphs 8 to 10 of Schedule 2 without authorisation of the criteria for determining the expenditure from their schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3).

(5) A local authority must not deduct the 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 from the Secretary of State under regulation 12(3).

(6) Where a local authority carries forward a deficit 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) Any amount of expenditure which was deducted under paragraphs 8 (growth fund) and 10 (extra infant classes) of Schedule 2 to the 2012 Regulations for the previous funding period and which remains unspent may be used by the local authority in the funding period for the purposes listed in paragraphs 8 and 10 of Schedule 2 of the 2012 Regulations that applied to such expenditure.

(8) Where a local authority treated any expenditure described in Part 5 of Schedule 2 to the 2012 Regulations (Items That May Be Removed From Maintained Schools' Budget Shares) as central expenditure under regulation 11(3) of the 2012 Regulations for the previous funding period and

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<sup>(36)</sup> 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).

any such amounts remain unspent, such amounts may be used by the local authority in the funding period for the purposes listed in Part 5 of Schedule 2 to the 2012 Regulations that applied to such expenditure.

(9) A local authority may apply to the Secretary of State for authorisation under regulation 25(1) to—

- (a) 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; and
- (b) alter the operation of regulation 11(3) (additional costs of pupils with special educational needs);

(10) 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 a charge payable by a local authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997<sup>(37)</sup>;

(11) 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 10 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 propose to make changes under paragraph (1) which will affect relevant early years providers or exempt 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 to 10 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.

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(37) *S.I. 1997/319*. These Regulations have lapsed but article 11 of the Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (*S.I. 2004/533*) contains a savings provision for regulation 16 of the 1997 Regulations.

(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;
- (c) the amounts to be allocated to relevant early years providers in their area;
- (d) the amounts to be allocated to exempt early years providers in their area; and
- (e) the amounts to be allocated in respect of community early years provision in schools maintained by them.

(4) A local authority must use the formula determined under paragraph (3) when making all of the determinations referred to in paragraph (3)(a) to (e) in respect of the funding period.

(5) A local authority may not make changes to their formulae after the funding period has commenced.

(6) The formulae must be determined in accordance with Part 3.

#### **Determination of allocation of budget shares etc for the funding period**

**11.**—(1) Except as provided for in paragraphs (2), (5) and (6), not later than 28th February 2014, a local authority must determine the budget share for each of the schools maintained by them (using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

(2) Paragraph (1) does not apply to any determination of amounts to be included in budget shares under regulation 20 (Sixth form funding) and in relation to such determinations the local authority must make the determination and notify the school to which the determination relates within a reasonable period after the notification given by the Secretary of State under regulation 20(1).

(3) 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, such amount must be calculated using a sum of £6,000 as the threshold below which school will be expected to meet the additional costs of pupils with special educational needs from its budget share.

(4) After the local authority have made a determination under paragraph (1) but before giving notice under paragraph (7), the authority may apply to their schools forum under regulation 12(1), or to the Secretary of State under regulation 12(2) 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 if it were part of central expenditure.

(5) Not later than 31st March 2014, 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.

(6) Not later than 31st March 2014, 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, the amount to be allocated to each relevant early years provider in their area, the amount to be allocated to each exempt early years provider in their area and the amount to be allocated in respect of community early years provision, using the formula referred to in regulation 10(3) in accordance with Part 3 of these Regulations.

(7) Not later than 31st March 2014, a local authority must give notice of—

- (a) each budget share or amount determined under paragraphs (1), (5) and (6); or
- (b) the redetermined budget share, when the budget share has been redetermined under paragraph (4),

to the governing body of the school, the exempt early years provider or the relevant early years provider concerned.

(8) Save as provided in this regulation and in regulations 16 (Special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision), 17 (Differential funding), 20 (Sixth form funding), 22 (Federated schools), 23 (Excluded pupils), 24 (Correction of errors and non-domestic rates) and 25 (Alternative arrangements), the authority must not redetermine a school's budget share, or the amount allocated to a relevant early years provider or an exempt early years provider.

## CHAPTER 2

### 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, 9 or 10 of Schedule 2, under regulation 8(4);
- (b) the making of deductions from the authority's schools budget of expenditure under regulation 8(5);
- (c) the funding of any deficit 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 if it were part of central expenditure, under regulation 11(4).

(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).

## 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 their 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—
- $A$  is the total number of pupils in the school;
  - $B$  is the number of places in the school which the authority have reserved for children with special educational needs;
  - $C$  is the number of children in places in the school which the authority have 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;
  - $D$  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 3rd October 2013.
- (4) Where a primary school had more pupils in reception classes on 17th January 2013 than on 4th October 2012, the local authority may take into account in their formula the number of additional pupils, and where they do so this factor must be applied to all primary schools in the area.
- (5) A local authority must include in their formula a single per pupil amount of at least—
- £2,000 for each of the pupils in reception classes and at key stages 1 and 2;
  - £3,000 for each of the pupils at key stage 3; and
  - £3,000 for each of the pupils at key stage 4;
- where the number of pupils is calculated with reference to paragraphs (2) to (4).

## Places

**14.**—(1) In determining budget shares for special schools, a local authority must include the sum of £10,000 for each place other than hospital education places and places for pupils in respect of whom sixth form grant is payable, but only where the sixth form grant is payable for a period up to 31st July 2014.

(2) In determining budget shares for primary or secondary schools maintained by the local authority, with places which the authority have reserved for children with special educational needs, a local authority must include the sum of £10,000 for each place other than places for pupils in respect of whom a sixth form grant is payable and hospital education places.

(3) In determining budget shares for pupil referral units, a local authority must include the sum of £8,000 for each place other than hospital education places.

(4) For each hospital education place referred to in paragraphs (1) to (3) the local authority must include 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 them (other than special schools, pupil referral units or nursery schools), a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation in pupils at the schools maintained by them.

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

- a pupil's eligibility for free school meals on 3rd October 2013 or a pupil's eligibility for free school meals recorded in any school census between and including Summer 2007 and Spring 2013;
- a pupil's IDACI score on 3rd October 2013,

and where it is based on an IDACI score the authority may use factors which differentiate between different IDACI bands.

(3) In determining budget shares pursuant to paragraph (1), the authority may take into account in their 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 pursuant to paragraph (2).

(5) 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 them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area; and
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

a local authority must take into account in their formula a factor or 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.

(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 them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area; and
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

a local authority may take into account in their formula a factor or 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, exempt early years provision and community early years provision**

16.—(1) Subject to paragraphs (5) and (6), in determining—

- (a) budget shares for nursery schools maintained by them;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area; and
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

a local authority must take into account in their formula the predicted total number of hours of attendance of pupils or children, using as a basis for the calculation 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 decide to fund only prescribed 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 children being provided community early years provision, who will receive prescribed early years provision during the period (using as a basis for the calculation 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 decide to fund early years provision in excess of that which is prescribed take into account—
    - (i) the predicted total number of hours of attendance of pupils in the nursery school or nursery class, and children being provided community early years provision, who will receive early years provision during the period (using as a basis for the calculation 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 exempt 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 prescribed early years provision from the relevant early years provider, or exempt early years provision from the exempt early years provider as the case may be, during the period (using as a basis for the calculation 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 pursuant to 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, the relevant early years provider, or the exempt early years provider concerned, within 28 days of the redetermination.
- (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 them;

- (b) amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area;
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

a local authority may take into account in their formula the number of places they wish to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where those places have been reserved by the authority for children with special educational needs, children in need or children that meet the condition prescribed by regulation 3(2) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012<sup>(38)</sup>.

(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 Children Act 1989<sup>(39)</sup>.

### **Differential funding**

17. For the purpose of determining or redetermining—

- (a) budget shares for nursery schools maintained by them;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area; and
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

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.

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

18.—(1) Subject to paragraph (3), in determining budget shares, a local authority may take into account in their formula any or all of the requirements, factors or criteria set out in Part 1 of Schedule 3, and where they do the date for ascertaining pupil numbers is 3rd October 2013, save as otherwise stated.

(2) Subject to regulation 17 (Differential funding), in determining—

- (a) budget shares for nursery schools maintained by them;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area; and
- (e) amounts to be allocated in respect of community early years provision in schools maintained by them,

a local authority may take into account in their formula any or all of the requirements, factors or criteria set out in Part 2 of Schedule 3.

(3) The requirements, factors and criteria set out 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.

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<sup>(38)</sup> S.I. 2012/2488.

<sup>(39)</sup> 1989 c.41.



(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 by;
- (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 decide 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—

- (a) special schools;
- (b) pupil referral units;
- (c) nursery schools; and
- (d) schools that have opened in any of the previous seven funding periods and do not yet have pupils in each year group for which the school proposes to provide education.

### **Minimum funding guarantee**

**19.**—(1) Subject to paragraph (4), in determining and redetermining budget shares for primary and secondary schools maintained by them, 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) In determining and redetermining—

- (a) budget shares for nursery schools maintained by them;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by them;
- (c) amounts to be allocated to relevant early years providers in their area;
- (d) amounts to be allocated to exempt early years providers in their area,

a local authority must ensure that the number by which they multiply the predicted total number of hours calculated pursuant to regulation 16(1) is no lower than 1.5 percent less than the number by which they multiplied the predicted total number of hours calculated pursuant to regulation 16(1) of the 2012 Regulations for making such determinations and redeterminations in the previous funding period.

(4) A local authority may make changes to the operation of this regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State under regulation 25 (Alternative arrangements).

### **Sixth form funding**

**20.**—(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 in respect of that school’s sixth form grant.

(2) A local authority may, in determining budget shares, use a factor which allocates funding in respect of the number of pupils in sixth forms on 3rd October 2013 subject to the limitation in paragraph (3).

(3) Where a local authority use a factor in determining budget shares pursuant to paragraph (2) they must ensure that the amount allocated per pupil in respect of this factor in the funding period is no greater than the amount that was allocated per pupil in sixth forms in the previous funding period.

(4) A local authority must redetermine the budget share of a secondary school before the end of the funding period where the authority receive 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**

**21.**—(1) Where in the funding period a new maintained school opens and is a replacement for two or more maintained schools that are discontinued during that 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 any new maintained school in their area from the date of the school's opening in accordance with this Part.

(3) Where in the previous funding period or on 1st April 2014 a new maintained school opened or opens and is a replacement for two or more maintained schools that were discontinued during that funding period, 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), had the schools not been discontinued.

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

(5) A local authority may make changes to the operation of this regulation where authorised to do so by the Secretary of State under regulation 25 (Alternative arrangements).

### **Federated schools**

**22.**—(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 decide to allocate a single budget share to the governing body of a federation under paragraph (2) they must determine this 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.

## CHAPTER 2

### Adjustments, Correction of Errors, and Alternative Arrangements Authorised by the Secretary of State

#### **Pupils permanently excluded from, or leaving, maintained schools**

**23.**—(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, pupil referral unit or from a place which the authority have reserved for children with special educational needs) (“the excluding school”) the authority must redetermine the excluding school’s budget share in accordance with paragraph (2).

(2) The excluding school’s budget share must be reduced by the amount  $A \times (B / 52) + C$  where—

- (a)  $A$  is the amount determined by the authority in accordance with this Part, that would be attributable to a pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority for the full funding period;
- (b)  $B$  is either—
  - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
  - (ii) where the permanent exclusion takes effect on or after 1st April in a school year<sup>(40)</sup> at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date; and
- (c)  $C$  is the amount of the adjustment made to the school’s budget share pursuant to a financial adjustment order.

(3) Where a pupil who has been permanently excluded from the excluding school and is admitted to another school maintained by a local authority (other than a special school, pupil referral unit or to a place which the authority have reserved for children with special educational needs) (“the admitting school”) in the funding period, the authority must redetermine the admitting school’s budget share in accordance with paragraphs (4) and (5).

(4) The admitting school’s budget share must be increased by an amount which may not be less than the amount  $D \times (E / F)$  where—

- (a)  $D$  is the amount by which the authority reduced the budget share of the excluding school, or would have reduced the budget share had that school been maintained by the authority, except that any reduction in the excluding school’s budget share made pursuant to a financial adjustment order must not be taken into account for these purposes;
- (b)  $E$  is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c)  $F$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) In redetermining the admitting school’s budget share, the authority may increase it by any amount up to the amount of the adjustment made by the excluding school’s budget share pursuant to a financial adjustment order.

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<sup>(40)</sup> “School year” is defined in section 579(1) of the 1996 Act.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school, the school's budget share must be increased by an amount which is no less than

$G \times (H / I)$  where—

- (a)  $G$  is the amount by which the authority reduced the school's budget share under paragraph (2);
- (b)  $H$  is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c)  $I$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school (other than a special school, pupil referral unit or from a place which the authority have reserved for children with special educational needs) for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(8) For the purposes of paragraph (2)(a), the amount attributable to a pupil is the sum of the amounts determined in accordance with the authority's formula, by reference to pupil numbers rather than by reference to any other factor or criterion not dependent on pupil numbers (except that, where the pupil in question is a pupil in respect of whom a sixth form grant is payable, the amount attributable to that pupil is £4,000 for the funding period).

(9) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority ("the excluding school") the local authority must redetermine the excluding school's budget share in accordance with paragraph (10).

(10) The excluding school's budget share must be reduced by  $J \times (K / 52)$  where—

- (a)  $J$  is the amount of the pupil premium allocated to the excluding school for the funding period in respect of that child; and
- (b)  $K$  is either—
  - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
  - (ii) where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date.

(11) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority and admitted to another school maintained by a local authority ("the admitting school") in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (12).

(12) The admitting school's budget share must be increased by an amount which may not be less than  $L \times (M / N)$  where—

- (a)  $L$  is the amount by which the authority reduced the budget share of the excluding school or would have reduced the budget share had that school been maintained by the authority;
- (b)  $M$  is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c)  $N$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(13) Where a permanently excluded pupil in respect of whom a pupil premium is payable is subsequently reinstated by the governing body of the school, the school's budget share must be increased by an amount which is no less than  $O \times (P / Q)$  where—

- (a)  $O$  is the amount by which the authority reduced the school's budget share under paragraph (10);
- (b)  $P$  is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c)  $Q$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(14) Paragraphs (9) and (10) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(15) For the purposes of this regulation—

- (a) “the relevant date” is the sixth school day following the date on which the pupil has been permanently excluded; and
- (b) “a financial adjustment order” means an order for the adjustment of a school's budget share made under regulation 25(5)(b) of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012<sup>(41)</sup> in respect of the exclusion of the pupil from the excluding school.

### **Correction of errors and changes in non-domestic rates**

24.—(1) A local authority may at any time during the funding period redetermine a maintained school's budget share, the amount allocated to a relevant early years provider, or the amount allocated to an exempt early years provider for the funding period or any previous funding period in order to correct an error in a determination or redetermination under these or any previous Regulations, whether arising from a mistake as to the number of pupils at the school or otherwise, and any such redetermination will take effect in the next financial year following the funding period.

(2) A local authority may redetermine a school's budget share to take into account any changes in that school's non-domestic rate liability in relation to the funding period or any previous funding period.

(3) In so far as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the Regulations in force during the funding period in which the error occurred.

### **Alternative arrangements approved by Secretary of State**

25.—(1) Subject to paragraph (2), on application by a local authority, the Secretary of State may authorise the authority to—

- (a) disregard the limits referred to in paragraph 5 of Schedule 2 when deducting any expenditure referred to in regulation 8(3) (Central Services expenditure);
- (b) deduct any expenditure referred to in regulation 8(9)(a) (expenditure falling outside of Schedule 2);
- (c) alter the operation of regulation 11(3) (additional expenditure on children with special educational needs);

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(41) [S.I. 2012/1033](#).

- (d) determine or redetermine budget shares of schools maintained by them;
- (e) determine or redetermine amounts to be allocated in respect of nursery classes in schools maintained by them;
- (f) determine or redetermine amounts to be allocated to relevant early years providers in their area;
- (g) determine or redetermine amounts to be allocated to exempt early years providers in their area;
- (h) include additional factors or criteria in their formula under regulation 10(1) (formula for determining budget shares) where the nature of a school's premises exceptionally gives rise to significant additional cost;
- (i) include additional factors or criteria that the authority propose to include in their formula under regulation 10(3) (early years single funding formula);
- (j) vary the amount by which a school's redetermined adjusted budget share shall be reduced for the purpose of determining the guaranteed level of funding in paragraph 1 of Schedule 4;
- (k) disregard regulation 13 (Pupil numbers);
- (l) alter the operation of regulation 21 (New schools, merged schools and closing schools) in respect of particular schools; and
- (m) alter the operation of paragraphs 13 (primary sparsity) and 14 (secondary sparsity) of Schedule 3 in respect of particular schools.

(2) The Secretary of State may authorise the matters referred to in paragraph (1) to such extent as the Secretary of State may specify in accordance with arrangements approved in place of the arrangements provided for by these Regulations.

## PART 4

### Schemes

#### **Required content of schemes**

**26.** A scheme prepared by a local authority under section 48(1) of the 1998 Act must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

#### **Approval by the schools forum or the Secretary of State of proposals to revise schemes**

**27.—**(1) Where a local authority submit a copy of their proposals to revise their scheme to their schools forum for approval pursuant to paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, the members of the schools forum who represent schools maintained by the authority may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(2) Where the schools forum approves the proposals to revise the scheme, it may specify the date upon which the revised scheme is to come into force.

(3) Where—

- (a) the schools forum refuses to approve proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, or approves any such proposals subject to modifications which are not acceptable to the local authority; or

(b) the local authority are not required to establish a schools forum for their area, the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(5) When approving proposals to revise the scheme, the Secretary of State may specify the date upon which the revised scheme is to come into force.

(6) No revised scheme is to come into force unless approved by the schools forum or the Secretary of State in accordance with this regulation.

### **Publication of schemes**

**28.**—(1) A local authority—

- (a) must publish their scheme on a website which is accessible to the general public; and
- (b) may publish it elsewhere, in such manner as they see fit.

(2) Whenever a local authority revise the whole or part of their scheme they must publish the scheme as revised on a website which is accessible to the general public by the date that the revisions are due to come into force, together with a statement that the revised scheme comes into force on that date.

5th December 2013

*David Laws*  
Minister of State  
Department for Education

## SCHEDULE 1

Regulation 4

## CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE NON-SCHOOLS EDUCATION BUDGET OF A LOCAL AUTHORITY

**Special educational provision**

1. Expenditure on services provided by educational psychologists.
2. Expenditure in connection with the local authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children).
3. Expenditure on monitoring the provision for pupils in schools for the purposes of disseminating good practice in relation to, and improving the quality of educational provision for, children with special educational needs.
4. Expenditure on collaboration with other statutory and voluntary bodies to provide support for children with special educational needs.
5. Expenditure in connection with—
  - (a) the provision of parent partnership services (that is services provided under section 332A of the 1996 Act<sup>(42)</sup> to give advice and information to parents of children with special educational needs), or other guidance and information to such parents which, in relation to pupils at a school maintained by the authority, are in addition to the information usually provided by the governing bodies of such schools; and
  - (b) arrangements made by the authority with a view to avoiding or resolving disagreements with the parents of children with special educational needs.
6. Expenditure on carrying out the authority's child protection functions under the Children Act 1989, functions under section 175 of the 2002 Act (duties in relation to welfare of children), and other functions relating to child protection.
7. Expenditure incurred in entering into, or subsequently incurred pursuant to, an arrangement under section 31 of the Health Act 1999<sup>(43)</sup> or regulations made under section 75 of the National Health Service Act 2006<sup>(44)</sup> (arrangements between NHS bodies and local authorities).
8. Expenditure on the provision of special medical support for individual children in so far as such expenditure is not met by a National Health Service Trust, NHS foundation trust, Clinical Commissioning Group or Local Health Board.

**School improvement**

9. Expenditure incurred by a local authority in respect of action to support the improvement of standards in schools in the authority's area, in particular expenditure incurred in connection with functions under the following sections of the 2006 Act—
  - (a) section 60<sup>(45)</sup> (performance standards and safety warning notice);
  - (b) section 60A<sup>(46)</sup> (teachers' pay and conditions warning notice);

<sup>(42)</sup> Section 332A was inserted by section 2 of the Special Educational Needs and Disability Act 2001 (c.10).

<sup>(43)</sup> 1999 c.8. Section 31 was repealed by section 6 of, and Schedule 4 to, the National Health Service (Consequential Provisions) Act 2006 (c.43) but section 4 of, and paragraph 1 of Schedule 2 to, that Act contains a savings provision which means that arrangements made under section 31 of the 1999 Act continue to have effect as if made under section 75 of the National Health Service Act 2006.

<sup>(44)</sup> 2006 c. 41.

<sup>(45)</sup> Section 60 was amended by section 203 of, and paragraph 3 of Schedule 13 to, the 2009 Act.

<sup>(46)</sup> Section 60A was inserted by section 203 of, and paragraph 4 of Schedule 13 to, the 2009 Act.



- (c) section 63(47) (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements);
- (d) section 64(48) (power of local authority to appoint additional governors);
- (e) section 65 (power of local authority to provide for governing bodies to consist of interim executive members) and Schedule 6; and
- (f) section 66(49) (power of local authority to suspend right to delegated budget).

## Access to education

### 10. Expenditure in relation to the following matters—

- (a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions;
- (b) planning and managing the supply of school places, including the authority's functions in relation to the establishment, alteration or discontinuance of schools pursuant to Part 2 of, and Schedule 2 to, the 2006 Act;
- (c) the authority's functions in relation to the exclusion of pupils from schools, excluding any provision of education to excluded pupils, but including advice to the parents of such pupils;
- (d) the authority's functions under sections 508A to 509A(50) (school travel) of the 1996 Act; and
- (e) the authority's functions under sections 510 and 514 of the 1996 Act (provision and administration of clothing grants and boarding grants), and pursuant to regulations made under section 518(2) of the 1996 Act.

11. Expenditure arising from the authority's functions under Chapter 2 of Part 6 of the 1996 Act (school attendance).

12. Expenditure on the provision of support for students under regulations made under section 1(1) of the Education Act 1962(51) and under section 22 of the Teaching and Higher Education Act 1998(52).

13. Expenditure on discretionary grants paid under section 1(6) or 2 of the Education Act 1962 (awards for designated and other courses).

14. Expenditure on the payment of 16-19 Bursaries(53).

15. Expenditure on the provision of tuition in music, or on other activities which provide opportunities for pupils to enhance their experience of music.

16. Expenditure incurred in enabling pupils to enhance their experience of the visual, creative and performing arts other than music.

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(47) Section 63 was amended by section 203 of, and paragraphs 5(2) and 5(3) of Schedule 13 to, the 2009 Act.

(48) Section 64 was amended by section 203 of, and paragraphs 6(2) to 6(5) of Schedule 13 to, the 2009 Act.

(49) Section 66 was amended by section 203 of, and paragraphs 7(a) and (b) of Schedule 13 to, the 2009 Act.

(50) Sections 508A to 509A were inserted by sections 57 and 76 to 78 of the 2006 Act and amended by section 103(1) of, and paragraph 23 of Schedule 2 to, the Childcare Act 2006 and section 54 of, and paragraphs 9(10) to 9(12) of Schedule 13 to, the Education Act 2011.

(51) 1962 c.12. The 1962 Act was repealed by the Teaching and Higher Education Act 1998 (c.30) with transitional savings provisions. The repeal does not affect the continued operation of the provisions that relate to the making of subordinate legislation. Relevant regulations made under section 1(1) of the 1962 Act are the Education (Mandatory Awards) Regulations 2003 (S.I. 2003/1994), as amended by S.I. 2004/1038 and S.I. 2004/1792. These Regulations describe the designated courses and methodology for calculating grants.

(52) 1998 c.30.

(53) A 16-19 Bursary is financial assistance under section 14 of the 2002 Act paid to, or in respect of, a person who is aged 16 to 19 in connection with undertaking any course or training.

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17. Expenditure on outdoor education centres, but not including centres wholly or mainly for the provision of organised games, swimming or athletics.

### **Additional education and training for children, young persons and adults**

18. Expenditure on the provision of education and training and of organised leisure time occupation, and other provision under sections 15ZA and 15ZC of the 1996 Act<sup>(54)</sup>.

19. Expenditure on the provision by the local authority under sections 507A and 507B of the 1996 Act<sup>(55)</sup> of recreation, social and physical training, educational leisure-time activities and recreational leisure-time activities.

### **Strategic management**

20.—(1) Expenditure on education functions related to—

- (a) functions of the director of children’s services and the personal staff of the director;
- (b) planning for the education service as a whole;
- (c) functions of the authority under Part I of the Local Government Act 1999<sup>(56)</sup> (Best Value) and the provision of advice to assist governing bodies in procuring goods and services with a view to securing continuous improvement in the way the functions of those governing bodies are exercised, having regard to a combination of economy, efficiency and effectiveness;
- (d) revenue budget preparation, preparation of information on income and expenditure relating to education for incorporation into the authority’s annual statement of accounts, and the external audit of grant claims and returns relating to education;
- (e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools) and, where it is the authority’s duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;
- (f) authorisation and monitoring of—
  - (i) expenditure which is not met from schools’ budget shares, and
  - (ii) expenditure in respect of schools which do not have delegated budgets, and all related financial administration;
- (g) the formulation and review of the methods of allocation of resources to schools and other bodies;
- (h) the authority’s monitoring of compliance with the requirements of their financial scheme prepared under section 48 of the 1998 Act, and any other requirements in relation to the provision of community facilities by governing bodies under section 27 of the 2002 Act;
- (i) internal audit and other tasks necessary for the discharge of the authority’s chief finance officer’s responsibilities under section 151 of the Local Government Act 1972<sup>(57)</sup>;
- (j) the authority’s functions under regulations made under section 44 of the 2002 Act<sup>(58)</sup>;
- (k) recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools’

<sup>(54)</sup> Sections 15ZA and 15ZC were inserted by section 41 of the 2009 Act.

<sup>(55)</sup> Sections 507A and 507B were inserted by section 6(1) of the 2006 Act.

<sup>(56)</sup> 1999 c. 27.

<sup>(57)</sup> 1972 c. 70.

<sup>(58)</sup> The Consistent Financial Reporting (England) Regulations 2012 (S.I. 2012/674).

- budget shares and who are paid for services carried out in relation to those of the authority's functions and services which are referred to in other paragraphs of this Schedule;
- (l) investigations which the authority carry out of employees, or potential employees, of the authority, or of governing bodies of schools, or of persons otherwise engaged, or to be engaged, with or without remuneration to work at or for schools;
  - (m) functions of the authority in relation to local government superannuation which it is not reasonably practicable for another person to carry out, and functions of the authority in relation to the administration of teachers' pensions;
  - (n) retrospective membership of pension schemes and retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body of a school to meet the cost from the school's budget share;
  - (o) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school, including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such staff;
  - (p) determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff;
  - (q) the authority's functions regarding the appointment or dismissal of employees;
  - (r) consultation and functions preparatory to consultation with or by governing bodies, pupils and persons employed at schools or their representatives, or with other interested bodies;
  - (s) compliance with the authority's duties under the Health and Safety at Work etc Act 1974(59) and the relevant statutory provisions as defined in section 53(1) of that Act, in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, the giving of advice to them;
  - (t) the investigation and resolution of complaints;
  - (u) legal services relating to the statutory functions of the authority;
  - (v) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
  - (w) provision of information to or at the request of the Crown and the provision of other information which the authority are under a duty to make available;
  - (x) the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies); and
  - (y) the authority's functions under the discrimination provisions of the Equality Act 2010(60) in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, the giving of advice to them.
- (2) References to schools in this paragraph are to schools maintained by the authority.

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(59) 1974 c.37.

(60) 2010 c.15.

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## Other functions

**21.** Expenditure in pursuance of a binding agreement, where the other party is a local authority, or the other parties include one or more local authorities, in relation to the operation of a facility provided partly, but not solely, for the use of schools.

**22.** Expenditure on establishing and maintaining those electronic computer systems, including data storage, which are intended primarily to maintain linkage between local authorities and schools which they maintain.

**23.** Expenditure on monitoring National Curriculum assessment arrangements required by orders made under section 87 of the 2002 Act.

**24.** Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act<sup>(61)</sup> or in the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act.

**25.** Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person except to the extent that these costs are chargeable to maintained schools' budget shares or fall within paragraph 4(b) of Schedule 2.

**26.** Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998.

**27.** Expenditure on the appointment of governors, the making of instruments of government, the payment of expenses to which governors are entitled and which are not payable from a maintained school's budget share, and the provision of information to governors.

**28.** Expenditure on making pension payments, other than in respect of staff employed in maintained schools.

**29.** Expenditure on insurance, other than for liability arising in connection with maintained schools or maintained school premises.

**30.** Expenditure in connection with powers and duties performed under Part 2 of the Children and Young Persons Act 1933<sup>(62)</sup> (enforcement of, and power to make byelaws in relation to, restrictions on the employment of children).

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<sup>(61)</sup> Section 390 was amended by section 140(1) of, and paragraph 93 of Schedule 20 to, the 1998 Act.

<sup>(62)</sup> 1933 c.12.

## SCHEDULE 2

Regulations 6 and 8

### CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE SCHOOLS BUDGET OF A LOCAL AUTHORITY WHICH MAY BE DEDUCTED FROM IT TO DETERMINE THE INDIVIDUAL SCHOOLS BUDGET

#### PART 1

##### Central Services

1. Expenditure on the operation of the system of admissions of pupils to schools (including expenditure incurred in carrying out consultations under section 88C(2) of the 1998 Act<sup>(63)</sup>) and in relation to appeals.
2. Expenditure in connection with the authority's functions under section 47A of the 1998 Act (establishment and maintenance of, and consultation with, schools forums).
3. CERA incurred for purposes not falling within any other paragraph of this Schedule or Schedule 1.
4. Expenditure in respect of—
  - (a) prudential borrowing;
  - (b) termination of employment costs, where the schools forum have approved the charging of these costs to the schools budget for the funding period in which they were incurred and the revenue savings achieved by the termination of employment to which they relate are equal to or greater than the costs incurred;
  - (c) services (often known as combined budgets) funded partly from central expenditure and partly from other budgets of the local authority or contributions from other bodies, where the expenditure relates to classes or descriptions of expenditure falling outside those set out in this Schedule;
  - (d) special educational needs transport costs; and
  - (e) purposes not falling within any other paragraph of this Schedule, provided that the expenditure does not amount in total to more than 0.1% of the authority's schools budget; which has been approved by the schools forum or the Secretary of State before 1st April 2013.
5. Any deductions under any of paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d) and 4(e) must not exceed the amount deducted under each of the corresponding paragraphs of Part 1 of Schedule 2 to the 2012 Regulations for the previous funding period.

#### PART 2

##### Central Schools Expenditure

6. Expenditure on pay arrears due to staff employed at maintained schools and other staff whose salaries are met from the schools budget, and expenditure on the costs of financing payment of such arrears, where the expenditure is not chargeable to a maintained school's budget share under the terms of the local authority's scheme.

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<sup>(63)</sup> Section 88C(2) was amended by section 51 of, and Schedule 4 to, the 2002 Act and sections 45 and 56 of the 2006 Act.

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7. Expenditure pursuant to section 18 of the 1996 Act<sup>(64)</sup> in making any grant or other payment in respect of fees or expenses (of whatever nature) which are payable in connection with the attendance of pupils at a school which is not maintained by any local authority.

8. Expenditure due to a significant growth in pupil numbers as a result of the local authority's duty under section 13(1) of the 1996 Act to secure that efficient primary education and secondary education are available to meet the needs of the population of their area.

9. Expenditure to be incurred due to a decline in pupil numbers in—

- (a) schools which were awarded either the highest or the second highest grade in their last inspection under section 5 of the 2005 Act, including those inspected during the funding period; and
- (b) Academy schools that have not previously been inspected under section 5 of the 2005 Act and have a predecessor school or schools which was awarded the highest or second highest grade in its last inspection under section 5 of the 2005 Act, including those inspected during the funding period,

where funding is likely to be necessary due to subsequent growth in pupil numbers at such schools before the end of the next three financial years after the funding period.

10. Expenditure to be incurred prior to the opening of new schools to fund the appointment of staff and to enable the purchase of any goods and services necessary in order to admit pupils.

11. Expenditure in order to make provision for extra classes in order to comply with the School Admissions (Infant Class Sizes) (England) Regulations 2012<sup>(65)</sup>.

12. Expenditure on licences which are negotiated centrally by the Secretary of State for all publicly funded schools.

13. Remission of boarding fees payable in connection with the attendance of pupils at maintained schools and Academies.

## PART 3

### Central Early Years Expenditure

14. Expenditure on early years provision, excluding expenditure—

- (a) on such provision in a maintained school;
- (b) on relevant early years provision;
- (c) on exempt early years provision; and
- (d) on community early years provision.

15. Expenditure on determining—

- (a) the eligibility for free school meals of a pupil who is being provided with early years provision; or
- (b) the eligibility of a child for prescribed early years provision.

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<sup>(64)</sup> Section 18 was amended by article 5(1) of, and paragraph 7 of Schedule 2 to, [S.I. 2010/1158](#).

<sup>(65)</sup> [S.I. 2012/10](#).

## PART 4

### Children And Young People With High Needs

**16.** Expenditure in respect of pupils with special educational needs in primary and secondary schools, and children with special educational needs in relevant early years providers, exempt early years providers and those being provided with community early years provision, excluding expenditure—

- (a) in respect of pupils in places which the authority have reserved for children with special educational needs; or
- (b) where it would be reasonable to expect such expenditure to be met from a school's budget share, the amount allocated to a relevant early years provider or the general annual grant paid to an Academy by the Secretary of State.

**17.** Expenditure in respect of pupils—

- (a) with special educational needs at special schools and special Academies; or
- (b) in places at primary or secondary schools which the authority have reserved for children with special educational needs,

where the expenditure cannot be met from the sum referred to in regulation 14(1) or 14(2).

**18.** Expenditure in respect of persons provided with further education who are—

- (a) aged under 19 and have learning difficulties; or
- (b) aged 19 or over but under 25 and are subject to learning difficulty assessment.

**19.** Expenditure on support services for children who have a statement of special educational needs and for children with special educational needs who do not have such a statement.

**20.** Expenditure for the purposes of encouraging—

- (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
- (b) the education of children with special educational needs at primary and secondary schools; and
- (c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs,

in cases where the local authority consider it would be unreasonable for such expenditure to be met from a school's budget share or the general annual grant paid to an Academy by the Secretary of State.

**21.** Expenditure incurred in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit, where the expenditure cannot be met from the sum referred to in regulation 14(3).

**22.** Expenditure on the payment of fees in respect of children with special educational needs—

- (a) at independent schools or at special schools which are not maintained by a local authority under section 348 of the 1996 Act; or
- (b) at an institution outside England and Wales under section 320 of the 1996 Act.

**23.** Expenditure on hospital education services, aside from expenditure on hospital education places referred to in regulation 14.

**24.** Expenditure on special schools and pupil referral units in financial difficulty.

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**25.** Expenditure on costs in connection with private finance initiatives and the programme known as “Building Schools for the Future” at special schools, special Academies, pupil referral units and alternative provision Academies**(66)**.

**26.** Expenditure on the purchase of CRC Energy Efficiency Scheme allowances operated by the Environment Agency for pupil referral units.

## PART 5

### Items That May Be Removed From Maintained Schools’ Budget Shares

**27.** Expenditure (other than expenditure referred to in Schedule 1 or any other paragraph of this Schedule) incurred on services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools.

**28.** Expenditure on determining the eligibility of a pupil for free school meals.

**29.** Expenditure on making payments to, or in providing a temporary replacement for, a woman on maternity leave or a person on adoption leave.

**30.** Expenditure on making payments to, or in providing a temporary replacement for, any person—

- (a) carrying out trade union duties or undergoing training under sections 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992**(67)**;
- (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c) performing public duties under section 50 of the Employment Rights Act 1996**(68)**;
- (d) undertaking jury service;
- (e) who is a safety representative under the Safety Representatives and Safety Committees Regulations 1977**(69)**;
- (f) who is a representative of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996**(70)**;
- (g) who is an employee representative for the purposes of Chapter 2 of Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992, as defined in section 196 of that Act or regulation 13(3) of the Transfer of Undertakings (Protection of Employment) Regulations 2006**(71)**;
- (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996;
- (i) undertaking duties as a member of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996**(72)**;
- (j) suspended from working at a school; or
- (k) who is appointed a learning representative of a trade union, in order for that person to analyse training requirements or to provide or promote training opportunities, and to carry out consultative or preparatory work in connection with such functions.

**(66)** “Alternative provision Academy” is defined in section 1C of the Academies Act 2010 (c.32).

**(67)** 1992 c.52. Section 168A was inserted by section 43 of the Employment Act 2002 (c.22).

**(68)** 1996 c.18.

**(69)** S.I. 1977/500, amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 1996/1513, 1999/860, 1999/2024, 1999/3242, 2005/1541, 2006/594 and 2008/960.

**(70)** S.I. 1996/1513, amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 1999/3242 and 2005/1541.

**(71)** S.I. 2006/246, amended by S.I. 2010/93.

**(72)** 1996 c.14.



**31.** Expenditure on making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local authority or the governing body of a school.

**32.** Expenditure on making payments to, or in providing a temporary replacement for, persons who have been continuously absent from work because of illness for 21 days or more.

**33.** Expenditure on insurance in respect of liability arising in connection with schools and school premises.

**34.** Expenditure on services to schools provided by museums and galleries.

**35.** Expenditure on library services.

**36.** Expenditure on licence fees or subscriptions paid on behalf of schools.

**37.** Expenditure on the schools' specific contingency.

**38.** Expenditure for the purposes of—

- (a) improving the performance of under-performing pupils from minority ethnic groups; or
- (b) meeting the specific needs of bilingual pupils.

### SCHEDULE 3

Regulation 18

#### ADDITIONAL REQUIREMENTS, OR FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT, IN A LOCAL AUTHORITY'S FORMULA UNDER REGULATION 18

### PART 1

#### Applicable only to budget shares for maintained schools

**1.** A single sum for primary schools—

- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
- (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.

**2.** A single sum for secondary schools—

- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
- (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.

**3.—(1)** Subject to sub-paragraph (5), in respect of pupils at key stages 1 and 2, a single per pupil amount based on the number of pupils in Year 1, Year 2, Year 3, Year 4 and Year 5 to whom either sub-paragraphs (2) and (4), or sub-paragraphs (3) and (4), applies.

(2) This sub-paragraph applies to pupils who achieved fewer than 73 points on the Early Years Foundation Stage Profile under the 2008 Document.

(3) This sub-paragraph applies to pupils who achieved fewer than 78 points on the Early Years Foundation Stage Profile under the 2008 Document.

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(4) This sub-paragraph applies to pupils who did not achieve expected development in relation to the relevant early learning goals in the Early Years Foundation Stage Profile under the 2012 Document.

(5) Where, in respect of the total number of pupils in the local authority, the percentage of those pupils to whom sub-paragraph (4) applies is greater than either—

- (a) the number of pupils to which sub-paragraph (2) applies, expressed as a percentage of the total pupils in the local authority, where the local authority is using sub-paragraph (2) to determine a single per pupil amount under sub-paragraph (1); or
- (b) the number of pupils to which sub-paragraph (3) applies, expressed as a percentage of the total pupils in the local authority, where the local authority is using sub-paragraph (3) to determine a single per pupil amount under sub-paragraph (1),

the authority may moderate the number of pupils to whom sub-paragraph (4) would otherwise apply, in accordance with sub-paragraph (6).

(6) The local authority may moderate the number of pupils to whom sub-paragraph (4) would otherwise apply by multiplying that number by a number between zero and one, but only where the resulting number expressed as a percentage of the number of pupils in the authority, is not less than the number referred to in sub-paragraph (5)(a) or (b), as appropriate.

4. In respect of pupils at key stages 3 and 4, a single per pupil amount based on—

- (a) the number of pupils who were assessed as achieving level 3 or lower in English or mathematics at key stage 2 under any arrangements predating the 2013 Document, and
- (b) the number of pupils who were assessed under the 2013 Document as achieving level 3 or lower in mathematics or English reading under the tests referred to in paragraph 4.1 of the 2013 Document or the teaching assessment of English writing.

5. A single per pupil amount for each pupil, based on the number of pupils in Year 1, Year 2 and at key stage 2 for whom English is not their first language, where either—

- (a) the pupil was not recorded as attending a school or schools in England on any school census before 6th October 2011;
- (b) the pupil was not recorded as attending a school or schools in England on any school census before 4th October 2012; or
- (c) the pupil was not recorded as attending a school or schools in England on any school census before 3rd October 2013.

6. A single per pupil amount for each pupil, based on the number of pupils at key stages 3 and 4 for whom English is not their first language, where either—

- (a) the pupil was not recorded as attending a school or schools in England on any school census before 6th October 2011;
- (b) the pupil was not recorded as attending a school or schools in England on any school census before 4th October 2012; or
- (c) the pupil was not recorded as attending a school or schools in England on any school census before 3rd October 2013.

7.—(1) Where the total number of pupils to whom sub-paragraph (2)(a) and (b) applies is more than 10% of the total number of pupils at key stages 1 and 2 in the school, a single per pupil amount for every pupil in excess of the said 10%.

(2) This sub-paragraph applies to—

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- (a) pupils at key stages 1 and 2 who joined in the previous three academic years at any time other than August or September, excluding pupils who joined the school in the nursery class, if the school has such a class;
  - (b) pupils at key stages 1 and 2 who joined in the reception class at any time other than January, in the previous three academic years.
- 8.** Where the total number of pupils at key stages 3 and 4 who joined the school in the last three academic years at any time other than August or September is more than 10% of the total number of pupils at key stages 3 and 4, a single per pupil amount for every pupil in excess of the said 10%.
- 9.** A single per pupil amount, based on the number of pupils who were looked after children on 31st March 2013.
- 10.** Funding for schools with split sites, where the funding must be in accordance with criteria published by the authority.
- 11.** Non-domestic rates payable in respect of the premises of each school (including actual or estimated cost).
- 12.** Payments in relation to a private finance initiative (including actual or estimated cost).
- 13.** Differential salaries of teachers at schools in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex due to the schools being in different London salary weighting areas.
- 14.**—(1) In respect of all primary schools to which sub-paragraph (2) applies, other than those which are middle schools or all-through schools, an amount calculated in accordance with sub-paragraphs (3) and (4)—
- (2) This sub-paragraph applies where—
    - (a) in respect of those pupils for which the school is their home school, the mean of the distances between each pupil’s home and their second closest school is more than or equal to a distance determined by the local authority of at least two miles and the same distance must be applied to all such schools; and
    - (b) the number of pupils in the school is less than a number determined by the authority, such number must be no more than 150 and the same number must be applied to all such schools.
  - (3) Subject to sub-paragraph (4), the amount is either—
    - (a) a single sum of up to £100,000, and each school must be allocated the same sum, or
    - (b) a sum of the amount  $A \times (1 - B / C)$  where—
      - $A$  is a sum of up to £100,000, and the same sum must be used in the calculation for each school
      - $B$  is the number of pupils in the school
      - $C$  is the number determined by the authority in sub-paragraph (2)(b).
  - (4) The authority must use the same method of calculating the amount under sub-paragraph (3) in respect of all schools to which sub-paragraph (2) applies.
- 15.**—(1) Where sub-paragraph (2) applies in respect of secondary schools, primary schools which are middle schools and primary schools which are all-through schools, an amount calculated in accordance with sub-paragraphs (3) and (4)—
- (2) This sub-paragraph applies where—

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- (a) in respect of those pupils for which the school is their home school, the mean of the distances between each pupil's home and their second closest school is more than or equal to a distance determined by the local authority of at least—
    - (i) two miles in respect of middle schools,
    - (ii) two miles in respect of all-through schools,
    - (iii) three miles in respect of secondary schools other than middle schools or all-through schools; and
  - (b) the number of pupils in the school is less than a number determined by the authority, such number must be no more than 600 and the same number must be applied to all of the schools listed in Paragraph (2)(a)(i) to (iii).
- (3) Subject to sub-paragraph (4) the amount is either—
- (a) a single sum of up to £100,000, and each school must be allocated the same sum, or
  - (b) a sum of the amount  $A \times (1 - B / C)$  where—
    - A* is a sum of up to £100,000, and the same sum must be used in the calculation for each school
    - B* is the number of pupils in the school
    - C* is the number determined by the authority in sub-paragraph (2)(b).
- (4) The authority must use the same method of calculating the amount under sub-paragraph (3) in respect of all schools to which sub-paragraph (2) applies.

## PART 2

### Applicable only to budget shares for, and amounts to be allocated to, providers of prescribed early years provision

- 16.** Incidence of looked after children.
- 17.** Prior attainment of pupils entering a school or children entering a relevant early years provider, exempt early years provider or school where they will receive community early years provision.
- 18.** Pupils and children for whom English is not their first language.
- 19.** A single sum for each school, relevant early years provider, exempt early years provider and school providing community early years provision, which may vary according to the type of provider.
- 20.** Funding for schools, relevant early years providers, exempt early years providers and schools providing community early years provision with split sites, where the funding must be in accordance with criteria published by the authority.
- 21.** Non-domestic rates payable in respect of the premises of each school, relevant early years provider, exempt early years provider or school providing community early years provision (including actual or estimated cost).
- 22.** Payments in relation to a private finance initiative (including actual or estimated cost).
- 23.** Differential salaries of teachers at schools in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex due to the schools being in different London salary weighting areas.
- 24.** The need to improve the quality of provision by particular providers or types of provider.

25. The degree of flexibility in the hours of attendance that a provider makes available.
26. The need to secure or sustain a sufficiency of prescribed early years provision within the authority's area or any sub-area within that area; and in this paragraph "sub-area" means—
- (a) an electoral division or ward of the authority; or
  - (b) such other appropriate geographical division into which the authority have notionally divided their area.

#### SCHEDULE 4

Regulation 19

##### MINIMUM FUNDING GUARANTEE

1. In this Schedule—
- (a) references to the number of pupils exclude those funded by a sixth form grant and those in places which the local authority have reserved for children with special educational needs;
  - (b) the "relevant number" of pupils for the previous funding period is the number of pupils at the school on 4th October 2012;
  - (c) the "relevant number" of pupils for the funding period is the number of pupils at the school on 3rd October 2013;
  - (d) references to a redetermined adjusted budget share for the previous funding period must be reduced by the following—
    - (i) any amount included pursuant to regulation 20 (sixth form funding) of the 2012 Regulations;
    - (ii) any amount allocated to the school pursuant to Schedule 3 of the 2012 Regulations where such amount has been deducted from the schools budget under Part 4 (Children And Young People With High Needs) of Schedule 2;
    - (iii) any amount allocated to the school pursuant to regulation 10(3)(b) (nursery classes) of the 2012 Regulations;
    - (iv) any amount included in respect of paragraph 10 (rates) of Schedule 3 of the 2012 Regulations;
    - (v) any amount allocated to the school pursuant to paragraph 1 (primary single sum) of Schedule 3;
    - (vi) any amount allocated to the school pursuant to paragraph 2 (secondary single sum) of Schedule 3;
    - (vii) any amount allocated to the school pursuant to paragraph 14 (primary sparsity) of Schedule 3; and
    - (viii) any amount allocated to the school pursuant to paragraph 15 (secondary sparsity) of Schedule 3.
  - (e) references to a redetermined adjusted budget share for the funding period include the effect of any alternative arrangements approved by the Secretary of State under regulation 25, but are reduced by the following—
    - (i) any amount included pursuant to regulation 20 (sixth form funding);
    - (ii) any amount allocated under regulation 14(2) (places in special schools and places reserved for children with special educational needs);
    - (iii) any amount included in respect of paragraph 11 (rates) of Schedule 3;

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- (iv) any amount allocated to the school pursuant to paragraph 1 (primary single sum) of Schedule 3;
  - (v) any amount allocated to the school pursuant to paragraph 2 (secondary single sum) of Schedule 3;
  - (vi) any amounts allocated pursuant to regulation 10(1) (formula for determining budget shares) which would have been within a class or description of the expenditure listed in Schedule 2 to the 2012 Regulations that the authority deducted in the previous funding period;
  - (vii) any amount allocated to the school under regulation 10(3) (early years single funding formula);
  - (viii) any amount allocated to the school pursuant to paragraph 14 (primary sparsity) of Schedule 3; and
  - (ix) any amount allocated to the school pursuant to paragraph 15 (secondary sparsity) of Schedule 3.
- (f) for the purposes of this Schedule—
- (i) where a school opened during the previous funding period, its redetermined adjusted budget share for the previous funding period is the amount it would have been had the school opened on 1st April 2013; and
  - (ii) where a school opens during the funding period, its redetermined adjusted budget share for the funding period is the amount it would have been had the school opened on 1st April 2014,
- in both cases adjusted in accordance with sub-paragraph (d) or (e), whichever is applicable.
- 2.** Where  $(A/B)$  is less than  $(C/D)$  then the guaranteed funding level is  $(C/D) \times B$  where—
- A* is the redetermined adjusted budget share for the funding period;
  - B* is the relevant number of pupils in the funding period;
  - C* is the redetermined adjusted budget share for the previous funding period multiplied by 0.985; and
  - D* is the number of relevant pupils in the previous funding period.
- 3.** Where a new school opens during the funding period and is a replacement for two or more schools being discontinued during the funding period its guaranteed funding level must be calculated in accordance with paragraph 2, subject to paragraph 4.
- 4.** In calculating the guaranteed level of funding under paragraph 3 the relevant number of pupils in the previous funding period under paragraph 1(b) is the sum of the relevant number of pupils in the discontinued schools on 4th October 2012.

## SCHEDULE 5

Regulation 26

### CONTENTS OF SCHEMES

- 1.** The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares.
- 2.** Amounts which may be charged against schools' budget shares.

3. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
4. The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.
5. Terms on which services and facilities are provided by the authority for schools maintained by them.
6. The payment of interest by or to the authority.
7. The times at which amounts equal in total to the school's budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.
8. The virement between budget heads within the delegated budget.
9. Circumstances in which a local authority may delegate to the governing body the power to spend any part of the authority's non-schools education budget or schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act(73).
10. The use of delegated budgets and of sums made available to a governing body by the local authority which do not form part of delegated budgets.
11. Borrowing by governing bodies.
12. The banking arrangements that may be made by governing bodies.
13. A statement as to the personal liability of governors in respect of schools' budget shares having regard to section 50(7) of the 1998 Act.
14. A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act(74).
15. The keeping of a register of any business interests of the governors and the head teacher.
16. The provision of information by and to the governing body.
17. The maintenance of inventories of assets.
18. Plans of a governing body's expenditure.
19. A statement as to the taxation of sums paid or received by a governing body.
20. Insurance.
21. The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc Act 1974.
22. The provision of legal advice to a governing body.
23. Funding for child protection issues.
24. How complaints by persons working at a school or by school governors about financial management or financial propriety at the school will be dealt with and to whom such complaints should be made.
25. Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the 2002 Act.

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(73) Section 49(4) was amended by section 215 of, and paragraph 100 of Schedule 21 to, the 2002 Act.

(74) Section 519 was amended by section 140 of, and paragraph 139 of Schedule 2 to, the 1998 Act.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the financial arrangements of local authorities in relation to the funding of maintained schools and providers of prescribed early years provision in England, for the financial year 2014-2015.

The School Finance (England) Regulations 2012 are revoked. The School and Early Years Finance (England) Regulations 2012 remain in force.

These Regulations define the non-schools education budget (regulation 4 and Schedule 1), the schools budget (regulation 6 and Schedule 2), central expenditure and the individual schools budget (regulation 8 and Schedule 2). They require local authorities to determine budget shares for schools maintained by them and amounts to be allocated in respect of early years provision in their area, in accordance with the appropriate formulae (regulations 10 and 11). They impose a minimum funding guarantee (regulation 19 and Schedule 4) and requirements in relation to local authorities' schemes (regulation 26 and Schedule 5).

No impact assessment has been prepared for these Regulations as they have minimal impact on businesses, civil society organisations and the public sector.