
STATUTORY INSTRUMENTS

2013 No. 3104

The School and Early Years Finance
(England) Regulations 2013

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⁽¹⁾ (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).

(1) 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).

(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 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⁽²⁾;

(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

(2) [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.

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.

(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

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- (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).