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STATUTORY INSTRUMENTS

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**2013 No. 3104**

The School and Early Years Finance  
(England) Regulations 2013

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)  $A$  is the total number of pupils in the school;
- (b)  $B$  is the number of places in the school which the authority have reserved for children with special educational needs;
- (c)  $C$  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)  $D$  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—

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

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) 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;
- (b) 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(1).
- (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(2).

### **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,

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(1) S.I. 2012/2488.

(2) 1989 c.41.

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.

(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>(3)</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).

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(3) “School year” is defined in section 579(1) of the 1996 Act.

(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.

(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>(4)</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

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

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);
- (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.