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STATUTORY INSTRUMENTS

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**2021 No. 59**

The School and Early Years Finance  
(England) Regulations 2021

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 its formula the number of pupils who were 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  $A - B$  where—

- (a)  $A$  is the total number of pupils in the school; and
- (b)  $B$  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 1st October 2020.

(4) Where—

- (a) there is or may be an increase to the published admission number at the school; or
- (b) the school is subject to a prescribed alteration that may lead to an increase in the number of pupils at the school,

the authority may, instead of ascertaining pupil numbers on 1st October 2020, include an estimate of pupil numbers.

(5) Where a primary school had more pupils in reception classes on 16th January 2020 than on 3rd October 2019, the local authority may take the number of additional pupils into account in its formula, and where it does so this factor must be applied to all primary schools in the area.

(6) A local authority must include in its 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.

(7) In this regulation, “published admission number” means the number of pupils in any relevant age group at the school determined by the admission authority under sections 88C and 88D of the 1998 Act<sup>(1)</sup>.

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(1) Sections 88C and 88D of the 1998 Act were inserted by section 151(1) and (4) of the Education and Skills Act 2008. For the meaning of “admission authority”, see section 88(1) of the 1998 Act.

**Places**

14.—(1) In determining budget shares for special schools, a local authority—

- (a) must include £10,000 for each place other than—
  - (i) hospital education places; and
  - (ii) places for those who are over 18, unless they are aged 19 and are continuing to attend a particular course of secondary education which they began before they reached the age of 18; and
- (b) must not include funding for places described in sub-paragraph (a)(ii).

(2) In determining budget shares for primary or secondary schools maintained by the local authority, with places which the authority has reserved for children with special educational needs, a local authority must—

- (a) in the case of a place that was taken by a pupil on 1st October 2020, include £6,000 per place, and
- (b) in all other cases except hospital education places, include £10,000 per place.

(3) In determining budget shares for pupil referral units, a local authority must include £10,000 for each place other than hospital education places.

(4) Paragraph (3) applies to places to be commissioned by schools or directly by a local authority.

(5) For each hospital education place referred to in paragraphs (1) to (3) the local authority must include at least 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.

(6) In determining budget shares under this regulation, a local authority must ensure that it funds places which may be taken by children who are not ordinarily resident in their area.

**Social deprivation**

15.—(1) In determining budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority must take into account in its formula one or more factors based on the incidence of social deprivation in pupils at the schools maintained by it.

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

- (a) a pupil's eligibility for free school meals on 1st October 2020;
- (b) a pupil's eligibility for free school meals recorded in any school census between and including Summer 2014 and Spring 2020; and
- (c) a pupil's LSOA rank on 1st October 2020,

and where it is based on an LSOA rank the authority may use factors which differentiate between different LSOA bands (that is, groupings of LSOA ranks set out in the document published by the Department for Education named "Schools Revenue Funding 2021 to 2022: Operational Guide"<sup>(2)</sup>).

(3) In determining budget shares under paragraph (1), the authority may take into account in its 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 using the criteria in paragraph (2).

(2) Published in July 2020 and available at: <https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2021-to-2022>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

- (5) Subject to regulation 25, 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 it;
  - (c) amounts to be allocated to relevant early years providers in its area; and
  - (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must take into account in its formula one or more 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 it;
  - (c) amounts to be allocated to relevant early years providers in its area; and
  - (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority may take into account in its formula one or more 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 and community early years provision**

- 16.—**(1) Subject to this regulation, in determining—
- (a) budget shares for nursery schools maintained by it;
  - (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
  - (c) amounts to be allocated to relevant early years providers in its area; and
  - (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

a local authority must take into account in its formula the predicted total number of hours of attendance of pupils or children, basing the calculation on 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 decides to fund only funded 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 of children being provided community early years provision, who

- will receive funded early years provision during the period (basing the calculation on 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 decides to fund early years provision in excess of funded 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 of children being provided community early years provision, who will receive early years provision during the period (basing the calculation on 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
- (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 funded early years provision from the relevant early years provider, during the period (basing the calculation on 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 under 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, or the relevant early years provider concerned.
- (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 it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area;
- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,
- a local authority may take into account in its formula the number of places it wishes to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where the authority has reserved those places for children with special educational needs or children in need.
- (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 1989 Act.

### **Early years pupil premium**

17.—(1) When determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area;

- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,  
a local authority must include in the amount to be allocated an amount equivalent to 53 pence for each child eligible who is eligible for the early years pupil premium, for each hour of early years provision that the child receives, up to a maximum of 570 hours.
- (2) A child is eligible for early years pupil premium if the child—
- (a) is eligible for funded early years provision under regulation 3(3) of the Early Years Provision Regulations 2014;
  - (b) receives at least one hour of such provision; and
  - (c) either—
    - (i) the child’s parents are receiving one or more of the benefits in paragraph (3), or
    - (ii) the child has previously been looked after by a local authority and is no longer so looked after as a result of the making of an order in paragraph (4).
- (3) The benefits are—
- (a) universal credit where the child’s parent has, in the relevant period, earned income not exceeding the applicable amount;
  - (b) income support;
  - (c) income-based jobseekers’ allowance;
  - (d) income-related employment and support allowance;
  - (e) support under Part VI of the Immigration and Asylum Act 1999;
  - (f) the guaranteed element of state pension credit;
  - (g) child tax credit (where the recipient is not also entitled to working tax credit and has an annual gross income of no more than £16,190), and
  - (h) working tax credit run-on.
- (4) The orders are—
- (a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002<sup>(3)</sup>;
  - (b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act<sup>(4)</sup>; and
  - (c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act<sup>(5)</sup> which consists of, or includes, arrangements relating to either or both of the following—
    - (i) with whom the child is to live;
    - (ii) when the child is to live with any person.
- (5) A local authority must include in the amount to be allocated for relevant early years provision or community early years provision in its area an amount of £302.10 (equivalent to 53 pence multiplied by 570) for each looked after child aged three or four years old in the local authority’s area.
- (6) The allocation referred to in paragraph (5) must be managed by the local authority’s designated virtual school head for the benefit of the educational needs of the relevant looked after children as described in their personal education plans (that is, plans relating to the children’s education and training, including as far as is relevant and reasonably practicable the information in paragraph 2 of Schedule 1 to the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(6)</sup>).

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(3) [2002 c.38](#).

(4) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

(5) Section 8(1) was amended by section 12 of the 2014 Act.

(6) [S.I. 2010/959](#).

(7) In paragraph (6), “virtual school head” means a person appointed by a local authority under section 22(3B) of the 1989 Act<sup>(7)</sup> for the purpose of discharging the local authority’s duty set out in section 22(3A) of that Act (duty to promote the educational achievement of children looked after by the authority).

(8) No early years provider may receive an amount of more than £302.10 per child under this regulation.

(9) A child who on 1st April 2018 was eligible, or after that date became or becomes eligible, for early years pupil premium continues to be so eligible notwithstanding any change in circumstances which would otherwise result in paragraph (2)(c)(i) ceasing to be satisfied or, in the case of paragraph (3)(a), the earned income of the child’s parent subsequently exceeding the applicable amount.

(10) In this regulation—

- (a) “earned income” means income for the purposes of Chapter 2 of Part 6 of the Universal Credit Regulations 2013<sup>(8)</sup>;
- (b) the relevant assessment period and the applicable amount are those referred to in the following sub-paragraphs as applicable—
  - (i) except where paragraphs (ii) or (iii) apply, where the parent had earned income which did not exceed £616.67 in the universal credit assessment period<sup>(9)</sup> immediately preceding the date of the request for early years pupil premium (period 1)—
    - (aa) the relevant assessment period is period 1; and
    - (bb) the applicable amount is £616.67;
  - (ii) this paragraph applies where paragraph (i) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 2) immediately preceding period 1 referred to in that paragraph—
    - (aa) the relevant assessment period is the sum of period 1 and period 2 (SAP); and
    - (bb) the applicable amount is £1,233.34;
  - (iii) this paragraph applies where paragraph (ii) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 3) immediately preceding period 2 referred to in that paragraph—
    - (aa) the relevant assessment period is the period made up of SAP and period 3; and
    - (bb) the applicable amount is £1,850;
- (c) where the parent referred to in paragraph (3)(a) is—
  - (i) a member of a couple who have jointly made a claim for, and are in receipt of, universal credit; or
  - (ii) a member of a couple but has claimed, and is in receipt of, universal credit as a single person,
 references to applicable amounts in paragraphs (i) to (iii) of paragraph (b) as applicable are to be read as references to the combined income of the couple;
- (d) “parent” has the meaning given by section 2(2) of the Childcare Act 2006.

<sup>(7)</sup> Section 22(3A) was inserted by section 52 of the Children Act 2004 (c. 31); section 22(3B) was inserted by section 99 of the 2014 Act.

<sup>(8)</sup> S.I. 2013/376. Chapter 2 of Part 6 is concerned with earned income for the purposes of calculating an award of universal credit.

<sup>(9)</sup> An assessment period is prescribed by regulation 21(1) of the Universal Credit Regulations 2013 as a period of one month beginning with the first day of entitlement and each subsequent period of one month during which entitlement subsists.

### **Disability access fund**

**18.**—(1) When determining—

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

a local authority must include in the amount to be allocated a single amount of at least £615 for each disabled child who is in receipt of funded early years provision by virtue of regulation 3(3) of the Early Years Provision Regulations 2014.

(2) A local authority may only include an amount under paragraph (1) once in respect of any child.

(3) For the purposes of this regulation, a child is disabled if he or she is paid or entitled to disability living allowance by virtue of section 71 of the Social Security Contributions and Benefits Act 1992<sup>(10)</sup>.

(4) The duty in paragraph (1) does not apply in respect of early years provision which is funded under regulation 14.

### **Risk Protection Arrangement**

**19.**—(1) Paragraph (2) applies if a local authority has not removed any expenditure referred to in paragraph 48 of Schedule 2 from a school's budget share under regulation 11(5).

(2) In determining (including redetermining) budget shares for schools maintained by it a local authority must include a factor which enables the local authority to—

- (a) deduct the amount ( $£19 \times Z/365$ ) per pupil from the budget share of a primary or secondary school, (other than a special school or pupil referral unit), if the governing body of that school enters into a Risk Protection Arrangement with the Secretary of State which commences on or after 1st April 2021;
- (b) deduct the amount ( $£19 \times Z/365$ ) per place from the budget share of a special school or pupil referral unit if—
  - (i) the governing body of that school, or
  - (ii) in the case of a pupil referral unit, the local authority,

enters into a Risk Protection Arrangement with the Secretary of State which commences on or after 1st April 2021.

(3) In paragraph (2)(a) and (b), Z is the number of days that the school or pupil referral unit is subject to a Risk Protection Arrangement with the Secretary of State, beginning with the day on which that Risk Protection Arrangement commences and ending with 31st March 2022.

### **Differential funding**

**20.**—(1) For the purpose of determining (including redetermining)—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) amounts to be allocated to relevant early years providers in its area; and

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(10) 1992 c.4.

- (d) amounts to be allocated in respect of community early years provision in schools maintained by it,

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.

- (2) In particular, a local authority may include an additional sum in the budget share of each nursery school maintained by it.

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

**21.**—(1) In order to determine the budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority—

- (a) must comply with the requirement for minimum per pupil funding set out in regulation 22, and
- (b) may take into account in its formula any or all of the requirements, factors or criteria mentioned in Part 1 of Schedule 3.

- (2) For the purposes of—

- (a) complying with the requirement mentioned in paragraph (1)(a), or
- (b) taking into account the matters mentioned in paragraph (1)(b),

the date for ascertaining pupil numbers or proportions is 1st October 2020, unless these Regulations provide otherwise.

- (3) Subject to regulation 25, in determining—

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

a local authority may, in its formula, provide additional funding to the provider, taking into account any or all of the factors in Part 2 of Schedule 3.

- (4) 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.

(5) Subject to paragraphs (7) and (8), 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;
- (b) determine a percentage by which the amount that the per pupil redetermined adjusted budget share would otherwise increase by will be reduced.

(6) In paragraph (5) “redetermined adjusted budget share for the previous funding period” and “redetermined adjusted budget share” have the same meanings as in Schedule 4.

- (7) Where the local authority decides to take one or both of the actions described in paragraph (5) (a) and (b)—

- (a) this must be applied to the budget shares of all schools in the local authority’s area; and
- (b) the local authority must ensure that no school in the area receives a budget share that is less than the amount it would receive under regulation 22 (the minimum per pupil funding requirement).



- (8) Paragraph (5) does not apply to the determination of budget shares for—
- (a) special schools;
  - (b) pupil referral units;
  - (c) nursery schools; and
  - (d) any school that has opened since 1st April 2014 and does not yet have pupils in each year group for which it proposes to provide education.

**Minimum per pupil amount**

22.—(1) Where the per pupil amount for a school is less than the minimum per pupil amount, the authority must determine (including redetermine) that school’s budget share based on the minimum per pupil amount.

- (2) In this paragraph, the per pupil amount for a school is—

$$\frac{X}{Y}$$

Where—

X is the notional budget share that the school would receive under the formula referred to in regulation 10(1), but for the operation of this paragraph.

Y is the number of pupils at the school.

- (3) In calculating X, the authority must—
- (a) deduct any premises factor allocation from the amount;
  - (b) add any amount that is deducted under regulation 11(5) or (6), 19(2), 29 or 30(1);
  - (c) deduct any amount that is added under regulation 29 or 30(1).
- (4) In this paragraph, the minimum per pupil amount for a school is—

$$\frac{(A \times D) + (B \times E) + (C \times F)}{G}$$

Where—

A is the number of primary-age year groups in the school.

B is the number of key stage 3 year groups in the school.

C is the number of key stage 4 year groups in the school.

D is the primary-age year group value of £4,180.

E is the key stage 3 year group value of £5,215.

F is the key stage 4 year group value of £5,715.

G is the total number of year groups in the school.

(5) Where authorised to do so by the Secretary of State under regulation 31 (alternative arrangements), a local authority may—

- (a) vary the year group values D, E or F set out in paragraph (4) for all the schools that are subject to the formula decided by the authority under regulation 10(1), and
- (b) alter the operation of this regulation in respect of particular schools.

**Minimum funding guarantee**

**23.**—(1) Except as provided for in this regulation, in determining (including redetermining) budget shares for primary and secondary schools maintained by it, a local authority must ensure that an amount equal to the guaranteed funding level is included, calculated in accordance with Schedule 4 (minimum funding guarantee).

(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) Where authorised to do so by the Secretary of State under regulation 31 (alternative arrangements), a local authority may alter the operation of this regulation and Schedule 4 in determining (including redetermining) budget shares.

**Early years 95 per cent requirement**

**24.**—(1) In making determinations under regulation 11(9), a local authority must comply with the formula set out in this regulation.

(2) The formula is  $(A - B) / C$  is no less than 95 percent of D, where—

(a) A is the total of—

- (i) all budget shares and amounts determined by the authority under regulation 11(9);
- (ii) any amount deducted by the authority under paragraph 27 of Schedule 2 to these Regulations; and
- (iii) any amount of the fund established under paragraph 32 of Schedule 2 to these Regulations, which the authority intends to distribute to early years providers;

(b) B is the total of—

- (i) the maintained nursery school supplement, and
- (ii) any part of the budget share or amount determined by the authority under regulation 11(9) in respect of disadvantaged two-year-olds;

(c) C is the total number of hours of attendance of children, predicted by the authority under regulation 16(1), less any predicted hours of attendance of disadvantaged two-year-olds;

(d) D is the hourly unit funding rate, notified to the local authority in the early years block.

**10 per cent early years discretionary funding cap**

**25.**—(1) A local authority must ensure that the total amount of discretionary funding does not exceed 10 per cent of early years allocations.

(2) In this regulation, “discretionary funding” means funding that is attributable to—

- (a) the factors based on the incidence of social deprivation in pupils or children referred to in regulation 15(5) (social deprivation), and
- (b) the requirements, factors and criteria set out in Part 2 of Schedule 3 which by virtue of regulation 21(3) a local authority may take into account in its formula.

(3) In this regulation, early years allocations is the total amount of the following budget shares and amounts determined by the local authority under regulation 11(9)—

- (a) the budget shares for nursery schools maintained by the authority,
- (b) the amounts to be allocated in respect of nursery classes in schools maintained by it;
- (c) the amounts to be allocated to relevant early years providers in its area; and
- (d) the amounts to be allocated in respect of community early years provision in schools maintained by it.

less any of the amounts specified in paragraph (4).

- (4) The following are not included in early years allocations for the purposes of this regulation—
- (a) any amounts allocated in respect of disadvantaged two-year-olds; and
  - (b) the maintained nursery school supplement.

### **Sixth form funding**

**26.**—(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 of sixth form grant for that school.

(2) A local authority may also include an additional amount in the budget shares of maintained secondary schools and special schools where permitted to do so under the sixth form grant.

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

**27.**—(1) Where in the funding period, but excluding 1st April 2021, a new maintained school opens, and is a replacement for two or more maintained schools that are discontinued during the 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—

- (a) any new maintained school in its area, and
- (b) any school that has opened since 1st April 2014 and does not yet have pupils in each year group for which the school proposes to provide education,

from the date of the school's opening on the basis of expected pupil numbers during the funding period estimated by the authority, and regulation 13 does not apply.

(3) Where a school to which paragraph (2) applies was funded on the basis of estimated pupil numbers in the previous funding period, the local authority may take account of any difference between estimated and actual pupil numbers in the previous funding period when estimating pupil numbers for the funding period.

(4) Where in the previous funding period or on 1st April 2021 a new maintained school opened or opens and is a replacement for two or more maintained schools that were discontinued during the previous funding period or on 1st April 2021, 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) if the schools had not been discontinued.

(5) Where paragraph (4) applies, no single sum is to be included in the new school's budget share under paragraph 1 or 2 of Schedule 3.

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

(7) Where in the funding period, but excluding 1st April 2021, a maintained school is subject to a prescribed alteration as a result of a closure of a school, a local authority must redetermine the budget share of the enlarged school by adding to it the budget share of the school that has been discontinued.

(8) Where in the previous funding period or on 1st April 2021 a maintained school is subject to a prescribed alteration as a result of a closure of a school during the previous funding period or on

1st April 2021, a local authority must include in the budget share of the enlarged school an amount equal to 85% of the total amount which the schools whose provision it has replaced would have been allocated in their budget shares under paragraph 1 and 2 of Schedule 3 if the school had not been discontinued.

(9) Where in the funding period, but excluding 1st April 2021, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, a local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.

(10) A local authority may change the operation of this regulation where authorised to do so by the Secretary of State under regulation 31 (alternative arrangements).

### **Federated schools**

**28.**—(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 decides to allocate a single budget share to the governing body of a federation under paragraph (2), it must determine it 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**

**29.**—(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, a pupil referral unit, or a place which the authority has 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  $A \times (B / 52) + C$  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 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 under a financial adjustment order.

(3) Where a pupil has been permanently excluded from the excluding school and is admitted to another school maintained by a local authority (other than a special school, a pupil referral unit, or to a place which the authority has 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 is not less than  $D \times (E / F)$  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 if that school had been maintained by the authority, except that any reduction in the excluding school's budget share made under 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 to the excluding school's budget share under 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, a pupil referral unit, or a place which the authority has 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 a sixth form grant is payable in respect of the pupil in question, the amount attributable to that pupil is £4,188 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 is not 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>(11)</sup> in respect of the exclusion of the pupil from the excluding school.

(11) S.I. 2012/1033.

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

**30.**—(1) A local authority may at any time during the funding period redetermine a maintained school's budget share, or the amount allocated to a relevant early years provider, for the funding period or any previous funding period in order to correct an error in a determination or redetermination made under these Regulations or any previous regulations made under sections 47 or 47ZA of the 1998 Act, 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 the Secretary of State**

**31.**—(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 3 of Schedule 2 when deducting any expenditure referred to in regulation 8(4) (historic commitments);
- (b) disregard regulation 8(7) (determination of the individual schools budget for the funding period and limit on increase in central expenditure);
- (c) deduct any expenditure referred to in regulation 8(12)(a) (expenditure falling outside Schedule 2);
- (d) alter the operation of regulation 11(3) (additional expenditure on children with special educational needs);
- (e) determine (including redetermine) budget shares of schools maintained by it;
- (f) determine (including redetermine) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (g) determine (including redetermine) amounts to be allocated to relevant early years providers in its area;
- (h) include additional factors or criteria in its 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 proposes to include in its formula under regulation 10(3) (early years single funding formula);
- (j) alter the operation of regulation 23 (minimum funding guarantee) and Schedule 4 in respect of particular schools;
- (k) vary any or all of the year group values D, E or F set out in regulation 22(4) for all the schools that are subject to the formula decided by the authority under regulation 10(1);
- (l) alter the operation of regulation 22 (minimum per pupil amount) in respect of particular schools;
- (m) disregard regulation 13 (pupil numbers);
- (n) alter the operation of regulation 27 (new schools, merged schools and closing schools) in respect of particular schools;

- (o) alter the operation of paragraphs 14 (primary population sparsity) and 15 (secondary population sparsity) of Schedule 3 in respect of particular schools; and
  - (p) alter the operation of regulation 24 (early years 95 per cent requirement).
- (2) The Secretary of State may authorise the matters in paragraph (1) to such extent as he or she may specify in accordance with arrangements approved in place of the arrangements provided for by these Regulations.