

EXPLANATORY MEMORANDUM TO

THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2021

2021 No. 59

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The School and Early Years Finance (England) Regulations 2021 provide instruction on how local authorities are to set their education budgets in the 2021-22 financial year. They also make permanent a change to the Regulations governing schools forums which allows them to meet remotely.
- 2.2 In particular, these Regulations set the parameters that local authorities must abide by in determining schools' budgets, and the budgets which are allowed to be retained centrally. They also set out how local authorities are to allocate funding to maintained schools and private, voluntary and independent providers of free early years provision through locally-determined funding formulae.
- 2.3 The Department for Education makes this instrument annually; these Regulations will apply only to budgets for the 2021-22 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 ("SSFA 1998"), which concerns the financing of maintained schools. They relate to the 2021-22 financial year and need to be made because the

School and Early Years Finance (England) Regulations 2020 (“the 2020 Regulations”) apply only up to the end of the 2020-21 financial year. The Department for Education makes the instrument annually.

7. Policy background

What is being done and why?

- 7.1 These Regulations largely relate to how local authorities spend their Dedicated Schools Grant (“DSG”) allocation, which consists of funding for: core provision for 5-16 year olds in mainstream schools; central services carried out on behalf of local schools; provision for children and young people (aged 0-25) with complex needs; government-funded childcare entitlements for two, three and four-year-olds.
- 7.2 Core funding for schools and high needs increased by £2.6 billion in 2020-21, to be followed by increases of £4.8bn and £7.1bn in 2021-22 and 2022-23 respectively, compared to 2019-20. The DSG for 2021-22 can be found here: [Dedicated schools grant \(DSG\): 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2021-to-2022). The Department for Education has allocated at least a 2% increase in per-pupil funding for every school, and the average per pupil increase is over 3%. In addition, every primary school will receive a minimum of £4,000 per pupil and every secondary school a minimum of £5,150. Every school has also been allocated additional funding to cover additional teachers’ pay and pensions costs, previously funded through separate grants. The high needs block is increasing by 10% overall in 2021-22 – an additional £730m. Every local authority will receive an increase in high needs funding of at least 8% per head of population aged 2-18, and up to 12% per head.
- 7.3 The National Funding Formulae (“NFF”) determine local authority DSG allocations. These were introduced in 2018-19 for schools, high needs and central school services; and in 2017-18 for early years. The schools NFF calculates notional school-level allocations, which are aggregated to form local authorities’ school funding within the DSG. The introduction of the NFF is in line with reforms by the Department for Education to make the funding system simpler, fairer and more transparent.
- 7.4 In 2021-22, local authorities will continue to determine schools’ budget allocations at a local level, through a local funding formula. This is known as a ‘soft’ schools NFF. We have announced that we will implement a ‘hard’ schools NFF in future, whereby schools receive what they attract through the national formula, rather than through different local authority funding formulae. In 2021-22, however, in order to ensure stability during the coronavirus (COVID-19) pandemic, the Department does not intend to introduce any changes to further restrict local authority discretion over their own funding formulae.
- 7.5 The 2021-22 NFF is broadly similar in policy terms to the original NFF: the same funding factors are in use, which form the basis of funding to schools, but small technical improvements have been made each year, as well as increases to the factor values used. These are set out in the 2021-22 NFF policy document, which we have published each year since the NFF was introduced: <https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs>.
- 7.6 The main changes compared with the 2020 Regulations are set out below.
Addition of funding from teachers’ pay and pension grants

- 7.7 The Teachers' Pay Grant (TPG) and the Teachers' Pension Employer Contribution Grant (TPECG) provide schools and local authorities with almost £2bn of funding a year. From 2021-22, the Department is rolling this funding into the NFF, in order to simplify their administration and improve the efficiency of the operation of the funding system. Our approach to rolling the grants into the NFF was to make sure that the additional funding schools and local authorities are allocated through the NFF is as close as possible to the funding they would have received if the grants were continuing as separate entities.
- 7.8 For the schools NFF, we have rolled in the grants in three ways, to reflect the three different ways in which schools attract funding through the formula. The first is by adding an amount to reflect the current grant funding (£180 per pupil for primary schools and £265 per pupil for secondary schools) onto the basic per pupil entitlement (or "age-weighted pupil unit", AWPU). The second is by adding the same per pupil amounts to the minimum per pupil (MPP) funding levels, increasing the amount that schools on these levels will attract through the NFF (the MPP is a factor of the funding formula which ensures that, in addition to distributing funding based on the particular characteristics of individual schools and their cohorts, every school receives a minimum level of funding). The third is by adding an amount representing the funding schools receive through the grants in respect of their pupils in reception to Year 11 onto their baselines, which is used to calculate any funding protection for the schools through the funding floor, increasing the amount that schools whose allocations are determined by the funding floor will attract.
- 7.9 We want the changes we have made to the schools NFF to be reflected in local funding formulae, without adding significant complexity to local arrangements. We intend to encourage local authorities to mirror the per pupil amounts added to basic per pupil entitlement, but not require them to do so because there is considerable variation in these values used and it would represent a significant new constraint to local flexibility. There are therefore no proposed changes to the Regulations here. We will require the additional funding to be reflected in the MPP levels, which are already compulsory to use in local formulae at the values used in the NFF. The only changes to the Regulations here will be to the values used for compulsory MPP levels (regulation 22). We will also require local authorities to mirror the total funding added to schools' NFF 2020-21 baselines, which will be shown within the data each local authority receives, in schools' local 2020-21 baselines used for the calculation of the minimum funding guarantee (MFG) in local funding formulae. The minimum funding guarantee (MFG) is the local equivalent of the NFF's funding floor: it is how local formulae protect schools from excessive changes in per-pupil funding. This is covered in regulation 23 and Schedule 4.
- 7.10 We have also added paragraph 24 to Schedule 2 so that local authorities can retain central funding equivalent to the additional employer pension contributions for teachers employed by local authorities other than in maintained schools, which in 2020-21 local authorities are receiving through the TPECG.

Update to Income Deprivation Affecting Children Index

- 7.11 The NFF uses data from the Income Deprivation Affecting Children Index (IDACI) produced by the Ministry for Housing, Communities and Local Government. This index was updated in 2019 and we have used the new 2019 data in the 2021-22 NFF. The Regulations will require local authorities to use this data in local funding formulae, so that the distribution of funding is based on the latest information of pupil needs. We have updated the references to IDACI data in regulation 15(2), in

accordance with the Schools Revenue Funding 2021 to 2022: Operational Guide, which can be found here: <https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2021-to-2022>.

Accounting for lack of 2020 assessment data for low prior attainment factor

- 7.12 Following the cancellation of assessments in summer 2020 due to coronavirus (COVID-19), local authorities will not be able to use this data as part of setting a low prior attainment factor in local funding formulae. The low prior attainment factor allows local authorities to give additional funding to schools in respect of their pupils who had low scores in previous assessments. Instead, local authorities will use 2019 assessment data, from the school's Year 2 and Year 8 pupils in the 2020/21 academic year, as a proxy for the school's Year 1 and Year 7 cohort. Where schools do not have Year 2 or Year 8 pupils, because they are new and growing, local authority level attainment data is used. These changes are reflected in paragraphs 3 and 4 of Schedule 3.

Strengthening schools forum approval of the growth fund

- 7.13 Local authorities, in agreement with their schools forum, can create growth and falling rolls funds to provide additional funding to schools (especially new schools) which see a significant change in pupil numbers as a result of changes in pre-16 basic need. This is covered in paragraphs 4 to 7 of Schedule 2 to these Regulations. Local authorities can determine the size of these funds and the criteria for their allocation, but these must be agreed with the local schools forum (see regulation 12(1)(a)). We are strengthening and clarifying the oversight that the schools forum has of the growth fund, and as part of this we want to ensure that local authorities agree any in-year reduction to the growth fund with the schools forum. This is an addition, paragraph (1)(b), to regulation 12. As with other matters listed in regulation 12, where a schools forum does not authorise the reduction or a local authority is not required to establish a schools forum for its area, a local authority can apply to the Secretary of State for such authorisation.

Amendment to the calculation of minimum per pupil levels

- 7.14 The MPP levels refer to the level of per pupil funding that schools receive. They support the lowest funded schools by 'topping up' any school that, under funding formulae, would otherwise receive below the minimum levels. The funding factors were introduced in response to one of the biggest concerns during consultation which was that the NFF did not allocate sufficient funding to the lowest funded schools. The Department included a minimum per pupil factor in the schools NFF to target funding towards the lowest funded schools and introduced an optional minimum factor into local formulae to allow local authorities to implement this change at local level. In 2020-21 we made the factor compulsory for all local authorities to use in local funding formulae, under regulation 22.
- 7.15 We have resolved a small discrepancy in the calculation. In the 2020 Regulations, this did not specify that adjustments made to schools' allocations to correct errors in the previous funding period should be excluded from the MPP calculation for that school. This would artificially decrease or increase a school's per pupil amount in the current funding period, based on an adjustment to correct an error in the previous year, which is irrelevant to whether a school is above or below the MPP levels.
- 7.16 We have made a small amendment to regulation 22(3) so that prior year adjustments under regulation 30 will be excluded from the calculation of MPP levels.

Amendments to the Schools Forum (England) (Coronavirus) (Amendment) Regulations 2020

7.17 The [Schools Forums \(England\) \(Coronavirus\) \(Amendment\) Regulations 2020](#) made provisions to clarify that schools forums could hold public meetings remotely, for a temporary period, while they were unable to meet physically in a room during the coronavirus (COVID-19) pandemic. This provided certainty to local authorities and schools forums that the forums were able to continue to meet and operate effectively during the coronavirus (COVID)-19 pandemic, to support the delivery of schools and early years funding. The explanatory memorandum to those Regulations said that while these provisions would expire at the end of March 2021, we might consider making them permanent after considering feedback on their operation. Feedback from local authorities has been that the holding of meetings remotely has been successful and made the arrangement of meetings easier: we now think it should be a permanent option. This is achieved by regulation 35.

7.18 This instrument also makes an amendment to the Schools Forums (England) Regulations 2012 to update the references in those Regulations to the 2020 Regulations to these Regulations (regulation 3).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument makes an amendment to the Schools Forums (England) Regulations 2012 and removes the expiry date from a previous amendment to those Regulations. The Department has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department did not conduct a specific public consultation on the 2021-22 Regulations. Proposals were developed through ongoing engagement with stakeholders, which formed the basis of the changes we are making. The changes relate to alignment with the NFF and thus build on the extensive consultation carried out when it was introduced.

10.2 Recent funding reforms to introduce the NFF for schools, high needs and central school services were developed through two formal public consultations. The first stage of the consultation was on the principles of the schools and high needs formulae and took place between 7 March and 17 April 2016. The second stage of the consultation was on the details of the formulae, and took place between 14 December 2016 and 22 March 2017. It received responses from over 26,000 individual respondents and representative organisations. These responses were carefully considered when designing the final NFF, which took effect from April 2018.

10.3 The final details of the formulae were announced in September 2017 and were set out in a policy document: <https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs> . A full government response to the stage 2 consultation was published 14 September 2017 at: <https://www.gov.uk/government/consultations/high-needs-national-funding-formula-stage-2> .

- 10.4 The early years NFF consultation ran from 11 August to 22 September 2016. It covered the distribution of funding from central government to local authorities; the distribution of funding from local authorities to providers (including the introduction of a universal base rate); meeting the needs of children with special educational needs and disabilities; and transitional arrangements. The government response to the consultation was published on 1 December 2016 at:
<https://www.gov.uk/consultations/early-years-funding-changes-to-funding-for-3-and-4-year-olds> .

11. Guidance

- 11.1 Operational guidance for local authorities for 2021-22, which was issued in July 2020, was updated in mid-December 2020 to align with the DSG. This is available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902183/Schools_operational_guide_2021_to_2022_1.pdf.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for two, three and four year olds through the same formula that the local authority will use to determine the funding of this entitlement in maintained schools.
- 12.2 The impact on the public sector is that local authorities must comply with these Regulations when allocating their schools budget and determining budget allocations for schools and amounts for early years providers.
- 12.3 An Impact Assessment has not been prepared for this instrument because it has minimal impact on businesses, civil society organisations, and on the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses, except for the early years providers referred to in 11.1 and 11.2 above.
- 13.2 It applies to local authorities and it is for the local authority to determine how they fund their local providers, within the rules set out in these Regulations.

14. Monitoring & review

- 14.1 These Regulations will be monitored through the usual contact that the Funding Policy Unit within the Department for Education has with schools and local authorities. The team will log and review any correspondence from schools and local authorities relating to the instrument.

15. Contact

- 15.1 Claire Green at the Department for Education Telephone: 07837 228 660 or email: claire.green@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tom Goldman, Deputy Director of the Funding Policy Unit, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Nick Gibb MP, Minister of State for School Standards at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.