
DRAFT FOR CONSULTATION

STATUTORY INSTRUMENTS

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EDUCATION, ENGLAND

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

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The Secretary of State for Education makes the following Regulations in exercise of powers conferred by sections 45A(a), 45AA(b), 47(c), 47ZA(d), 47A(4)(e), 48(1) and (2)(f), 49(2) and (2A)(g) and 138(7) of, and paragraph 2B(h) of Schedule 14 to, the School Standards and Framework Act 1998(i) and section 24(3) of the Education Act 2002(j).

PART 1

Introduction

Citation, commencement, application and interpretation

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

(2) These Regulations apply in relation to the financial year beginning on 1st April 2013.

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

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996(k);

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2002 Act” means the Education Act 2002;

“the 2005 Act” means the Education Act 2005(l);

“the 2006 Act” means the Education and Inspections Act 2006(m);

“the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009(n);

“the 2012 Regulations” means the School Finance (England) Regulations 2012(o);

(a) Inserted by section 41(1) of the 2002 Act and amended by section 101 of, and paragraph 3 of Schedule 16 to, the 2005 Act.

(b) Inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.

(c) Amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.

(d) Inserted by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c22).

(e) Section 47A was inserted by section 43 of the 2002 Act and amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2002 Act, section 57 of, paragraph 2 of Schedule 5 to, the 2006 Act, section 165 of the Education and Skills Act 2008 (c.25) and section 194 of the Apprenticeships, Skills, Children and Learning Act 2009.

(f) Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act, section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.

(g) Subsections (2) and (2A) were substituted for subsections and (3), as originally enacted, by section 57 of, and paragraph 4 of Schedule 5 to, the 2006 Act.

(h) Paragraphs 2A and 2B of Schedule 14 were substituted for paragraph 2, as originally enacted, by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.

(i) 1998 c.31. For the meaning of “prescribed” and “regulations”, see section 142(1) of the 1998 Act.

(j) 2002 c.32. For the meaning of “prescribed” and “regulations”, see section 212 of the 2002 Act.

(k) 1996 c.56.

(l) 2005 c.18.

(m) 2006 c.40.

(n) 2009 c.22.

(o) S.I. 2012/335.

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003(a);

“CRC” means the CRC Energy Efficiency Scheme operated by the Environment Agency;

“central expenditure” means the total amount deducted by a local authority from their schools budget in accordance with regulation 7;

“CERA” means capital expenditure which an authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003;

“children in need” means children in respect of whom the local authority in whose area they reside must provide a range and level of services appropriate to their needs under section 17 of the Children Act 1989(b);

“combined service” is a service funded partly from central expenditure, and partly from other budgets of the authority or contributions from other bodies;

“Dedicated Schools Grant” is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act;

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

“early years provision” has the meaning assigned to it in section 20 of the Childcare Act 2006(c);

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

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

a reference to a “governing body” of a school shall include the management committee of a pupil referral unit;

“funding period” means the financial year beginning on 1st April 2013;

“IDACI” means the Income Deprivation Affecting Children Index;

“IDACI bands” means the groupings of IDACI scores as published by the Department for Education (d);

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

“institution within the further education sector” has the meaning given in section 91(3) of the Further and Higher Education Act 1992(e);

“key stage” means the key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 84, 85 and 85A of the 2002 Act(f) and “key stage 1”, “key stage 2”, “key stage 3” and “key stage 4” mean the first, second, third and fourth key stages referred to in those sections respectively, and references to the number of

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

(b) 1989 c.41.

(c) 2006 c.21.

(d)

(e) 1992 c.13.

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

pupils at those key stages are references to the number at the school on the date referred to in regulations 13(3);

“local authority’s formula” means a formula determined under regulation 9;

“looked after child” means a child identified as such by the Department of Education from information supplied to it by a local authority on the SSDA903 statistical return;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988(a);

“PFI scheme unitary payment” means a charge payable by a local authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(b);

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

“previous funding period” means the financial year beginning on 1st April 2012;

“primary or secondary school” means a primary or secondary school which is a community, foundation or voluntary school;

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

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

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

“pupil premium” means the amount allocated by a local authority from the pupil premium grant to a school in respect of each registered pupil at that school who is entitled to it under the terms and conditions of the grant;

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

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

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

“school census” and “termly school census” means the information of that name compiled by the Department for Education in respect of pupils at schools;

“schools member of the schools forum” means a member of the schools forum elected under regulation 5 of the Schools Forum (England) Regulations(d);

“school year” has the meaning given in section 579(1) of the 1996 Act(e);

(a) 1988 c.41.

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

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

(d) [XXXX]

(e) Section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44) inserted this definition.

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

“special Academy” means an Academy which meets the requirements of section 1A(2) of the Academies Act 2010(a);

“specific grant” means any grant (other than the Dedicated Schools Grant or any sixth form grant) paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used;

a reference to “termination of employment costs”, for the purposes of paragraph 5(b) of Schedule 2, is a reference to expenditure relating to the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school;

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

(5) In these Regulations—

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools includes such expenditure of that class or description as the authority may incur in relation to Academies, and to pupils registered at Academies; and

a reference to a person being subject to learning difficulty assessment has the same meaning as in section 13(4) of the 1996 Act.

Revocation of previous Regulations

2. The School Finance (England) Regulations 2011(b) and the School Finance (Amendment) (England) Regulations 2011 (c) are revoked on 1st April 2013.

Amendments

3.—(1) The Schools Forums (England) Regulations 2012(d) are amended as follows.

(2) In regulation 8, after paragraph (11) insert—

“(11A). Only the schools members of the schools forum who are representatives of primary schools (other than nursery schools) may vote to decide whether or not to authorise the matters referred to in regulation 12(1) of the School and Early Years Finance (England) Regulations 2013 where they relate to primary schools (other than nursery schools).

(11B). Only the schools members of the schools forum who are representatives of secondary schools may vote to decide on whether or not to authorise the matters referred to in regulation 12(1) of the School and Early Years Finance (England) Regulations 2013 where they relate to secondary schools.”

(a) c.32 as amended by section 53(7) of the Education Act 2011 (c.21).

(b) S.I. 2011/371.

(c) S.I. 2011/778.

(d) [XXXX]

PART 2

Action to be Taken by a Local Authority

CHAPTER 1

Appropriation of the Non-Schools Education Budget

The Non-Schools Education Budget

4. The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's non-schools education budget, subject to the exceptions in regulation 6—

- (a) those specified in Schedule 1, including expenditure on associated administrative costs and overheads; and
- (b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget).

CHAPTER 2

Determination of Schools Budgets, Individual Schools Budgets, and Budget Shares

Initial determination of a local authority's schools budget

5. A local authority must not later than 15th March 2013—

- (a) make an initial determination of their schools budget; and
- (b) give notice of that determination to the governing bodies of the schools they maintain.

The schools budget

6.—(1) The classes or descriptions of local authority expenditure specified in sub-paragraphs (a) to (e) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget, subject to paragraph (2) and the exceptions in regulation 7—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local authority;
- (c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraph (a) or (b);
- (d) expenditure on the education of pupils or students up to the age of 25 years with special educational needs, or persons provided with further education who are under 25 and are subject to learning difficulty assessment^(a), in so far as that expenditure does not fall within sub-paragraph (a), (b) or (c); and
- (e) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraph (a), (b), (c) or (d).

(2) Where a local authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 36(c) of Schedule 2 of the 2012 Regulations is only expenditure prescribed for the purposes of section 45A(2) to the 1998 Act and the

(a) "Learning difficulty assessment" has the meaning given in section 13(5) of the 1996 Act.

determination of a local authority's schools budget where that expenditure is incurred in providing an educational benefit to those pupils.

Exceptions

7. A local authority's non-schools education budget or schools budget must not include the following classes or descriptions of expenditure—

- (a) capital expenditure, other than—
 - (i) CERA,
 - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred—
 - (i) on prudential borrowing,
 - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph (a)(ii); and
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(a) (arrangements for patrolling school crossings).

Determination of the individual schools budget for the funding period and limit on increase in central expenditure

8.—(1) Subject to paragraphs (2) to (8), not later than 15th March 2013, a local authority must deduct from their schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 (“the central expenditure”) as they propose to deduct, in order to determine their individual schools budget.

(2) Central expenditure referred to at paragraphs 3 and 4 of Part 1 (Central Services) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken in previous funding periods that commit the authority to incur expenditure in the funding period.

(3) In deducting the central expenditure referred to in Part 1 (Central Services) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 6 of Schedule 2.

(4) A local authority may not deduct the central expenditure referred to in paragraph 9 of Schedule 2 without authorisation from their schools forum, under regulation 12(1), or the Secretary of State under regulation 12(3) of the criteria for determining the expenditure, and must consult their schools forum before incurring expenditure on that item.

(5) A local authority may not deduct the central expenditure referred to in Part 1 (Central Services), Part 2 (Central Schools Expenditure), Part 3 (Central Early Years Expenditure) or Part 5 (Items That May Be Removed From Maintained Schools' Budget Shares) of Schedule 2 without authorisation from their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3).

(6) Where a local authority carries forward a deficit in the central expenditure from the previous funding period to the funding period, which reduces the amount of the schools budget available, the funding of this deficit from the schools budget must be authorised by their schools forum under regulation 12(1), or the Secretary of State under regulation 12(3).

(7) A local authority may apply to the Secretary of State for authorisation under regulation 12(4) to deduct any expenditure falling outside of the classes or descriptions of planned expenditure referred to in Schedule 2 from the authority's schools budget in order to determine their individual schools budget.

(a) 1984 c.27. Section 26 was amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), sections 288 and 423 of, and Schedule 34 to, the Greater London Authority Act 1999 (c.29) and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

(8) References to planned expenditure in this regulation are references to that expenditure net of—

- (a) all related specific grants;
- (b) all related fees, charges and income; and
- (c) any funding received from the Secretary of State in respect of PFI scheme unitary payments,

and the expenditure referred to in Schedule 2 includes expenditure on associated administrative costs and overheads unless otherwise stated

Consultation

9.—(1) A local authority may make changes to the formulae they have used in the financial year beginning 1st April 2012.

(2) Subject to paragraph (4), a local authority must consult their schools forum and schools maintained by them about any proposed changes under paragraph (1), in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(3) Where a local authority proposes to make changes under paragraph (1) which will affect relevant early years providers in their area they must also consult those providers in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(4) Paragraph (2) does not apply to changes made relating to matters referred to in regulation 20 (sixth form funding) or 23 (excluded pupils).

Formulae for determination of budget shares etc for certain maintained schools and early years providers

10.—(1) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2), decide upon the formula which they will use to determine the budget shares for schools maintained by them (other than special schools, pupil referral units and nursery schools).

(2) A local authority must use the formula determined under paragraph (1) in all determinations of school budget shares in respect of the funding period.

(3) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2) or 9(3), decide upon the formula they will use to determine—

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

(4) A local authority must use the formula determined under paragraph (3) in all determinations of budget shares for nursery schools maintained by them, the amounts to be allocated in respect of nursery classes in schools maintained by them and the amounts to be allocated to relevant early years providers in their area in respect of the funding period.

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

Determination of allocation of budget shares etc for the funding period

11.—(1) Not later than 15th March 2013, a local authority must determine the budget share for each of the schools maintained by them (other than special schools, pupil referral units and nursery schools), using the formula referred to in regulation 10(1) in accordance with Part 3 of these regulations.

(2) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (5), the authority, may apply to their schools forum under regulation 12(1), or to the Secretary of State under regulation 12(3) for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from the budget shares of

- (a) all primary (other than nursery) schools,
- (b) all secondary schools, or
- (c) all primary (other than nursery) and all secondary schools

where the expenditure is instead to be treated as central expenditure.

(3) Not later than 15th March 2013, a local authority must determine the budget share for each of the special schools and pupil referral units maintained by them in accordance with Part 3 of these regulations.

(4) Not later than 31st March 2013 a local authority must determine the budget share for each of the nursery schools maintained by them, the amount to be allocated in respect of each nursery class in schools maintained by them and the amount to be allocated to each relevant early years provider in their area, using the formula referred to in regulation 10(3) in accordance with Part 3 of these Regulations.

(5) Not later than 31st March 2013, a local authority must give notice of each budget share or amount determined under paragraphs (1), (3) and (4) to the governing body of the school or the relevant early years provider concerned, except where an application has been made under paragraph (2) and this has been authorised by the schools forum or the Secretary of State in which case the authority must give notice of the redetermined budget share.

CHAPTER 3

Further Deductions and Variations to Limits Authorised by Schools Forums or the Secretary of State

Applications to the schools forum and the Secretary of State

12.—(1) Subject to paragraph (2), on the application of a local authority, their schools forum may authorise—

- (a) the criteria for determining expenditure referred to in paragraph 9 of Schedule 2, under regulation 8(4);
- (b) the making of deductions from the authority's schools budget of certain central expenditure under regulation 8(5);
- (b) the funding of any deficit in the authority's central expenditure from the schools budget under regulation 8(6); or
- (c) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from schools' budget shares where it is instead to be treated by the authority as central expenditure, under regulation 11(2).

(2) Where—

- (a) a schools forum does not authorise any of the matters referred to in paragraph (1); or
- (b) a local authority are not required to establish a schools forum for their area,

the authority may make an application to the Secretary of State for such authorisation..

(3) On the application of a local authority under paragraph (2), the Secretary of State may authorise the matters referred to in paragraph (1).

(4) On the application of a local authority under regulation 8(7) the Secretary of State may authorise the authority to deduct any expenditure falling outside of the classes or descriptions of planned expenditure referred to in Schedule 2 from the authority's schools budget in order to determine their individual schools budget.

PART 3

Formulae for Determination of Budget Shares etc

CHAPTER 1

Requirements, and Factors and Criteria Taken into Account

Pupil numbers

13.—(1) Subject to regulation 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision) and paragraph (2), in determining and redetermining budget shares for primary and secondary schools, a local authority must ascertain and take into account in their formula the number of registered pupils at those schools on the date specified in paragraph (3).

(2) For the purposes of paragraph (1), the number of registered pupils does not include pupils—

- (a) in places in primary or secondary schools which the authority have reserved for children with special educational needs, or
- (b) in respect of whom a sixth form grant is payable.

(3) The date for ascertaining pupil numbers is 4th October 2012.

(4) Where a primary school has more registered pupils in reception classes on 19th January 2012 than on 6th October 2011, the authority may take into account in their formula the number of additional pupils, and where it does 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 for each of the following—

- (a) the number of registered pupils in reception classes and at key stage 1 and 2,
- (b) the number of registered pupils at key stage 3, and
- (c) the number of registered pupils at key stage 4,

where the number of registered pupils is calculated with reference to paragraphs (1) to (4).

Places

14.—(1) In determining and redetermining budget shares, a local authority must include the sum of £10,000 for each place (other than places for sixth form pupils) in—

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

(2) In determining and redetermining budget shares a local authority must include the sum of £8,000 for each place in pupil referral units.

Social deprivation

15.—(1) In determining budget shares for 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 among pupils registered at the schools maintained by them, subject to paragraphs (2) to (4).

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

- (a) the pupil's eligibility for free school meals as recorded on the October 2012 school census,
- (b) the pupil's eligibility for free school meals as recorded on any termly school census between and including the Summer 2006 and Spring 2012 censuses, or
- (c) the pupil's IDACI score on the date specified in regulation 13(3),

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, and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at the nursery school or in the nursery class or among children receiving relevant early years provision from the provider, and the determination of the incidence of social deprivation must be based on the characteristics of the pupil or child and not on the location of the school or provider.

(6) In determining—

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

in respect of two year olds, a local authority may take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at the nursery school or in the nursery class or among children receiving relevant early years provision from the provider, and the determination of the incidence of social deprivation must be based on the characteristics of the pupil or child 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

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, and
- (c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, as the case may be, using as a basis for the calculation the most recent data available about the actual numbers of registered pupils or children.

(2) A local authority must review the budget share for each maintained nursery school and the amount allocated in respect of each nursery class when further information about the hours of attendance becomes available, taking into account—

- (a) in the case where the local authority decide to fund only prescribed early years provision—
 - (i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class 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—

(i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class 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; and

redetermine that budget share or amount allocated, as the case may be.

(3) A local authority must review the amount allocated to each relevant early years provider, when further information about hours of attendance becomes available, taking 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 during the period (using as a basis for the calculation the actual hours of such attendance in at least three sample weeks); or

(b) the actual total numbers of hours of such attendance for the period; and

redetermine the amount allocated.

(4) Where a local authority make any redetermination pursuant to paragraph (2) or (3) they must give notice to the governing body of the school or the relevant early years provider concerned of the redetermination and the date on which it will be implemented, within 28 days of the redetermination.

(5) When determining budget shares for maintained nursery schools, amounts to be allocated in respect of nursery classes and amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, according to the special educational needs of any such pupils or children.

(6) When determining amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of children receiving prescribed early years provision from the relevant early years provider, according to whether any children have been admitted to the relevant early years provider in excess of the number agreed with the authority.

(7) When determining—

(a) budget shares for maintained nursery schools,

(b) amounts to be allocated in respect of nursery classes maintained by them and

(c) amounts to be allocated to relevant early years providers,

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, children of the description prescribed by regulation 3(2) of the Local Authority (Duty to secure early years provision free of charge) Regulations 2012/ xxx or other two year olds whom the local authority wish to fund in accordance with their policy set in accordance with the guidance [name] made under section 7(3) of the Childcare Act 2006.

Differential funding

17. For the purpose of determining or redetermining—

(a) budget shares for maintained nursery schools,

(b) amounts to be allocated in respect of nursery classes in schools maintained by them and

(c) amounts to be allocated to relevant early years providers in their area,

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) and regulation 17 (differential funding), 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.

(2) In determining budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools maintained by them and amounts to be allocated to relevant early years providers in their area, 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) and (6), in determining the budget shares for schools maintained by them (other than special schools, pupil referral units and nursery schools), with reference to the per pupil amount of redetermined adjusted budget share for the previous funding period, a local authority may—

- (a) determine a percentage beyond which the per pupil amount of redetermined adjusted budget share a school would otherwise be allocated must not increase by, or
- (b) determine a proportionate limit to this increase.

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

(5) Where the authority decide to determine such a percentage under paragraph (4) it must be applied to the budget shares of all schools in the local authority area.

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 purposes 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 and
- (c) amounts to be allocated to relevant 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 15(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 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 23 (additional arrangements).

Sixth form funding

20.—(1) A local authority must include in the budget shares of secondary 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 registered pupils in sixth forms on [XXXX] October 2012 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 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, save that in determining the amount allocated per pupil in the previous funding period no account should be taken of amounts that formed part of central expenditure in that 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

21.—(1) A local authority must determine a budget share for any new school in its area from the date of the school's opening in accordance with this Part.

Federated schools

22.—(1) Subject to paragraphs (2) and (3), where two or more 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 (1), 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 Additional Arrangements Authorised by Schools Forums or 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 pupil referral unit ("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 $A \times (B / 52)$ where—

- (a) A is the amount determined by the authority in accordance with this Part, that would be attributable to a registered 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; and
- (b) B is the number of complete weeks remaining in the funding period calculated from the relevant date, except that 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, B is the number of complete weeks remaining in that school year calculated from the relevant date.

(3) Where a pupil who has been permanently excluded from a school maintained by a local authority is admitted to another school maintained by a local authority other than a pupil referral

unit (“the admitting school”) in the funding period, the authority must redetermine the admitting school’s budget share in accordance with paragraph (4).

(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;
- (b) E is the number of complete weeks remaining in the funding period during which the pupil is a registered 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) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act, 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.

(6) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school other than a pupil referral unit 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.

(7) For the purposes of paragraph (2)(a), the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority’s formula, by reference to pupil numbers rather than by reference any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom a sixth form grant is payable, the amount attributable to that pupil is £3,135 for the funding period).

(8) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority other than a pupil referral unit (“the excluding school”) the local authority must redetermine the excluding school’s budget share in accordance with paragraph (9).

(9) 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;
- (b) K is the number of complete weeks remaining in the funding period calculated from the relevant date, except that 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, K is the number of complete weeks remaining in that school year calculated from the relevant date.

(10) 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 other than a pupil referral unit (“the admitting school”) in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (11).

(11) 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 registered pupil at the admitting school; and
- (c) N is the number of complete weeks remaining in the funding period calculated from the relevant date.

(12) Where a permanently excluded pupil in respect of whom a pupil premium is payable is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act, 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 (9);
- (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.

(13) Paragraphs (8) and (9) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school other than a pupil referral unit 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.

(14) For the purposes of this regulation, "the relevant date" is the sixth school day following the date on which the pupil has been permanently excluded.

Correction of errors and changes in non-domestic rates

24.—(1) A local authority may at any time during the funding period redetermine a school's budget share for the funding period or any earlier 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 registered pupils at the school or otherwise, any such redetermination will take effect in the following 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 earlier 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.

Additional arrangements approved by Secretary of State

25.—(1) Subject to paragraphs (2) and (3), a local authority may apply to the Secretary of State for authorisation or authorisations to determine or redetermine budget shares of schools maintained by them.

(2) The Secretary of State may authorise the authority to determine or redetermine budget shares to such extent as the Secretary of State may specify in accordance with arrangements approved by him in place of the arrangements provided for by these Regulations but these arrangements may only relate to—

- (a) additional factors or criteria that the authority propose to include in its formula, or
- (b) what amounts a school's redetermined adjusted budget shall be reduced by for the purpose of determining the guaranteed level of funding in paragraph 2(e) of Schedule 4, or
- (c) the variation of the operation of regulation 13 (pupil numbers).

(3) The authority may only make an application to the Secretary of State under paragraphs (2)(a) and (b) where the nature of a school's premises exceptionally gives rise to significant additional cost.

(4) A local authority may apply to the Secretary of State to include additional factors or criteria in its formula for determining and redetermining budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools maintained by them and amounts to be allocated to relevant early years providers in their area.

(5) On an application of a local authority under paragraph (4) the Secretary of State may authorise the authority to include in its formula such factors or criteria proposed by the authority.

(6) A local authority may apply to the Secretary of State for authorisation to vary the operation of regulation 18(3) in the determination and redetermination of budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools maintained by them and amounts to be allocated to relevant early years providers in their area.

(7) On application of a local authority under paragraph (6) the Secretary of State may authorise the authority to vary the operation of regulation 18(3) as proposed by the authority.

PART 3

Schemes

Required content of schemes

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

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

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

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

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

(3) Where—

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

the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

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

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

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

Publication of schemes

28.—(1) A local authority—

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

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

[Date]

[Name]
Parliamentary Under Secretary of State
Department for Education

SCHEDULE 1

Regulation 4

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

Special educational provision

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

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

(b) 2006 c. 41.

8. Expenditure on the provision of special medical support for individual pupils in so far as such expenditure is not met by a Primary Care Trust, National Health Service Trust, NHS foundation trust or Local Health Board.

School improvement

9. Expenditure incurred by a local authority in respect of action to support the improvement of standards in the authority's schools, in particular expenditure incurred in connection with functions under the following sections of the 2006 Act—

- (a) section 60 (performance standards and safety warning notice),
- (b) section 60A (teachers' pay and conditions warning notice),
- (c) section 63 (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements),
- (d) section 64 (power of local authority to appoint additional governors),
- (e) section 65 (power of local authority to provide for governing bodies to consist of interim executive members) and Schedule 6; and
- (f) section 66 (power of local authority to suspend right to delegated budget).

Access to education

10. Expenditure in relation to the following matters—

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

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

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

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

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

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

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

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

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

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

Additional education and training for children, young persons and adults

18. Expenditure on the provision of education and training and of organised leisure time occupation, and other provision under sections 15ZA and 15ZC of the 1996 Act.

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

Strategic management

20. Expenditure on education functions related to—

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

(a) 1999 c. 27.

(b) 1972 c. 70.

(c) The Consistent Financial Reporting (England) Regulations 2003 (S.I. 2003/373, as amended by S.I. 2004/393, 2006/437, 2007/599 and 2008/46.

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

Other functions

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

(a) 1974 c.37.

(b) 2010 c.15.

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

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

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

25. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person except to the extent that these costs are chargeable to schools' budget shares or fall within paragraph 5(b) of Schedule 2.

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

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

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

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

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

SCHEDULE 2

Regulations 6 and 8

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

PART 1

Central Services

1. Expenditure on the operation of the system of admissions of pupils to schools (including expenditure incurred in carrying out consultations under section 88C(2) of the 1998 Act(c)) and in relation to appeals.

2. Expenditure incurred in connection with the authority's functions under section 47A of the 1998 Act (establishment and maintenance of, and consultation with, schools forums)

3. CERA incurred for purposes not falling within any other paragraph of this Schedule or Schedule 1.

(a) Section 390 was amended by section 140(1) of, and paragraph 93 of Schedule 20 to, the 1998 Act.

(b) 1933 c.12.

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

4. Expenditure on—

- (a) prudential borrowing;
- (b) termination of employment costs, where the schools forum has approved the charging of these costs to the schools budget for the funding period in which they were incurred and the revenue savings achieved by the termination of employment to which they relate are equal to or greater than the costs incurred;
- (c) combined services where the expenditure relates to classes or descriptions of expenditure falling outside those set out in this Schedule

where the expenditure has been approved by the schools forum or the Secretary of State in a previous funding period.

5. Expenditure on purchase of CRC allowances for schools

6. Any deductions under each of paragraphs 2 to 5 must not exceed the amount deducted under each of paragraphs 13, 31, 34, 36(a), 36(b), 36(c) and 38 of Schedule 2 to the 2012 Regulations for the previous funding period.

PART 2

Central Schools Expenditure

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

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

9. Expenditure to be incurred due to a significant growth in pupil numbers as a result of the local authority's duty under section 13(1) of the 1996 Act to secure that efficient primary education and secondary education are available to meet the needs of the population of their area, but only where the authority has set criteria for determining the circumstances in which the expenditure can be incurred and the basis for calculating the amount of any such expenditure..

10. Expenditure to be incurred in order to make provision for extra classes in order to comply with the School Admissions (Infant Class Sizes) (England) Regulations 2012^(b).

PART 3

Central Early Years Expenditure

11. Expenditure on early years provision, excluding expenditure—

- (a) on such provision on a maintained school; and
- (b) on relevant early years provision.

12. Expenditure on determining the eligibility—

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

(a) Section 18 was amended by article 5(1) of, and paragraph 7 of Schedule 2 to, S.I. 2010/1158.

(b) S.I. 2012/10.

PART 4

Pupils With High Needs

13. Expenditure in respect of pupils with special educational needs at primary and secondary schools, excluding expenditure—

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

14. Expenditure in respect of—

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

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

15. Expenditure in respect of persons provided with further education who are aged 19 or over but under 25 and are subject to learning difficulty assessment.

16. Expenditure on support services for pupils who have a statement of special educational needs and for pupils with special educational needs who do not have such a statement.

17. Expenditure for the purposes of encouraging—

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

in cases where the local authority consider it would be unreasonable for such expenditure to be met from a school's budget share.

18. Expenditure incurred in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit where the expenditure cannot be met from the sum referred to in regulation 14(2).

19. Expenditure on the payment of fees in respect of pupils with special educational needs—

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

PART 5

Items That May Be Removed From Maintained Schools' Budget Shares

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

21. Expenditure on determining the eligibility of a pupil for free school meals;

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

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

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

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

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

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

27. Expenditure on services to schools provided by museums and galleries.

28. Expenditure on library services.

29. Expenditure on licence fees or subscriptions paid on behalf of schools.

30. Expenditure on the schools' specific contingency

31. Expenditure for the purposes of—

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

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

(b) 1996 c.18.

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

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

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

(f) 1996 c.14.

**ADDITIONAL REQUIREMENTS, OR FACTORS OR CRITERIA
WHICH MAY BE TAKEN INTO ACCOUNT, IN A LOCAL
AUTHORITY'S FORMULA UNDER REGULATION 17**

PART 1

Applicable only to budget shares for maintained schools

- 1.** A single per pupil amount for each looked after child based on either—
 - (a) the number of looked after children in the local authority area,
 - (b) the number of children who have been looked after for six months or more in the local authority area, or
 - (c) the number of children who have been looked after for twelve months or more in the local authority area.
- 2.** Prior attainment of pupils at key stages 1 and 2 (excluding pupils in schools years 5 and 6) who have achieved either fewer than 78 points or fewer than 73 points on the current Early Years Foundation Stage Profile.
- 3.** Prior attainment of pupils at key stages 3 and 4 who achieved a level 3 or lower in both English and Maths at key stage 2.
- 4.** A single per pupil amount for each pupil at key stages 1 and 2 for whom English is not their first language, based on either-
 - (a) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for three years or less ,
 - (b) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for two years or less, or
 - (c) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for one year or less,where the number of pupils in the previous three years is determined by information in the October 2009, October 2010 and October 2011 school censuses.
- 5.** A single per pupil amount for each pupil at key stage 3 and 4 for whom English is not their first language, based on either—
 - (a) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for three years or less,
 - (b) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for two years or less, or
 - (c) the number of pupils for whom English is not their first language where the pupil has been attending a school or schools in England for one year or lesswhere the number of pupils in the previous three years is determined by information in the October 2009, October 2010 and October 2011 school censuses.
- 6.** A single sum of an equal amount to be given to each school of up to £200,000 per school.
- 7.** Where a school has a split site the funding must be in accordance with criteria published by the authority.
- 8.** Non-domestic rates payable in respect of the premises of each school which must be actual or estimated cost.
- 9.** Payments in relation to a private finance initiative (including actual or estimated cost).

10. Salaries of teachers at a school in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex .

11. A single per pupil amount, based on—

- (a) the number of pupils at key stages 1 and 2 who joined the school in the last three academic years at any other time than August or September, (and January in the case of reception classes), and where the school has a nursery class, excluding pupils who joined the school in the nursery class, and
- (b) the number of pupils at key stages 3 and 4 who joined the school in the last three academic years at any other time than August or September..

PART 2

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

12. Incidence of looked after children.

13. Prior attainment of pupils entering a school or relevant early years provider.

14. Pupils and children for whom English is not their first language.

15. A single sum for each school and relevant early years provider which may vary according to the type of provider.

16. Where a school or a relevant early years provider has a split site the funding must be in accordance with criteria published by the authority.

17. Non-domestic rates payable in respect of the premises of each school or relevant early years provider.

18. Payments in relation to a private finance initiative (including actual or estimated cost).

19. Salaries of teachers at a school or early years provider in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex .

20. The need to improve the quality of provision by particular providers or types of provider.

21. The degree of flexibility in the hours of attendance that a provider makes available.

22. The need to secure or sustain a sufficiency of prescribed early years provision within the authority’s area or any sub-area within that area; and in this paragraph “sub-area” means—

- (a) an electoral division or ward of the authority; or
- (b) such other appropriate geographical division into which the authority have notionally divided their area.

SCHEDULE 4

Regulation 19

MINIMUM FUNDING GUARANTEE

1. In this Schedule—

- (a) references to the number of pupils exclude those funded by a sixth form grant and those in places which the local authority have reserved for children with special educational needs;
- (b) the “Schedule 2 applied to that funding period,”
 - (i) any amount included in respect of paragraph 8 (rates) of Schedule 3 to the 2012 Regulations,

- (c) any amount allocated to the school pursuant to paragraph 6 (single sum) of Schedule 3 relevant number” of pupils for the previous funding period is the number of registered pupils at the school on 6th October 2011;
- (d) the “relevant number” of pupils for the funding period is the number of pupils at the school on 4th October 2012;
- (e) references to a redetermined adjusted budget share for the previous funding period must be reduced by the following—
 - (i) any amounts included pursuant to regulation 20 (sixth form funding) of the 2012 Regulations,
 - (ii) any amounts allocated to the school pursuant to Schedule 3 of 2012 Regulations where such amount has been deducted from the schools budget under Part 4 (Pupils With High Needs) of Schedule 2,
 - (iii) any amounts that the local authority estimates the school would have been allocated for places the authority reserves for children with special educational needs in the previous funding period had Part 4 (Pupils With High Needs) of, and
 - (iv) any amount allocated to the school pursuant to regulation 9(3)(b) (nursery classes) of the 2012 Regulations;
- (f) references to a redetermined adjusted budget share for the funding period include the effect of any additional arrangements approved by the schools forum or the Secretary of State under regulation 25 (additional arrangements), but are reduced by the following—
 - (i) any amounts included pursuant to regulation 20 (sixth form funding),
 - (ii) any amount allocated under regulation 14(1) (special units and resourced provision),
 - (iii) any amounts included in respect of paragraph 8 (rates) of Schedule 3,
 - (iv) any amount allocated to the school pursuant to paragraph 6 (single sum) of Schedule 3,
 - (v) any amounts allocated pursuant to regulation 10(1) (formula for determining budget shares) which would have been within a class or description of the expenditure listed in Schedule 2 to the 2012 Regulations, and
 - (vi) any amount allocated to the school under regulation 10(3) (early years single funding formula);
- (g) for the purposes of this Schedule—
 - (i) where a school has opened during the previous funding period, its redetermined adjusted budget share for the previous funding period is the amount that it would have been had the school opened on 1st April 2012,
 - (ii) where a school opens during the funding period, its redetermined adjusted budget share for the funding period is the amount that it would have been had the school opened on 1st April 2013,

adjusted in accordance with sub-paragraph (d) or (e), whichever is applicable.

2. Where (A/B) is less than (C/D) then the guaranteed funding level is $(C/D) \times B$ where—

A is the redetermined adjusted budget share for the funding period,

B is the relevant number of pupils in the funding period,

C is the redetermined adjusted budget share for the previous funding period multiplied by 0.985, and

D is the number of relevant pupils in the previous funding period.

3. Where a school opens during the funding period, and is a replacement for two or more schools being discontinued during the funding period, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school’s redetermined adjusted budget share for the previous funding period is to be determined using the

sum of the relevant number of pupils in the discontinued schools for the previous funding period as the relevant number for the purposes of paragraph 1(b).

SCHEDULE 5

Regulation 26

CONTENTS OF SCHEMES

- 1.** The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares.
- 2.** Amounts which may be charged against schools' budget shares.
- 3.** Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
- 4.** The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.
- 5.** Terms on which services and facilities are provided by the authority for schools maintained by them.
- 6.** The payment of interest by or to the authority.
- 7.** The times at which amounts equal in total to the school's budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.
- 8.** The virement between budget heads within the delegated budget.
- 9.** Circumstances in which a local authority may delegate to the governing body the power to spend any part of the authority's non-schools education budget or schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act(a).
- 10.** The use of delegated budgets and of sums made available to a governing body by the local authority which do not form part of delegated budgets.
- 11.** Borrowing by governing bodies.
- 12.** The banking arrangements that may be made by governing bodies.
- 13.** A statement as to the personal liability of governors in respect of schools' budget shares having regard to section 50(7) of the 1998 Act.
- 14.** A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act(b).
- 15.** The keeping of a register of any business interests of the governors and the head teacher.
- 16.** The provision of information by and to the governing body.
- 17.** The maintenance of inventories of assets.
- 18.** Plans of a governing body's expenditure.
- 19.** A statement as to the taxation of sums paid or received by a governing body.

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

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

20. Insurance.

21. The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc Act 1974.

22. The provision of legal advice to a governing body.

23. Funding for child protection issues.

24. How complaints by persons working at a school or by school governors about financial management or financial propriety at the school will be dealt with and to whom such complaints should be made.

25. Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the 2002 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the financial arrangements of local authorities in relation to the funding of maintained schools and providers of prescribed early years provision in England, for the financial year 2013-2014.

The School Finance (England) Regulations 2011 and the School Finance (Amendment) (England) Regulations 2011 are revoked. The School Finance (England) Regulations 2012, remain in force.

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

An impact assessment has not been prepared for these Regulations because no impact on the private or voluntary sector is foreseen.