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STATUTORY INSTRUMENTS

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**2021 No. 59**

**EDUCATION, ENGLAND**

**The School and Early Years Finance  
(England) Regulations 2021**

*Made* - - - - *19th January 2021*  
*Laid before Parliament* *21st January 2021*  
*Coming into force* - - *11th February 2021*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 45A(1), 45AA(2), 47(3), 47ZA(4), 47A(4B) and (5)(5), 48(1) and (2)(6), 49(2) and (2A)(7), 138(7) of, and paragraph 2B(8) of Schedule 14 to, the School Standards and Framework Act 1998(9) and section 24(3) of the Education Act 2002(10).

**PART 1**

**Introduction**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2021 and come into force on 11th February 2021.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2021.

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- (1) Section 45A was inserted by section 41(1) of the 2002 Act. It was amended by section 101 of, and paragraph 3 of Schedule 16 to, the 2005 Act; by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) (“the 2009 Act”); by S.I. 2010/1158; and by section 3(2)(a) of the Childcare Act 2016 (c. 5).
- (2) Section 45AA was inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.
- (3) Section 47 was amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.
- (4) Section 47ZA was inserted by section 202 of the 2009 Act and amended by section 3(2)(b) of the Childcare Act 2016.
- (5) 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, and 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 2009 Act.
- (6) 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; and section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.
- (7) Subsections (2) and (2A) were substituted for subsections (2) and (3), as originally enacted, by section 57 of, and paragraph 4 of Schedule 5 to, the 2006 Act.
- (8) Paragraph 2B of Schedule 14 was substituted for paragraph 2, as originally enacted, by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.
- (9) 1998 c.31. For the meaning of “prescribed” and “regulations”, see section 142(1) of the 1998 Act.
- (10) 2002 c.32. For the meaning of “prescribed” and “regulations”, see section 212(1) of the 2002 Act.

(3) These Regulations apply in relation to England.

(4) In these Regulations—

“1989 Act” means the Children Act 1989**(11)**;

“1996 Act” means the Education Act 1996**(12)**;

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

“2002 Act” means the Education Act 2002;

“2003 Act” means the Local Government Act 2003**(13)**;

“2005 Act” means the Education Act 2005**(14)**;

“2006 Act” means the Education and Inspections Act 2006**(15)**;

“2010 Act” means the Academies Act 2010**(16)**;

“2014 Act” means the Children and Families Act 2014**(17)**;

“the Early Years Provision Regulations 2014” means the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014**(18)**;

“2020 Regulations” means the School and Early Years Finance (England) Regulations 2020**(19)**;

“2012 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 27th March 2012**(20)**;

“2014 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 31st March 2014**(21)**;

“2017 Document” means the document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 3rd March 2017**(22)**

“2016 ARA” means the document entitled “2016 Key Stage 2 Assessment and Reporting Arrangements”**(23)** containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003**(24)**, made under section 87(3) of the 2002 Act;

“2017 ARA” means the document entitled “2017 Key Stage 2 Assessment and Reporting Arrangements”**(25)** containing provisions made under Article 11 of the Education (National

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**(11)** 1989 c.41.

**(12)** 1996 c.56.

**(13)** 2003 c.26.

**(14)** 2005 c.18.

**(15)** 2006 c.40.

**(16)** 2010 c.32.

**(17)** 2014 c.6.

**(18)** S.I. 2014/2147, as amended by S.I. 2016/887, S.I. 2018/146, and S.I. 2018/383.

**(19)** S.I. 2020/83.

**(20)** Available at: <http://webarchive.nationalarchives.gov.uk/20130404110654/https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

**(21)** A printed copy may be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

**(22)** Available at: <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>. A printed copy may be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

**(23)** Available at: 2016 Key stage 2: assessment and reporting arrangements (ARA) - Guidance - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

**(24)** S.I. 2003/1038, amended by S.I. 2009/1585, 2010/290, 2011/2392, 2013/1513; there are other amending instruments but none is relevant.

**(25)** Available at: <https://www.gov.uk/government/publications/2017-key-stage-2-assessment-and-reporting-arrangements-ara>. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003, made under section 87(3) of the 2002 Act;

“2018 ARA” means the document entitled “2018 Key Stage 2 Assessment and Reporting Arrangements”(26) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003, made under section 87(3) of the 2002 Act;

“2019 ARA” means the document entitled “2019 Key Stage 2 Assessment and Reporting Arrangements”(27) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003, made under section 87(3) of the 2002 Act;

“academic year” means any period commencing with 1st August and ending with the next 31st July;

“administrative costs and overheads” includes—

- (i) expenditure on legal services;
- (ii) expenditure in relation to the investigation and resolution of complaints;
- (iii) expenditure related to functions imposed by or under Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools), the administration of grants to the authority (including preparation of applications) and, where it is the authority’s duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions; and
- (iv) expenditure on 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;

“all-through schools” means those primary or secondary schools known by this title where pupils may join the school at an age of between three and five years and remain at the school until the age of between 16 and 19 years;

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper accounting practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the 2003 Act(28);

“central expenditure” means, in respect of the funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 or, in respect of the previous funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 of the 2020 Regulations;

“CERA” means capital expenditure which a local authority expects to charge to its revenue account within the meaning of section 22 of the 2003 Act;

“community early years provision” means funded early years provision provided by the governing body of a maintained school under section 27(1) of the 2002 Act to children other than pupils at the school, where the local authority has chosen to fund such provision;

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

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(26) Available at: 2018 key stage 2: assessment and reporting arrangements (ARA) - Digital Education Resource Archive (DERA) ([ioe.ac.uk](http://ioe.ac.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(27) Available at: 2019 key stage 2: assessment and reporting arrangements (ARA) - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(28) Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146). Relevant amendments to those regulations are made by S.I. 2004/534, 2004/3055 and 2007/573.

“early years block” means the amount of funding allocated to a local authority in relation to early years provision in the Dedicated Schools Grant during the funding period;

“the Early Years Foundation Stage Profile” has the meaning given in section 2 of the 2012 Document, the 2014 Document, or the 2017 Document as the context specifies more particularly;

“early years provision” has the meaning given in section 20 of the Childcare Act 2006<sup>(29)</sup>;

“early years pupil premium” means funding supplied by the Department for Education for the purpose of early years provision to children who meet the criteria in regulation 17(2);

“EHC plan” has the meaning given in section 37(2) of the 2014 Act;

“eligibility for free school meals” means eligibility for free lunches under section 512ZB of the 1996 Act<sup>(30)</sup>;

“excluded early years provision” means early years provision provided by a provider—

- (i) which is an independent school (other than an academy) which does not meet the standards prescribed under section 94 of the Education and Skills Act 2008<sup>(31)</sup> in relation to the spiritual, moral, social and cultural development of pupils at the school; or
- (ii) which the local authority has reasonable grounds to believe—
  - (aa) does not actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - (bb) promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations;

“expenditure on the schools specific contingency” is central expenditure deducted for the purpose of ensuring that monies are available to enable an increase in a school’s budget share after it has been allocated and where it subsequently becomes apparent that a governing body has incurred expenditure which it would be unreasonable to expect it 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) circumstances which were unforeseen when the school’s budget share was initially determined;

“funded early years provision” means—

- (i) early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006; and
- (ii) early years provision specified for the purposes of section 2(1) of the Childcare Act 2016<sup>(32)</sup>;

“funding period” means the financial year beginning on 1st April 2021;

“home school” means, in respect of a pupil, a school which is the shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

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<sup>(29)</sup> 2006 c.21.

<sup>(30)</sup> Section 512ZB was inserted by section 201(1) of the 2002 Act and amended by section 28 of, and paragraph 16(3) of Schedule 3 to, the Welfare Reform Act 2007 (c.5), section 26(1)(a) to (e) of the Child Poverty Act 2010 (c. 9) and section 31, and paragraph 39(a) and (b) of Schedule 2 to, the Welfare Reform Act 2012 (c.5).

<sup>(31)</sup> 2008 c.25.

<sup>(32)</sup> 2016 c. 5.

- (i) a selective school;
- (ii) a special school<sup>(33)</sup>; or
- (iii) an independent school which is not an academy;

“hospital education” means education provided at a community special school or foundation special school established in a hospital, or under any arrangements made by the local authority under section 19 of the 1996 Act (exceptional provision of education), where the child is being provided with such education by reason of a decision made by a medical practitioner, and “hospital education places” shall be read accordingly;

“IDACI” means the Income Deprivation Affecting Children Index referred to in the document named “Statistical release – main findings” under the title for the collection of related data and documents, “English Indices of Deprivation 2019” published by the Ministry for Housing and Local Government<sup>(34)</sup>;

“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<sup>(35)</sup> and “key stage 1”, “key stage 2”, “key stage 3” and “key stage 4” mean, respectively, the first, second, third and fourth key stages referred to in those sections;

“looked after child” has the meaning given by—

- (i) section 22(1) of the 1989 Act; or
- (ii) section 74(1) of the Social Services and Well-being (Wales) Act 2014<sup>(36)</sup>;

“LSOA rank” means the rank allocated to a pupil in respect of the Lower-layer Super Output Area in which the pupil lives under IDACI;

“middle school single sum formula” is  $A \times (B / C) + D \times (E / C)$  where—

- (i) *A* is the amount allocated per school by the authority under paragraph 1(a) of Schedule 3 (primary single sum);
- (ii) *B* is the number of primary-age year groups in the school;
- (iii) *C* is the number of year groups in the school;
- (iv) *D* is the amount allocated per school by the authority under paragraph 2(a) of Schedule 3 (secondary single sum); and
- (v) *E* is the number of secondary-age year groups in the school;

“the maintained nursery school supplement” is any amount allocated to the authority in respect of nursery schools maintained by it, notified to the authority in the early years block;

“non-domestic rate” has the meaning given in section 54 of the Local Government Finance Act 1988<sup>(37)</sup>;

“premises factor allocation” means—

- (i) any additional funding that would be allocated to the school by virtue of paragraph 10 to 12 of Schedule 3; and
- (ii) any additional funding that the local authority has allocated to the school which has been authorised by the Secretary of State under regulation 31(1)(h);

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<sup>(33)</sup> For the meaning of special school, see section 337 of the 1996 Act.

<sup>(34)</sup> Available at: English indices of deprivation 2019 - GOV.UK ([www.gov.uk](http://www.gov.uk)). A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

<sup>(35)</sup> Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.

<sup>(36)</sup> 2014 anaw. 4.

<sup>(37)</sup> 1988 c.41.

“previous funding period” means the financial year beginning on 1st April 2020 and “previous funding periods” means such funding periods as the context specifies more particularly;

“proper accounting practices” means those accounting practices which a local authority is 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<sup>(38)</sup>;

“prescribed alteration” means a prescribed alteration within the meaning of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013<sup>(39)</sup>;

“provider”, in relation to funded early years provision, includes a governing body of a maintained 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 as a result 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 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 learning goals” means the early learning goals in the prime areas in section 1 of the 2017 Document (or, as the case may be, the 2012 Document or 2014 Document) and also the early learning goals of reading; writing; numbers; and shape, space and measures in section 1 of that document;

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

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

“Risk Protection Arrangement” means an arrangement to cover the costs of certain liabilities arising in connection with maintained schools and their premises that is entered into between the Secretary of State and—

- (i) the governing bodies of maintained schools, (in the case of a maintained school apart from a pupil referral unit), or
- (ii) the local authority, (in the case of a pupil referral unit);

“school census” means the record of individual pupil information supplied by local authorities to the Secretary of State under section 537A of the 1996 Act<sup>(40)</sup>;

“second closest school” means, in respect of a pupil, the school which is the second shortest distance in a straight line from the pupil’s home and which admits pupils of the pupil’s age and sex, other than—

- (i) a selective school;
- (ii) a special school; or
- (iii) an independent school which is not an academy;

“selective school” means a school where all the pupils in the school are selected by ability or by aptitude;

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<sup>(38)</sup> This definition is taken from section 21 of the 2003 Act and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

<sup>(39)</sup> S.I. 2013/3110. The regulations are made under section 18 of the 2006 Act.

<sup>(40)</sup> Section 537A was inserted by section 140(1) of, and paragraph 153 of Schedule 30 to, the 1998 Act.

“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;

“special academy” means an educational institution which meets the requirements of section 1A(2) of the 2010 Act;

“special educational needs” has the meaning given in section 20(1) of the 2014 Act;

“specific grant” means any grant paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used other than—

- (i) the Dedicated Schools Grant; or
- (ii) any sixth form grant;

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

“Year 1” means the school year<sup>(41)</sup> in which the majority of pupils attain the age of six;

“Year 2” means the school year in which the majority of pupils attain the age of seven;

“Year 3” means the school year in which the majority of pupils attain the age of eight;

“Year 4” means the school year in which the majority of pupils attain the age of nine;

“Year 5” means the school year in which the majority of pupils attain the age of ten;

“Year 6” means the school year in which the majority of pupils attain the age of eleven;

“Year 7” means the school year in which the majority of pupils attain the age of twelve;

“Year 8” means the school year in which the majority of pupils attain the age of thirteen.

(5) In these Regulations—

- (a) a reference to a determination or redetermination of a budget share or amount to be allocated is a reference to such a determination or redetermination for the funding period, unless otherwise stated;
- (b) a reference to an academy’s “predecessor school” is a reference to—
  - (i) the school that was discontinued and which that academy replaced, or
  - (ii) the maintained school which converted into that academy in accordance with section 4 of the 2010 Act;
- (c) a reference to a “governing body” of a school includes the management committee of a pupil referral unit unless otherwise specified;
- (d) a reference to an inspection under section 5 of the 2005 Act includes a reference to an inspection under section 8 of that Act (other inspections) which has been treated by the Chief Inspector as an inspection under section 5;
- (e) a reference to the number of pupils at a particular key stage is a reference to the number on 1st October 2020, unless otherwise stated;
- (f) a reference to disadvantaged two-year-olds in regulations 24 and 25 means—
  - (i) a child who is eligible for funded early years provision only by virtue of meeting the eligibility condition in regulation 3(2) of the Early Years Provision Regulations 2014, including any three-year-olds who are so eligible, or
  - (ii) a child in respect of whom funding is allocated by virtue of regulation 15(6);
- (g) a reference to “pupils or children” in regulations 15 and 16 is a reference to—
  - (i) in respect of a nursery school, the pupils at the school,
  - (ii) in respect of a nursery class, the pupils in the class,

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(41) For the meaning of “school year”, see section 579(1) of the 1996 Act.

- (iii) in respect of a funded early years provider, the children receiving funded early years provision from the provider,
- (iv) in respect of a relevant early years provider, the children receiving relevant early years provision from the provider, and
- (v) in respect of community early years provision, the children receiving such provision at the school;
- (h) a reference to “pupils” includes only those pupils who are recorded on the school census as either—
  - (i) registered solely at that school, or
  - (ii) registered at more than one school, but attending that school for most of their time, except in regulations 15(5), 15(6) and 16 where “pupil” means a registered pupil<sup>(42)</sup>;
- (i) a reference to “schools” in Schedule 1 includes maintained schools and academies, except where the context requires otherwise;
- (j) a reference to “special educational needs transport costs”, for the purposes of paragraph 2(d) of Schedule 2, is a reference to the costs of home-to-school transport for pupils with special educational needs in schools maintained by a local authority where the authority is meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by it are equal to, or greater than, the costs of such transport;
- (k) a reference to “termination of employment costs”, for the purposes of paragraph 2(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;
- (l) a reference to “children”, for the purposes of Schedule 2, has the meaning given by section 579 of the 1996 Act;
- (m) a reference to “young people”, for the purposes of Part 5 of Schedule 2, is a reference to a person who is over compulsory school age but under the age of 19.

## Revocation

**2.** The School and Early Years Finance (England) (No. 2) Regulations 2018<sup>(43)</sup> are revoked on 1st April 2021.

## Amendments

**3.** In regulation 8 of the Schools Forums (England) Regulations 2012<sup>(44)</sup>, in each place where the words “the School and Early Years Finance (England) Regulations 2020” occur, substitute “the School and Early Years Finance (England) Regulations 2021”.

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<sup>(42)</sup> For the meaning of “registered pupil”, see section 434(5) of the 1996 Act.

<sup>(43)</sup> [S.I. 2018/1185](#).

<sup>(44)</sup> [S.I. 2012/2261](#); relevant amending instruments are [S.I. 2012/2991](#), [2013/3104](#), [2015/2033](#), [2017/44](#), [2018/10](#), the 2020 Regulations and [S.I. 2020/540](#).



## PART 2

### Action to be Taken by a Local Authority

#### CHAPTER 1

##### Determination of the Non-Schools Education Budget, Schools Budget, Individual Schools Budget, and Budget Shares

###### **The non-schools education budget**

4.—(1) The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's non-schools education budget, subject to the exceptions in regulation 7—

- (a) those specified in Schedule 1;
- (b) expenditure which is to be treated as part of the non-schools education budget by virtue of regulation 8(13); and
- (c) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget).

(2) The expenditure referred to in paragraph (1) includes expenditure on associated administrative costs and overheads.

###### **Initial determination of a local authority's schools budget**

5. A local authority must, not later than 28th February 2021—

- (a) make an initial determination of its schools budget; and
- (b) give notice of that determination to the governing bodies of the schools which it maintains.

###### **The schools budget**

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

(2) The classes or descriptions of local authority expenditure are—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils at maintained schools;
- (b) expenditure on the education of children at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for children otherwise than at schools maintained by a local authority;
- (c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraphs (a) or (b);
- (d) expenditure on the education of—
  - (i) persons provided with further education who are aged under 19 and have special educational needs; and
  - (ii) persons provided with further education who are aged 19 or over but under 25 and are subject to an EHC plan,

in so far as that expenditure does not fall within sub-paragraphs (a) to (c); and

- (e) expenditure on early years provision, in so far as that expenditure does not fall within subparagraphs (a) to (d).

### **Exceptions**

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

- (a) capital expenditure, other than—
  - (i) CERA;
  - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred—
  - (i) on prudential borrowing;
  - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph (a)(ii); and
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(45)</sup> (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 the following provisions of this regulation and not later than 28th February 2021, a local authority must deduct from its schools budget such of the classes or descriptions of planned expenditure set out in Schedule 2 as it proposes to deduct in order to determine its individual schools budget.

(2) Under paragraph (1), a local authority—

- (a) must not deduct from its schools budget such of the classes or description of planned expenditure set out in Part 6 of Schedule 2; and
- (b) may only deduct from its schools budget such of the classes or descriptions of planned expenditure set out in Part 7 of Schedule 2 if that deduction is to be made under paragraph (13).

(3) Expenditure referred to in paragraphs 1 and 2 of Part 1 (Historic Commitments) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken before 1st April 2013 that commit the authority to incur expenditure in the funding period.

(4) In deducting the expenditure referred to in Part 1 (Historic Commitments) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 3 of Schedule 2, unless it is authorised to do so under regulation 31(1)(a).

(5) A local authority must not deduct the expenditure referred to in paragraphs 4 to 6 of Schedule 2 unless the criteria for determining the expenditure have been authorised by its schools forum under regulation 12(1), or by the Secretary of State under regulation 12(3).

(6) Except as provided for in paragraphs (13) and (14), a local authority must not deduct the expenditure referred to in Schedule 2 (other than expenditure referred to in paragraph 8 (expenditure on licences) and Part 5 (Children and Young People With High Needs)) without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3).

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<sup>(45)</sup> 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), sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38), and section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13).

- (7) Where a local authority has expenditure falling within Part 8 of Schedule 2, it must—
- (a) deduct all of that expenditure from its schools budget;
  - (b) deduct such part of that expenditure as the authority may determine and carry forward the remaining part to the next funding period; or
  - (c) carry forward all of that expenditure to the next funding period.
- (8) A local authority may apply to the Secretary of State for authorisation under regulation 31(1) to disregard the requirements in paragraph (7).
- (9) Any amount of expenditure which was deducted under paragraphs 4 (growth fund), 5 (falling rolls), 6 (new schools), and 7 (extra infant classes) of Schedule 2 to the 2020 Regulations for the previous funding period and which remains unspent may be used by the local authority in the funding period for the purposes listed in paragraphs 4 to 7 of Schedule 2 to the 2020 Regulations that applied to such expenditure.
- (10) A local authority must deduct the expenditure referred to in paragraph 32 of Schedule 2.
- (11) Where a local authority treated any expenditure described in Part 6 of Schedule 2 to the 2020 Regulations (Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools) as central expenditure for the previous funding period under regulation 11(5) of the 2020 Regulations and any such amounts remain unspent, such amounts may be used by the local authority in the funding period for the purposes listed in Part 6 of Schedule 2 to the 2020 Regulations that applied to such expenditure.
- (12) A local authority may apply to the Secretary of State for authorisation under regulation 31(1) to—
- (a) deduct from its schools budget any expenditure falling outside the classes or descriptions of planned expenditure in Schedule 2, in order to determine its individual schools budget; and
  - (b) alter the operation of regulation 11(3) (additional costs of pupils with special educational needs).
- (13) A local authority may deduct the expenditure specified in paragraph (14) from the schools budget without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3), in which case it shall be treated as if it were part of the non-schools education budget, prescribed in regulation 4.
- (14) The specified expenditure, for the purposes of paragraph (13) is the description of expenditure referred to in—
- (a) paragraphs 9 to 12 of Schedule 2;
  - (b) Part 3 of Schedule 2; and
  - (c) Part 7 of Schedule 2.
- (15) References to planned expenditure in this regulation and Schedule 2 are references to that expenditure net of—
- (a) all related specific grants;
  - (b) all related fees, charges and income; and
  - (c) any funding received from the Secretary of State in respect of a charge payable by a local authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(46).

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(46) *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.

(16) The expenditure referred to in Schedule 2 includes expenditure on associated administrative costs and overheads.

### **Consultation**

**9.—(1)** In determining the formulae under regulation 10, a local authority may change the formulae which it determined under regulation 10 of the 2020 Regulations.

(2) Subject to paragraph (4), a local authority must consult its schools forum and schools maintained by it 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 its area, it 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 26 (sixth form funding) or 29 (excluded pupils).

(5) A local authority must consult its schools forum before incurring any of the expenditure referred to in paragraphs 4 to 6 of Schedule 2.

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

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

(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 (3), decide on the formula which it will use to determine—

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

(4) A local authority must use the formula determined under paragraph (3) when making all the determinations referred to in paragraph (3)(a) to (d) in respect of the funding period.

(5) A local authority must ensure, in the formula determined under paragraph (3), that the predicted total number of hours calculated under regulation 16(1) is multiplied by a rate.

(6) The rate referred to in paragraph (5) must be the same rate used in all determinations referred to in paragraph (3)(a) to (d).

(7) A local authority may not change its formulae after the funding period has begun.

(8) The formulae must be determined in accordance with Part 3 of these Regulations.

### **Determination of allocation of budget shares etc. for the funding period**

**11.—(1)** Except as provided for in paragraphs (2), (4) and (9), not later than 28th February 2021, a local authority must determine the budget share for each school which it maintains, using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

(2) Paragraph (1) does not apply to any determination of amounts to be included in budget shares under regulation 26 (sixth form funding) and in relation to such determination the local authority must make the determination and notify the school to which the determination relates within a reasonable period after the notification given by the Secretary of State under regulation 26(1).

(3) When making the determination under paragraph (1) the local authority must identify within each budget share an amount calculated by reference to the requirements, factors and criteria specified in Part 3 which are relevant to pupils with special educational needs; such amount must be calculated using a sum of £6,000 as the threshold below which the school will be expected to meet the additional costs of pupils with special educational needs from its budget share.

(4) Not later than 28th February 2021, a local authority must determine the budget share for each of the special schools and pupil referral units maintained by it in accordance with Part 3 of these Regulations.

(5) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (10), the authority may apply to its schools forum under regulation 12(1), or to the Secretary of State under regulation 12(2), for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools) of Schedule 2 from the budget shares of—

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

where the expenditure is instead to be treated as if it were part of central expenditure.

(6) After the local authority has made a determination under paragraph (1) or (4) but before giving notice under paragraph (10), the authority may apply to its schools forum under regulation 12(1), or to the Secretary of State under regulation 12(2), for authorisation to redetermine schools' budget shares by removing any of the expenditure referred to in Part 7 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary, Secondary, and Special Schools, and Pupil Referral Units) of Schedule 2 from the budget shares of the schools specified in paragraph (7), where the expenditure is instead to be treated as if it were part of central expenditure.

(7) For the purposes of paragraph (6), the specified schools are all primary schools other than nursery schools, all secondary schools, and all special schools and pupil referral units.

(8) Where the local authority makes an application under paragraph (6), the amount by which the budget share is to be redetermined must be set out—

- (a) in the case of a maintained school which is not a special school, on an amount per pupil basis;
- (b) in the case of a maintained school which is a special school, or a pupil referral unit, on an amount per place basis.

(9) Not later than 31st March 2021, a local authority must determine—

- (a) the budget share for each of the nursery schools maintained by it;
- (b) the amount to be allocated in respect of each nursery class in schools maintained by it;
- (c) the amount to be allocated to each relevant early years provider in its area; and
- (d) the amount to be allocated in respect of community early years provision,

using the formula referred to in regulation 10(3) in accordance with Part 3 of these Regulations.

(10) Not later than 31st March 2021, a local authority must give notice of—

- (a) each budget share or amount determined under paragraphs (1), (4) and (9); or

- (b) the redetermined budget share, when the budget share has been redetermined under paragraph (5) or (6),

to the governing body of the school or the relevant early years provider concerned.

(11) Save as provided in this regulation and in regulations 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision), 19 (Risk Protection Arrangement), 20 (differential funding), 26 (sixth form funding), 27 (new schools, merged schools and closing schools), 28 (federated schools), 29 (excluded pupils), 30 (correction of errors and non-domestic rates) and 31 (alternative arrangements), the authority must not redetermine a school's budget share or the amount allocated to a relevant early years provider.

## CHAPTER 2

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

#### **Applications to the schools forum and the Secretary of State**

12.—(1) On the application of a local authority, its schools forum may authorise—

- (a) the criteria for determining expenditure referred to in paragraphs 4 to 6 of Schedule 2, under regulation 8(5);
- (b) the reduction during the funding period of any amount of expenditure deducted in accordance with regulation 8(5);
- (c) the making of deductions from the authority's schools budget of expenditure under regulation 8(6);
- (d) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools) of Schedule 2 from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(5); and
- (e) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 7 (Items That May Be Removed From Maintained Schools' Budget Shares - Primary, Secondary, and Special Schools, and Pupil Referral Units) of Schedule 2 from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(6).

(2) Where—

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

the authority may apply 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).

## PART 3

### Determination of Budget Shares etc.

#### CHAPTER 1

##### Requirements, and Factors and Criteria Taken into Account

#### **Pupil numbers**

**13.**—(1) In determining budget shares for primary and secondary schools, except in respect of nursery classes, a local authority must ascertain and take into account in its formula the number of pupils who were at those schools in accordance with paragraph (2) on the date specified in paragraph (3).

(2) For the purposes of paragraph (1), the number of pupils is  $A - B$  where—

- (a)  $A$  is the total number of pupils in the school; and
- (b)  $B$  is the number of pupils in the school in respect of whom sixth form grant is payable.

(3) The date for ascertaining pupil numbers is 1st October 2020.

(4) Where—

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

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

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

(6) A local authority must include in its formula a single per pupil amount of at least—

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

(7) In this regulation, “published admission number” means the number of pupils in any relevant age group at the school determined by the admission authority under sections 88C and 88D of the 1998 Act<sup>(47)</sup>.

#### **Places**

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

(a) must include £10,000 for each place other than—

- (i) hospital education places; and
- (ii) places for those who are over 18, unless they are aged 19 and are continuing to attend a particular course of secondary education which they began before they reached the age of 18; and

(b) must not include funding for places described in sub-paragraph (a)(ii).

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<sup>(47)</sup> Sections 88C and 88D of the 1998 Act were inserted by section 151(1) and (4) of the Education and Skills Act 2008. For the meaning of “admission authority”, see section 88(1) of the 1998 Act.

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

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

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

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

(5) For each hospital education place referred to in paragraphs (1) to (3) the local authority must include at least the equivalent amount per hospital education place which the authority included in the budget share of the school or pupil referral unit, as the case may be, in the previous funding period.

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

### **Social deprivation**

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

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

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

and where it is based on an LSOA rank the authority may use factors which differentiate between different LSOA bands (that is, groupings of LSOA ranks set out in the document published by the Department for Education named “Schools Revenue Funding 2021 to 2022: Operational Guide”(48)).

(3) In determining budget shares under paragraph (1), the authority may take into account in its formula a single per pupil amount for each socially deprived pupil in reception classes and at key stage 1 and 2, and a single per pupil amount for each socially deprived pupil at key stage 3 and 4.

(4) In paragraph (3) a reference to a “socially deprived pupil” is to a pupil who has been determined as being such using the criteria in paragraph (2).

(5) Subject to regulation 25, other than in respect of two-year-olds, in determining—

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

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



a local authority must take into account in its formula one or more factors based on the incidence of social deprivation in pupils or children, and the determination of the incidence of social deprivation must be based on the characteristics of the pupils or children and not on the location of the school or provider.

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

a local authority may take into account in its formula one or more factors based on the incidence of social deprivation in pupils or children, and the determination of the incidence of social deprivation must be based on the characteristics of the pupils or children and not on the location of the school or provider.

### **Special arrangements for pupils in maintained nursery schools and nursery classes and for children receiving relevant early years provision and community early years provision**

16.—(1) Subject to this regulation, in determining—

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

a local authority must take into account in its formula the predicted total number of hours of attendance of pupils or children, basing the calculation on the most recent data available about the actual numbers of pupils or children.

(2) When further information about hours of attendance becomes available a local authority must—

- (a) review the budget share for each maintained nursery school, the amount allocated in respect of each nursery class and the amount allocated in respect of community early years provision; and
- (b) redetermine that budget share or amount allocated, as the case may be.

(3) When carrying out a review and redetermination under paragraph (2) the local authority must—

- (a) in the case where the local authority decides to fund only funded early years provision, take into account—
  - (i) the predicted total number of hours of attendance of pupils in the nursery school or nursery class, and of children being provided community early years provision, who will receive funded early years provision during the period (basing the calculation on the actual hours of such attendance in each of at least three sample weeks); or
  - (ii) the actual total number of hours of such attendance for the period;
- (b) in the case where the local authority decides to fund early years provision in excess of funded early years provision, take into account—
  - (i) the predicted total number of hours of attendance of pupils in the nursery school or nursery class, and of children being provided community early years provision, who

will receive early years provision during the period (basing the calculation on the actual hours of such attendance in each of at least three sample weeks); or

(ii) the actual total number of hours of such attendance for the period.

(4) When further information about hours of attendance becomes available, a local authority must—

- (a) review the amount allocated to each relevant early years provider; and
- (b) redetermine the amount allocated.

(5) When carrying out a review and redetermination under paragraph (4) the local authority must take into account—

- (a) the predicted total number of hours of attendance of children who will receive funded early years provision from the relevant early years provider, during the period (basing the calculation on the actual hours of such attendance in each of at least three sample weeks); or
- (b) the actual total numbers of hours of such attendance for the period.

(6) Within 28 days of making any redetermination under paragraph (2) or (4), the local authority must give notice of the redetermination and the date on which it will be implemented to the governing body of the school, or the relevant early years provider concerned.

(7) When making determinations under this regulation, a local authority may weight the predicted total number of hours of attendance of pupils or children, according to the special educational needs of any such pupils or children.

(8) When determining—

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

a local authority may take into account in its formula the number of places it wishes to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where the authority has reserved those places for children with special educational needs or children in need.

(9) In paragraph (8) “children in need” means children in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17 of the 1989 Act.

### **Early years pupil premium**

17.—(1) When determining—

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

a local authority must include in the amount to be allocated an amount equivalent to 53 pence for each child eligible who is eligible for the early years pupil premium, for each hour of early years provision that the child receives, up to a maximum of 570 hours.

(2) A child is eligible for early years pupil premium if the child—

- (a) is eligible for funded early years provision under regulation 3(3) of the Early Years Provision Regulations 2014;
  - (b) receives at least one hour of such provision; and
  - (c) either—
    - (i) the child’s parents are receiving one or more of the benefits in paragraph (3), or
    - (ii) the child has previously been looked after by a local authority and is no longer so looked after as a result of the making of an order in paragraph (4).
- (3) The benefits are—
- (a) universal credit where the child’s parent has, in the relevant period, earned income not exceeding the applicable amount;
  - (b) income support;
  - (c) income-based jobseekers’ allowance;
  - (d) income-related employment and support allowance;
  - (e) support under Part VI of the Immigration and Asylum Act 1999;
  - (f) the guaranteed element of state pension credit;
  - (g) child tax credit (where the recipient is not also entitled to working tax credit and has an annual gross income of no more than £16,190), and
  - (h) working tax credit run-on.
- (4) The orders are—
- (a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002<sup>(49)</sup>;
  - (b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act<sup>(50)</sup>; and
  - (c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act<sup>(51)</sup> which consists of, or includes, arrangements relating to either or both of the following—
    - (i) with whom the child is to live;
    - (ii) when the child is to live with any person.
- (5) A local authority must include in the amount to be allocated for relevant early years provision or community early years provision in its area an amount of £302.10 (equivalent to 53 pence multiplied by 570) for each looked after child aged three or four years old in the local authority’s area.
- (6) The allocation referred to in paragraph (5) must be managed by the local authority’s designated virtual school head for the benefit of the educational needs of the relevant looked after children as described in their personal education plans (that is, plans relating to the children’s education and training, including as far as is relevant and reasonably practicable the information in paragraph 2 of Schedule 1 to the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(52)</sup>).
- (7) In paragraph (6), “virtual school head” means a person appointed by a local authority under section 22(3B) of the 1989 Act<sup>(53)</sup> for the purpose of discharging the local authority’s duty set out in section 22(3A) of that Act (duty to promote the educational achievement of children looked after by the authority).

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<sup>(49)</sup> 2002 c.38.

<sup>(50)</sup> Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

<sup>(51)</sup> Section 8(1) was amended by section 12 of the 2014 Act.

<sup>(52)</sup> S.I. 2010/959.

<sup>(53)</sup> Section 22(3A) was inserted by section 52 of the Children Act 2004 (c. 31); section 22(3B) was inserted by section 99 of the 2014 Act.

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

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

(10) In this regulation—

- (a) “earned income” means income for the purposes of Chapter 2 of Part 6 of the Universal Credit Regulations 2013<sup>(54)</sup>;
- (b) the relevant assessment period and the applicable amount are those referred to in the following sub-paragraphs as applicable—
  - (i) except where paragraphs (ii) or (iii) apply, where the parent had earned income which did not exceed £616.67 in the universal credit assessment period<sup>(55)</sup> immediately preceding the date of the request for early years pupil premium (period 1)—
    - (aa) the relevant assessment period is period 1; and
    - (bb) the applicable amount is £616.67;
  - (ii) this paragraph applies where paragraph (i) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 2) immediately preceding period 1 referred to in that paragraph—
    - (aa) the relevant assessment period is the sum of period 1 and period 2 (SAP); and
    - (bb) the applicable amount is £1,233.34;
  - (iii) this paragraph applies where paragraph (ii) does not because the applicable amount referred to in that paragraph is exceeded and there is a universal credit assessment period (period 3) immediately preceding period 2 referred to in that paragraph—
    - (aa) the relevant assessment period is the period made up of SAP and period 3; and
    - (bb) the applicable amount is £1,850;
- (c) where the parent referred to in paragraph (3)(a) is—
  - (i) a member of a couple who have jointly made a claim for, and are in receipt of, universal credit; or
  - (ii) a member of a couple but has claimed, and is in receipt of, universal credit as a single person,
 

references to applicable amounts in paragraphs (i) to (iii) of paragraph (b) as applicable are to be read as references to the combined income of the couple;
- (d) “parent” has the meaning given by section 2(2) of the Childcare Act 2006.

### **Disability access fund**

**18.—**(1) When determining—

- (a) budget shares for nursery schools maintained by it;
- (b) amounts to be allocated in respect of nursery classes in schools maintained by it;

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<sup>(54)</sup> *S.I. 2013/376.* Chapter 2 of Part 6 is concerned with earned income for the purposes of calculating an award of universal credit.  
<sup>(55)</sup> An assessment period is prescribed by regulation 21(1) of the Universal Credit Regulations 2013 as a period of one month beginning with the first day of entitlement and each subsequent period of one month during which entitlement subsists.

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

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

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

(3) For the purposes of this regulation, a child is disabled if he or she is paid or entitled to disability living allowance by virtue of section 71 of the Social Security Contributions and Benefits Act 1992(56).

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

### **Risk Protection Arrangement**

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

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

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

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

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

### **Differential funding**

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

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

a local authority may use factors or criteria which differentiate between different categories or descriptions of school or provider on the basis of unavoidable costs.

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

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

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

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

(2) For the purposes of—

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

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

(3) Subject to regulation 25, in determining—

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

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

(4) The requirements, factors and criteria set out in Schedule 3 may not be taken into account by a local authority on the basis of actual or estimated cost unless otherwise stated in that Schedule.

(5) Subject to paragraphs (7) and (8), where a school would otherwise receive a greater amount of redetermined adjusted budget share per pupil than it did in the previous funding period, the local authority may do one or both of the following—

- (a) determine a percentage beyond which the per pupil amount of redetermined adjusted budget may not increase;
- (b) determine a percentage by which the amount that the per pupil redetermined adjusted budget share would otherwise increase by will be reduced.

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

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

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

(8) Paragraph (5) does not apply to the determination of budget shares for—

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

### Minimum per pupil amount

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

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

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

Where—

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

Y is the number of pupils at the school.

(3) In calculating X, the authority must—

- (a) deduct any premises factor allocation from the amount;
- (b) add any amount that is deducted under regulation 11(5) or (6), 19(2), 29 or 30(1);
- (c) deduct any amount that is added under regulation 29 or 30(1).

(4) In this paragraph, the minimum per pupil amount for a school is—

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

Where—

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

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

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

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

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

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

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

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

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

### Minimum funding guarantee

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

(2) For the purpose of determining budget shares, paragraph (1) does not apply to any school opening during the funding period, except in the circumstances set out in paragraph 3 of Schedule 4.

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

### **Early years 95 per cent requirement**

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

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

- (a) A is the total of—
  - (i) all budget shares and amounts determined by the authority under regulation 11(9);
  - (ii) any amount deducted by the authority under paragraph 27 of Schedule 2 to these Regulations; and
  - (iii) any amount of the fund established under paragraph 32 of Schedule 2 to these Regulations, which the authority intends to distribute to early years providers;
- (b) B is the total of—
  - (i) the maintained nursery school supplement, and
  - (ii) any part of the budget share or amount determined by the authority under regulation 11(9) in respect of disadvantaged two-year-olds;
- (c) C is the total number of hours of attendance of children, predicted by the authority under regulation 16(1), less any predicted hours of attendance of disadvantaged two-year-olds;
- (d) D is the hourly unit funding rate, notified to the local authority in the early years block.

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

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

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

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

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

- (a) the budget shares for nursery schools maintained by the authority,
  - (b) the amounts to be allocated in respect of nursery classes in schools maintained by it;
  - (c) the amounts to be allocated to relevant early years providers in its area; and
  - (d) the amounts to be allocated in respect of community early years provision in schools maintained by it.
- less any of the amounts specified in paragraph (4).

(4) The following are not included in early years allocations for the purposes of this regulation—

- (a) any amounts allocated in respect of disadvantaged two-year-olds; and
- (b) the maintained nursery school supplement.



### **Sixth form funding**

26.—(1) A local authority must include in the budget shares of maintained secondary schools and special schools an amount equal to any sum notified to the local authority by the Secretary of State as being the allocation of sixth form grant for that school.

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

(3) A local authority must redetermine the budget share of a secondary school before the end of the funding period where the authority receives a written notification from the Secretary of State of a revised allocation in respect of the sum referred to in paragraph (1).

### **New schools, merged schools and closing schools**

27.—(1) Where in the funding period, but excluding 1st April 2021, a new maintained school opens, and is a replacement for two or more maintained schools that are discontinued during the funding period, a local authority must calculate the budget share of the new school by adding together the budget shares of the schools that have been discontinued.

(2) Except where paragraph (1) applies, a local authority must determine a budget share for—

(a) any new maintained school in its area, and

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

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

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

(4) Where in the previous funding period or on 1st April 2021 a new maintained school opened or opens and is a replacement for two or more maintained schools that were discontinued during the previous funding period or on 1st April 2021, a local authority must include in the budget share of the new school an amount equal to 85% of the total amount which the schools that it replaced would have been allocated in their budget shares under paragraphs 1 and 2 of Schedule 3 (single sums) if the schools had not been discontinued.

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

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

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

(8) Where in the previous funding period or on 1st April 2021 a maintained school is subject to a prescribed alteration as a result of a closure of a school during the previous funding period or on 1st April 2021, a local authority must include in the budget share of the enlarged school an amount equal to 85% of the total amount which the schools whose provision it has replaced would have been allocated in their budget shares under paragraph 1 and 2 of Schedule 3 if the school had not been discontinued.

(9) Where in the funding period, but excluding 1st April 2021, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, a local authority may add an

amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.

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

### **Federated schools**

**28.**—(1) Subject to paragraphs (2) and (3), where two or more maintained schools are federated under section 24 of the 2002 Act, the local authority must determine a budget share for each school in accordance with Part 3 of these Regulations.

(2) After carrying out the determination under paragraph (1) the local authority may treat the schools as a single school for the purposes of these Regulations and, accordingly, allocate a single budget share to the governing body of the federation.

(3) Where the local authority decides to allocate a single budget share to the governing body of a federation under paragraph (2), it must determine it by combining the budget shares of all the schools that form part of that federation.

(4) Where one or more schools are to leave a federation which has been allocated a single budget share under paragraph (2), the local authority must—

- (a) determine the budget share for each of the leaving schools, and
- (b) redetermine the budget share for the federation,

in accordance with Part 3 of these Regulations.

## **CHAPTER 2**

### **Adjustments, Correction of Errors, and Alternative Arrangements Authorised by the Secretary of State**

#### **Pupils permanently excluded from, or leaving, maintained schools**

**29.**—(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, a pupil referral unit, or a place which the authority has reserved for children with special educational needs) (“the excluding school”) the authority must redetermine the excluding school’s budget share in accordance with paragraph (2).

(2) The excluding school’s budget share must be reduced by  $A \times (B / 52) + C$  where—

- (a)  $A$  is the amount determined by the authority in accordance with this Part that would be attributable to a pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority for the full funding period;
- (b)  $B$  is either—
  - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
  - (ii) where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date; and
- (c)  $C$  is the amount of the adjustment made to the school’s budget share under a financial adjustment order.

(3) Where a pupil has been permanently excluded from the excluding school and is admitted to another school maintained by a local authority (other than a special school, a pupil referral unit, or to a place which the authority has reserved for children with special educational needs) (“the admitting school”) in the funding period, the authority must redetermine the admitting school’s budget share in accordance with paragraphs (4) and (5).

(4) The admitting school’s budget share must be increased by an amount which is not less than  $D \times (E / F)$  where—

- (a)  $D$  is the amount by which the authority reduced the budget share of the excluding school, or would have reduced the budget share if that school had been maintained by the authority, except that any reduction in the excluding school’s budget share made under a financial adjustment order must not be taken into account for these purposes;
- (b)  $E$  is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c)  $F$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) In redetermining the admitting school’s budget share, the authority may increase it by any amount up to the amount of the adjustment made to the excluding school’s budget share under a financial adjustment order.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school, the school’s budget share must be increased by an amount which is no less than  $G \times (H / I)$  where—

- (a)  $G$  is the amount by which the authority reduced the school’s budget share under paragraph (2);
- (b)  $H$  is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c)  $I$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school (other than a special school, a pupil referral unit, or a place which the authority has reserved for children with special educational needs) for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(8) For the purposes of paragraph (2)(a), the amount attributable to a pupil is the sum of the amounts determined in accordance with the authority’s formula, by reference to pupil numbers rather than by reference to any other factor or criterion not dependent on pupil numbers (except that where a sixth form grant is payable in respect of the pupil in question, the amount attributable to that pupil is £4,188 for the funding period).

(9) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority (“the excluding school”), the local authority must redetermine the excluding school’s budget share in accordance with paragraph (10).

(10) The excluding school’s budget share must be reduced by  $J \times (K / 52)$  where—

- (a)  $J$  is the amount of the pupil premium allocated to the excluding school for the funding period in respect of that child; and
- (b)  $K$  is either—
  - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or

- (ii) where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date.

(11) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority and admitted to another school maintained by a local authority (“the admitting school”) in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (12).

(12) The admitting school’s budget share must be increased by an amount which is not less than  $L \times (M / N)$  where—

- (a)  $L$  is the amount by which the authority reduced the budget share of the excluding school or would have reduced the budget share had that school been maintained by the authority;
- (b)  $M$  is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c)  $N$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(13) Where a permanently excluded pupil in respect of whom a pupil premium is payable is subsequently reinstated by the governing body of the school, the school’s budget share must be increased by an amount which is no less than  $O \times (P / Q)$  where—

- (a)  $O$  is the amount by which the authority reduced the school’s budget share under paragraph (10);
- (b)  $P$  is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c)  $Q$  is the number of complete weeks remaining in the funding period calculated from the relevant date.

(14) Paragraphs (9) and (10) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(15) For the purposes of this regulation—

- (a) “the relevant date” is the sixth school day following the date on which the pupil has been permanently excluded; and
- (b) “a financial adjustment order” means an order for the adjustment of a school’s budget share made under regulation 25(5)(b) of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012<sup>(57)</sup> in respect of the exclusion of the pupil from the excluding school.

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

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

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(57) S.I. 2012/1033.

or otherwise, and any such redetermination will take effect in the next financial year following the funding period.

(2) A local authority may redetermine a school's budget share to take into account any changes in that school's non-domestic rate liability in relation to the funding period or any previous funding period.

(3) In so far as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the Regulations in force during the funding period in which the error occurred.

### **Alternative arrangements approved by the Secretary of State**

**31.**—(1) Subject to paragraph (2), on application by a local authority, the Secretary of State may authorise the authority to—

- (a) disregard the limits referred to in paragraph 3 of Schedule 2 when deducting any expenditure referred to in regulation 8(4) (historic commitments);
- (b) disregard regulation 8(7) (determination of the individual schools budget for the funding period and limit on increase in central expenditure);
- (c) deduct any expenditure referred to in regulation 8(12)(a) (expenditure falling outside Schedule 2);
- (d) alter the operation of regulation 11(3) (additional expenditure on children with special educational needs);
- (e) determine (including redetermine) budget shares of schools maintained by it;
- (f) determine (including redetermine) amounts to be allocated in respect of nursery classes in schools maintained by it;
- (g) determine (including redetermine) amounts to be allocated to relevant early years providers in its area;
- (h) include additional factors or criteria in its formula under regulation 10(1) (formula for determining budget shares) where the nature of a school's premises exceptionally gives rise to significant additional cost;
- (i) include additional factors or criteria that the authority proposes to include in its formula under regulation 10(3) (early years single funding formula);
- (j) alter the operation of regulation 23 (minimum funding guarantee) and Schedule 4 in respect of particular schools;
- (k) vary any or all of the year group values D, E or F set out in regulation 22(4) for all the schools that are subject to the formula decided by the authority under regulation 10(1);
- (l) alter the operation of regulation 22 (minimum per pupil amount) in respect of particular schools;
- (m) disregard regulation 13 (pupil numbers);
- (n) alter the operation of regulation 27 (new schools, merged schools and closing schools) in respect of particular schools;
- (o) alter the operation of paragraphs 14 (primary population sparsity) and 15 (secondary population sparsity) of Schedule 3 in respect of particular schools; and
- (p) alter the operation of regulation 24 (early years 95 per cent requirement).

(2) The Secretary of State may authorise the matters in paragraph (1) to such extent as he or she may specify in accordance with arrangements approved in place of the arrangements provided for by these Regulations.

## PART 4

### Schemes

#### Required content of schemes

**32.** 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

**33.**—(1) Where a local authority submits a copy of its proposals to revise its scheme to its schools forum for approval under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, the members of the schools forum who represent schools maintained by the authority may—

- (a) approve the proposals;
- (b) approve the proposals with modifications; or
- (c) refuse to approve the proposals.

(2) Where the schools forum approves the proposals to revise the scheme, it may specify the date on which the revised scheme is to come into force.

(3) The local authority may apply to the Secretary of State for approval of proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act<sup>(58)</sup> where—

- (a) the schools forum refuses to approve the proposals, or approves them with modifications which are not acceptable to the local authority; or
- (b) the local authority is not required to establish a schools forum for its area.

(4) The Secretary of State may—

- (a) approve the proposals;
- (b) approve the proposals with modifications; or
- (c) refuse to approve the proposals.

(5) When approving proposals, the Secretary of State may specify the date on 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

**34.**—(1) A local authority—

- (a) must publish its scheme on a website which is accessible to the general public; and
- (b) may publish it elsewhere.

(2) Whenever a local authority revises the whole or part of its scheme, it 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.

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<sup>(58)</sup> Paragraph 2A of Schedule 14 to the 1998 Act was inserted by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.

## PART 5

### Schools Forums

#### **Amendment of the Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020**

**35.**—(1) The Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020<sup>(59)</sup> are amended as follows.

(2) In regulation 1—

- (a) in the heading, for “, commencement and expiry” substitute “and commencement”;
- (b) in paragraph (2), omit “and shall cease to have effect on 1st April 2021”.

(3) In regulation 2, in the heading, for “meetings of” substitute “the”.

19th January 2021

*Nick Gibb*  
Minister 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 local authority's functions under—
  - (a) 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); and
  - (b) sections 22, 36, 37 and 44 of the 2014 Act (which functions relate to the identification of children and young people with special educational needs and disabilities; the assessment of education, health and care needs; and the preparation and review of EHC plans).
3. Expenditure on monitoring the provision for pupils in schools 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 32 of the 2014 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; and
  - (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 1989 Act, functions under section 175 of the 2002 Act (duties in relation to welfare of children), and other functions relating to child protection.
7. Expenditure incurred in entering into, or subsequently incurred under, an arrangement under section 31 of the Health Act 1999<sup>(60)</sup> or regulations made under section 75 of the National Health Service Act 2006<sup>(61)</sup> (arrangements between NHS bodies and local authorities).

**Schools causing concern**

8. Expenditure incurred by a local authority in connection with functions under the following sections of the 2006 Act—
  - (a) section 60<sup>(62)</sup> (performance standards and safety warning notice);
  - (b) section 60A<sup>(63)</sup> (teachers' pay and conditions warning notice);

<sup>(60)</sup> 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.

<sup>(61)</sup> 2006 c. 41.

<sup>(62)</sup> Section 60 was amended by section 203 of, and paragraph 3 of Schedule 13 to, the 2009 Act, and by section 2 of the Education and Adoption Act 2016 (c. 6) ("the 2016 Act").

<sup>(63)</sup> Section 60A was inserted by section 203 of, and paragraph 4 of Schedule 13 to, the 2009 Act, and by section 3 of the 2016 Act.



- (c) section 63(64) (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements);
- (d) section 64(65) (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(66) (power of local authority to suspend right to delegated budget).

### **Access to education**

9. Expenditure in relation to planning and managing the supply of school places, including the authority's functions in relation to the establishment, alteration or discontinuance of schools under Part 2 of, and Schedule 2 to, the 2006 Act.

10. Expenditure in relation to the authority's functions under sections 508A to 509A(67) of the 1996 Act.

11. Expenditure on the provision of support for students under regulations made under section 1(1) of the Education Act 1962(68) and under section 22 of the Teaching and Higher Education Act 1998(69).

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

13. Expenditure on the payment of 16-19 Bursaries(70).

### **Additional education and training for children, young persons and adults**

14. Expenditure on the provision of education and training and of organised leisure time occupation, and other provision under sections 15ZA, 15ZC and 15B of the 1996 Act(71).

15. Expenditure on the provision by the local authority under sections 507A and 507B of the 1996 Act(72) of recreation, social and physical training, educational leisure time activities and recreational leisure time activities.

### **Other functions**

16. 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.

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(64) Section 63 was amended by section 203 of, and paragraphs 5(2) and 5(3) of Schedule 13 to, the 2009 Act, and by section 2 of the 2016 Act.

(65) Section 64 was amended by section 203 of, and paragraphs 6(2) to 6(5) of Schedule 13 to, the 2009 Act, and by sections 3 and 6 of the 2016 Act.

(66) Section 66 was amended by section 203 of, and paragraphs 7(a) and (b) of Schedule 13 to, the 2009 Act, and by sections 2 and 3 of the 2016 Act.

(67) Sections 508A to 509A were inserted by sections 76 to 78 of the 2006 Act and by section 57 of the 2009 Act. They were amended by section 103(1) of, and paragraph 23 of Schedule 2 to, the Childcare Act 2006 and section 54 of, and paragraphs 9(1) to 9(12) of Schedule 13 to, the Education Act 2011.

(68) 1962 c. 12. The Education Act 1962 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 Education Act 1962 are the Education (Mandatory Awards) Regulations 2003 (S.I. 2003/1994). These regulations describe the designated courses and methodology for calculating grants.

(69) 1998 c.30.

(70) 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 undertaking any course or training.

(71) Sections 15ZA and 15ZC were inserted by section 41 of the 2009 Act. Section 15B was inserted by section 149 of, and Schedule 9 to, the Learning and Skills Act 2000 (c. 21).

(72) Sections 507A and 507B were inserted by section 6(1) of the 2006 Act.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

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

## 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

##### Historic Commitments

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

2. Expenditure in respect of—

- (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) services (often known as combined budgets) funded partly from central expenditure and partly from other budgets of the local authority or contributions from other bodies, where the expenditure relates to classes or descriptions of expenditure falling outside those in this Schedule;
- (d) special educational needs transport costs; and
- (e) purposes not falling within any other paragraph of this Schedule, provided that the expenditure does not amount in total to more than 0.1% of the authority's schools budget,

which was approved by the schools forum or the Secretary of State before 1st April 2013.

3. Any deductions under any of paragraphs 1 and 2(a), 2(b), 2(c), 2(d) and 2(e) must not exceed the amount deducted under each of the corresponding paragraphs of Part 1 of Schedule 2 to the 2020 Regulations for the previous funding period.

#### PART 2

##### Central Schools Expenditure

4. Expenditure 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 its area, including expenditure resulting from the additional costs associated with establishing a new school.

5. Expenditure to be incurred due to a decline in pupil numbers in—

- (a) schools maintained by the authority which were awarded either the highest or the second highest grade in their last inspection under section 5 of the 2005 Act, including those inspected during the funding period; and
- (b) academies that have not previously been inspected under section 5 of the 2005 Act and have a predecessor school or schools which were awarded the highest or second highest grade in their last inspection under section 5 of the 2005 Act, including those inspected during the funding period,

where funding is likely to be necessary due to subsequent growth in pupil numbers at such schools before the end of the next three financial years after the funding period.

6. Expenditure to be incurred before the opening of new schools to fund the appointment of staff and to enable the purchase of any goods and services necessary in order to admit pupils.

7. Expenditure to make provision for extra classes in order to comply with the School Admissions (Infant Class Sizes) (England) Regulations 2012(73).

8. Expenditure on licences which are negotiated centrally by the Secretary of State for all publicly funded schools.

9. 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) and in relation to appeals.

10. Expenditure under section 18 of the 1996 Act(74) 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.

11. Remission of boarding fees payable in connection with the attendance of pupils at maintained schools and academies under sections 458 or 514 of the 1996 Act or section 10A of the 2010 Act.

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

13. 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.

## PART 3

### Other Central Education Expenditure

#### Asset management

14. Expenditure in connection with education functions in relation to the following areas of expenditure—

- (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; and
- (b) landlord responsibilities of the authority (including in relation to land leased to academies),

which is not within the description of expenditure at paragraph 79.

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(73) S.I. 2012/10.

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

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## Strategic management

15. 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) authorisation and monitoring of expenditure which is not met from the budget shares of schools maintained by the authority, and all related financial administration;
  - (d) the formulation and review of the methods of allocating resources to schools maintained by the authority, and other bodies;
  - (e) 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(75) in so far as the responsibilities do not relate to maintained schools; and
  - (f) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies.

## Other functions

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

17. 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(76) or on the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act.

18. Expenditure in connection with powers and duties performed under Part 2 of the Children and Young Persons Act 1933(77) (enforcement of, and power to make byelaws in relation to, restrictions on the employment of children).

19. Expenditure in relation to consultation and functions preparatory to consultation with or by governing bodies, pupils, or with other interested bodies in connection with education functions, which is not within the description of expenditure at paragraph 69 of this Schedule.

20. Expenditure on the authority’s functions in relation to the exclusion of pupils from schools.

21. Expenditure in relation to provision of information to or at the request of the Crown and the provision of other information which the authority is under a duty to make available, which is not within the description of expenditure at paragraph 71 of this Schedule.

22. Expenditure on education functions related to 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, that is not within the description of expenditure at paragraph 76 of this Schedule.

23. Expenditure in connection with the authority’s duty under regulation 9A of the School Information (England) Regulations 2008(78).

24. Expenditure in relation to 30.5% of the total employer contribution to the pension costs for—
- (a) members of the teachers’ pension scheme to which the Teachers’ Pensions Regulations 2010(79) apply; and

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(75) 1972 c.70.

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

(77) 1933 c.12.

(78) S.I. 2008/3093. Regulation 9A was inserted by S.I. 2017/37.

(79) S.I. 2010/990, to which there are amendments not relevant to these Regulations.

(b) members of the Teachers' Pension Scheme 2015 established under regulation 2 of the Teachers' Pension Scheme Regulations 2014<sup>(80)</sup>,  
who are employed by the local authority but not employed to work in a maintained school under the direct management of the head teacher or governing body.

## PART 4

### Central Early Years Expenditure

- 25.** Expenditure on early years provision, excluding expenditure—
- (a) on such provision in a maintained school;
  - (b) on relevant early years provision;
  - (c) on community early years provision; and
  - (d) on excluded early years provision.
- 26.** Expenditure on determining—
- (a) the eligibility for free school meals of a pupil who is being provided with early years provision;
  - (b) the eligibility of a child for funded early years provision;
  - (c) the eligibility of a child for the early years pupil premium; or
  - (d) the eligibility of a child for the disability access fund.
- 27.** Expenditure on an early years contingency fund, for subsequent distribution to providers of funded early years provision, as a result of the attendance of an additional number of children.

## PART 5

### Children And Young People With High Needs

- 28.** Expenditure in respect of pupils with special educational needs in primary and secondary schools, and children with special educational needs in relevant early years providers, and those being provided with community early years provision, excluding expenditure—
- (a) in respect of pupils in places which the authority has reserved for children with special educational needs; or
  - (b) where it would be reasonable to expect such expenditure to be met from a maintained school's budget share, the amount allocated to a relevant early years provider or the general annual grant paid to an academy by the Secretary of State.
- 29.** Expenditure in respect of pupils—
- (a) with special educational needs at special schools and special academies; or
  - (b) in places at primary or secondary schools which the authority has reserved for children with special educational needs,

where the expenditure cannot be met from the sum referred to in regulation 14(1) or 14(2) or where it would be unreasonable to expect such expenditure to be met from a maintained school's budget share or the general annual grant paid to an academy by the Secretary of State.

- 30.** Expenditure in respect of persons provided with further education who are—

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<sup>(80)</sup> S.I. 2014/512, to which there are amendments not relevant to these Regulations.

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- (a) aged under 19 and have special educational needs; or
- (b) aged over 18 but under 25 and are subject to an EHC plan, and are not attending a maintained school, an academy, an alternative provision academy, a non-maintained special school, or an independent school.

**31.** Expenditure on support services for children who have attained compulsory school age and for young people who are subject to an EHC plan or have a statement of special educational needs, and for such children and young people with special educational needs who do not have such a plan or statement.

**32.** Expenditure on services for children who have not attained compulsory school age and are subject to an EHC plan, and for such children with special educational needs who do not have such a plan.

**33.** Expenditure for the purposes of encouraging—

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

in cases where the local authority considers it would be unreasonable for such expenditure to be met from a maintained school's budget share or the general annual grant paid to an academy by the Secretary of State.

**34.** 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(3) and, in the case of an alternative provision academy, where it would be unreasonable to expect such expenditure to be met from the general annual grant paid to such an academy by the Secretary of State.

**35.** Expenditure on the payment of fees in respect of children and young people with special educational needs—

- (a) at independent schools or at special schools which are not maintained by a local authority under section 63 of the 2014 Act; or
- (b) at an institution outside England and Wales under section 320 of the 1996 Act or section 62 of the 2014 Act.

**36.** Expenditure on hospital education services, aside from expenditure on hospital education places referred to in regulation 14.

**37.** Expenditure on special schools and pupil referral units in financial difficulty.

**38.** Expenditure on costs in connection with private finance initiatives and the programme known as "Building Schools for the Future" at—

- (a) maintained schools which provide secondary education falling within the description in section 2(2A) of the 1996 Act;
- (b) special schools;
- (c) special academies;
- (d) pupil referral units;
- (e) alternative provision academies; and

(f) 16 to 19 academies**(81)**.

**39.** Expenditure on the purchase of CRC Energy Efficiency Scheme allowances operated by the Environment Agency for pupil referral units.

**40.** Expenditure on the provision of special medical support for individual children and young people in so far as such expenditure is not met by an NHS Trust, NHS foundation trust, Clinical Commissioning Group or Local Health Board.

## PART 6

### Items That May Be Removed From Maintained Schools' Budget Shares – Primary and Secondary Schools

**41.** 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.

**42.** Expenditure on determining the eligibility of a pupil for free school meals.

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

**44.** Expenditure on making payments to, or in providing a temporary replacement for, any person who is—

- (a) carrying out trade union duties or undergoing training under sections 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992**(82)**;
- (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**(83)**;
- (d) undertaking jury service;
- (e) a safety representative under the Safety Representatives and Safety Committees Regulations 1977**(84)**;
- (f) a representative of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996**(85)**;
- (g) 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**(86)**;
- (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**(87)**;
- (j) suspended from working at a school; or

**(81)** For the meaning of 16 to 19 academy and alternative provision academy, see sections 1B and 1C of the 2010 Act.

**(82)** 1992 c.52; section 168A was inserted by section 43 of the Employment Act 2002 (c.22).

**(83)** 1996 c.18.

**(84)** 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, 2008/960, 2014/469, and 2016/562.

**(85)** S.I. 1996/1513, amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 1999/3242, 2005/1541, and 2014/431.

**(86)** S.I. 2006/246, amended by S.I. 2010/93 and S.I. 2014/16.

**(87)** 1996 c.14.

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- (k) 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.
45. Expenditure on making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for three months or more other than to a local authority or the governing body of a school.
46. 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.
47. Expenditure on insurance in respect of liability arising in connection with schools and school premises.
48. Expenditure on a Risk Protection Arrangement.
49. Expenditure on services to schools provided by museums and galleries.
50. Expenditure on library services.
51. Expenditure on licence fees or subscriptions paid on behalf of schools.
52. Expenditure on the schools' specific contingency.
53. Expenditure for the purposes of—
- (a) improving the performance of under-performing pupils from minority ethnic groups; or
  - (b) meeting the specific needs of bilingual pupils.
54. Expenditure incurred for the purposes of supporting the improvement of standards in maintained schools, that is not required by the authority's functions in Part 4 of the 2006 Act.

## PART 7

### Items That May Be Removed From Maintained Schools' Budget Shares – Primary, Secondary and Special Schools, and Pupil Referral Units

55. Expenditure in relation to the authority's functions under section 510 of the 1996 Act (provision and administration of clothing grants) and under regulations made under section 518(2) of the 1996 Act.
56. Expenditure on the provision of tuition in music, or on other activities which provide opportunities for pupils to enhance their experience of music.
57. Expenditure incurred in enabling pupils to enhance their experience of the visual, creative and performing arts other than music.
58. Expenditure on outdoor education centres, but not including centres wholly or mainly for the provision of organised games, swimming or athletics.
59. Expenditure in relation to functions of the authority under Part I of the Local Government Act 1999(88) (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.
60. Expenditure in relation to authorisation and monitoring of expenditure in respect of schools which do not have delegated budgets, and all related financial administration.

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(88) 1999 c.27.



**61.** Expenditure in relation to the authority's monitoring of compliance with the requirements of its 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.

**62.** Expenditure in relation to 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 in so far as the responsibilities relate to maintained schools.

**63.** Expenditure in relation to the authority's functions under regulations made under section 44 of the 2002 Act<sup>(89)</sup>, in so far as the functions relate to maintained schools.

**64.** Expenditure in relation to investigations which the authority carries 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.

**65.** Expenditure in relation to 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.

**66.** Expenditure in relation to advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work under the direct management of the head teacher or governing body 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.

**67.** Expenditure in relation to determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff.

**68.** Expenditure in relation to the authority's functions regarding the appointment or dismissal of employees in maintained schools.

**69.** Expenditure in relation to consultation and functions preparatory to consultation with persons employed at schools or their representatives.

**70.** Expenditure in relation to compliance with the authority's duties under the Health and Safety at Work etc. Act 1974<sup>(90)</sup> 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, giving them advice.

**71.** Expenditure in relation to provision of information to or at the request of the Crown and the provision of other information which the authority is under a duty to make available, in so far as the information relates to maintained schools.

**72.** Expenditure in relation to the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies).

**73.** Expenditure in relation to the authority's functions under the discrimination provisions of the Equality Act 2010<sup>(91)</sup> 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, giving them advice.

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

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<sup>(89)</sup> Relevant regulations made under section 44 of the 2002 Act are the Consistent Financial Reporting (England) Regulations 2012 (S.I. 2012/674).

<sup>(90)</sup> 1974 c.37.

<sup>(91)</sup> 2010 c.15.

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**75.** 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 maintained school's budget share, and the provision of information to governors.

**76.** Expenditure on education functions related to 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, in so far as those functions relate to maintained schools.

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

**78.** Expenditure on 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 the school to meet the cost from the school's budget share.

- 79.** Expenditure on landlord responsibilities in relation to maintained schools, and in particular—
- (a) expenditure in pursuance of duties performed under the School Premises (England) Regulations 2012(**92**); and
  - (b) expenditure in connection with duties under the Control of Asbestos Regulations 2012(**93**).

**80.** 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 maintained schools' budget shares or fall within paragraph 2(b) of this Schedule(**94**).

**81.** Expenditure on inspecting attendance registers under the Education (Pupil Registration) (England) Regulations 2006(**95**).

## PART 8

### Deficit From Previous Funding Period

**82.** Expenditure in relation to any deficit in respect of the local authority's schools budget from a previous funding period.

## SCHEDULE 3

Regulation 21

### ADDITIONAL REQUIREMENTS, OR FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT, IN A LOCAL AUTHORITY'S FORMULA UNDER REGULATION 21

## PART 1

### Applicable only to budget shares for maintained schools (other than special schools and pupil referral units)

- 1.** A single sum for primary schools—

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(92) [S.I. 2012/1943](#).

(93) [S.I. 2012/632](#).

(94) Costs in connection with dismissal or premature retirement may be chargeable to a maintained school's budget share by virtue of section 37 of the 2002 Act.

(95) [S.I. 2006/1751](#), as amended by [S.I. 2007/603](#), [S.I. 2010/1172](#), [S.I. 2011/1625](#), [S.I. 2012/1033](#), [S.I. 2013/756](#), and [S.I. 2016/792](#).

- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
  - (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.
2. A single sum for secondary schools—
- (a) other than middle schools, of an equal amount to be given to each school of up to £175,000 per school; and
  - (b) which are middle schools, of an amount to be calculated per school in accordance with the middle school single sum formula.
3. In respect of pupils at key stages 1 and 2, a single per pupil amount based on the total of—
- (a) the number of pupils in Years 2 to 6 who did not achieve the expected development in relation to the relevant early learning goals in the Early Years Foundation Stage Profile under the 2012 Document, the 2014 Document, or the 2017 Document, and
  - (b) where a school has pupils in Year 2, the number produced by multiplying together—
    - (i) the proportion of pupils in that year in the school who did not achieve that expected development, and
    - (ii) the total number of pupils in Year 1 in the school, or
  - (c) where a school has no pupils in Year 2, the number produced by multiplying together—
    - (i) the proportion of pupils in that year in all the maintained schools (other than special schools and pupil referral units) and academies (other than special academies and alternative provision academies) in the local authority's area who did not achieve that expected development, and
    - (ii) the total number of pupils in Year 1 in the school.
4. In respect of pupils at key stages 3 and 4, a single per pupil amount based on the total of—
- (a) the number produced by multiplying the total of the following number of pupils by 0.48—
    - (i) the number of pupils assessed under the 2016 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests referred to in section 4 of the 2016 ARA, and
    - (ii) the number of pupils not falling within (i) who were given a teacher assessment standard of 'working towards the expected standard', or lower, in English writing, referred to in section 9 of the 2016 ARA;
  - (b) the number produced by multiplying the total of the following number of pupils by 0.58—
    - (i) the number of pupils assessed under the 2017 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests referred to in section 4 of the 2017 ARA, and
    - (ii) the number of pupils not falling within (i) who were given a teacher assessment standard of 'working towards the expected standard', or lower, in English writing, referred to in section 7 of the 2017 ARA;
  - (c) the number produced by multiplying the total of the following number of pupils by 0.64—
    - (i) the number of pupils assessed under the 2018 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests referred to in section 4 of the 2018 ARA, and
    - (ii) the number of pupils not falling within (i) who were given a teacher assessment standard of 'working towards the expected standard', or lower, in English writing, referred to in section 7 of the 2018 ARA;

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- (d) the number produced by multiplying the total of the following number of pupils by 0.65—
    - (i) the number of pupils assessed under the 2019 ARA as achieving a scaled score of 99 or lower in the mathematics or English reading tests referred to in section 5 of the 2019 ARA, and
    - (ii) the number of pupils not falling within (i) who were given a teacher assessment standard of ‘working towards the expected standard’, or lower, in English writing, referred to in section 8 of the 2019 ARA; and
  - (e) the number produced by multiplying the total of the following number of pupils by 0.65—
    - (i) where a school has pupils in Year 8, the number produced by multiplying together—
      - (aa) the proportion of pupils in that year who fell within sub-paragraph (d)(i) or (ii), and
      - (bb) the total number of pupils in Year 7 in the school, or
    - (ii) where a school has no pupils in Year 8, the number produced by multiplying together—
      - (aa) the proportion of pupils in that year in all the maintained schools (other than special schools and pupil referral units) and academies (other than special academies and alternative provision academies) in the local authority’s area who fell within sub-paragraph (d)(i) or (ii), and
      - (bb) the total number of pupils in Year 7 in the school.
- 5.** A single per pupil amount for each pupil, based on the number of pupils in Year 1, Year 2 and at key stage 2 whose first language is not English, where—
- (a) the pupil was not recorded as attending a school or schools in England on any school census before 4th October 2018;
  - (b) the pupil was not recorded as attending a school or schools in England on any school census before 3rd October 2019; or
  - (c) the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2020.
- 6.** A single per pupil amount for each pupil, based on the number of pupils at key stages 3 and 4 whose first language is not English, where—
- (a) the pupil was not recorded as attending a school or schools in England on any school census before 4th October 2018;
  - (b) the pupil was not recorded as attending a school or schools in England on any school census before 3rd October 2019; or
  - (c) the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2020.
- 7.—(1)** Where the total number of pupils to whom sub-paragraph (2)(a) and (b) applies is more than 6% of the total number of pupils at key stages 1 and 2 in the school, a single per pupil amount for every pupil in excess of that 6%.
- (2)** This sub-paragraph applies to pupils at key stages 1 and 2 who joined the school in the previous three academic years and were first recorded on the school census by the school in the spring or summer, excluding—
- (a) pupils who joined the school in the nursery class, if the school has such a class, and
  - (b) pupils who joined the school in the reception class in January.

8. Where the total number of pupils at key stages 3 and 4 who joined the school in the last three academic years and were first recorded on the school census by the school in the spring or summer, is more than 6% of the total number of pupils at key stages 3 and 4, a single per pupil amount for every pupil in excess of that 6%.

9. A single per pupil amount, based on the number of pupils who were looked after children on 31st March 2020.

10. Funding for schools with split sites, where the funding must be in accordance with criteria published by the authority.

11. Non-domestic rates payable in respect of the premises of each school (including actual or estimated cost).

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

13. Differential costs at schools in the county councils of Buckinghamshire, Essex, Hertfordshire, Kent or West Sussex due to the schools' being in different London salary weighting areas.

14.—(1) In respect of all primary schools to which sub-paragraph (2) applies, other than those which are middle schools or all-through schools, an amount calculated in accordance with sub-paragraphs (3) to (5).

(2) This sub-paragraph applies where—

- (a) in respect of those pupils for whom the school is their home school, the mean of the distances between each pupil's home and their second closest school is more than or equal to a distance determined by the local authority of at least two miles and the same distance must be applied to all such schools; and
- (b) the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups) is less than a number determined by the local authority as applying to all such schools, which must be no more than 21.4.

(3) The amount is calculated in accordance with one of the following methods—

- (a) a sum of A, with each school being allocated the same sum;
- (b) a sum of the amount  $A \times (1 - B/C)$ ; or
- (c) a sum determined as follows—
  - (i) if B is less than  $0.5 \times C$ , the sum of A; and
  - (ii) if B is equal to or more than  $0.5 \times C$ , a sum of the amount  $A \times (1 - ((B - (0.5 \times C)) / (0.5 \times C)))$ .

(4) For the purposes of this paragraph—

- (a) A is a sum of up to £100,000;
- (b) B is the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups); and
- (c) C is the number determined by the authority in sub-paragraph (2)(b).

(5) The authority must use the same method of calculating the amount under sub-paragraph (3) in respect of all schools to which sub-paragraph (2) applies.

15.—(1) Where sub-paragraph (2) applies in respect of secondary schools, primary schools which are middle schools and primary schools which are all-through schools, an amount calculated in accordance with sub-paragraphs (3) to (5).

(2) This sub-paragraph applies where—

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- (a) in respect of those pupils for which the school is their home school, the mean of the distances between each pupil's home and his or her second closest school is more than or equal to a distance determined by the local authority of at least—
  - (i) two miles in respect of middle schools,
  - (ii) two miles in respect of all-through schools, and
  - (iii) three miles in respect of secondary schools other than middle schools or all-through schools; and
- (b) the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups) is less than a number determined by the local authority, which must be no more than—
  - (i) 69.2 in respect of middle schools,
  - (ii) 62.5 in respect of all-through schools, and
  - (iii) 120 in respect of secondary schools other than middle schools or all-through schools, and the same number must be applied to all the schools of each type listed in this sub-paragraph.
- (3) The amount is calculated in accordance with one of the following methods—
  - (a) a sum of  $A$ , with each school being allocated the same sum;
  - (b) a sum of the amount  $A \times (1 - B/C)$ ; or
  - (c) a sum determined as follows—
    - (i) if  $B$  is less than  $0.5 \times C$ , the sum of  $A$ ; and
    - (ii) if  $B$  is equal to or more than  $0.5 \times C$ , a sum of the amount  $A \times (1 - ((B - (0.5 \times C)) / (0.5 \times C)))$ .
- (4) For the purposes of this paragraph—
  - $A$  is a sum of up to £100,000, and the same sum must be used in the calculation for each school;
  - $B$  is the average size of a year group at the school (derived by dividing the number of pupils by the number of year groups); and
  - $C$  is the number determined by the authority in sub-paragraph (2)(b).
- (5) The authority must use the same method of calculating the amount under sub-paragraph (3) in respect of all schools to which sub-paragraph (2) applies.

## PART 2

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

- 16. The rurality or sparsity of the population of the area.
- 17. Pupils and children whose first language is not English.
- 18. The qualifications of staff.
- 19. The estimated cost of sharing expertise with other early years providers.
- 20. The degree to which providers offer flexible provision to parents.

## SCHEDULE 4

Regulation 23

### MINIMUM FUNDING GUARANTEE

#### 1.—(1) In this Schedule—

- (a) references to the number of pupils—
  - (i) for the purposes of the previous funding period, exclude those funded by a sixth form grant; and
  - (ii) for the purposes of the funding period, exclude those funded by a sixth form grant;
- (b) the “relevant number” of pupils for the previous funding period is the number of pupils at the school on 3rd October 2019;
- (c) the “relevant number” of pupils for the funding period is the number of pupils at the school on 1st October 2020;
- (d) the “minimum funding number” means a number determined by the authority, between and including 1.005 and 1.02;
- (e) the redetermined adjusted budget share for the previous funding period means a number calculated by the authority, which must—
  - (i) exclude—
    - (aa) any amount allocated under regulation 14(2) (places reserved for children with special educational needs) of the 2020 Regulations;
    - (bb) any amount included under regulation 26(1) or (2) (sixth form funding) of the 2020 Regulations;
    - (cc) any amount included under regulation 30 (correction of errors and changes in non-domestic rates) of the 2020 Regulations;
    - (dd) the difference between (a) any amount allocated to the school under regulation 27(4) or (8) of the 2020 Regulations, and (b) the single sum which the school would have received under paragraph 1 or 2 of Schedule 3 to the 2020 Regulations if regulation 27(4) or (8) of the 2020 Regulations had not applied;
    - (ee) any amount allocated to the school under Schedule 3 to the 2020 Regulations where such amount has been deducted from the schools budget under Part 5 (Children And Young People With High Needs) of Schedule 2;
    - (ff) any amount allocated to the school under regulation 10(3) (early years single funding formula) of the 2020 Regulations;
    - (gg) any amount included in respect of paragraph 11 (rates) of Schedule 3 to the 2020 Regulations;
    - (hh) any amount allocated to the school under paragraph 1 (primary single sum) of Schedule 3 (or, where regulation 27(4) or (8) applies, the amount allocated to the school under that regulation);
    - (ii) any amount allocated to the school under paragraph 2 (secondary single sum) of Schedule 3 (or, where regulation 27(4) or (8) applies, the amount allocated to the school under that regulation);
    - (jj) any amount allocated to the school under paragraph 14 (primary population sparsity) of Schedule 3;
    - (kk) any amount allocated to the school under paragraph 15 (secondary population sparsity) of Schedule 3;

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- (ll) any amount added to or deducted from the school's budget share under regulation 29 (pupils permanently excluded from, or leaving, maintained schools) of the 2020 Regulations; and
- (ii) include—
  - (aa) any amount deducted from the school's budget share under regulation 11(5) or (6) (determination of allocation of budget shares etc. for the funding period), 19(2) (Risk Protection Arrangement) or 29 of the 2020 Regulations; and
  - (bb) any amount allocated to the school in the previous funding period in respect of the teachers' pay grant and the teachers' pension employer contribution grant, as shown on the Authority Proforma Tool for 2021-22 sent to the authority by the Department for Education in December 2020.
- (f) references to a redetermined adjusted budget share for the funding period include the effect of any alternative arrangements approved by the Secretary of State under regulation 31, but the authority must—
  - (i) exclude—
    - (aa) any amount allocated under regulation 14(2) (places reserved for children with special educational needs);
    - (bb) any amount included under regulation 26 (sixth form funding);
    - (cc) any amount included under regulation 30 (correction of errors and changes in non-domestic rates);
    - (dd) any amounts allocated under 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 2020 Regulations that the authority deducted in the previous funding period;
    - (ee) any amount allocated to the school under regulation 10(3) (early years single funding formula);
    - (ff) any amount included in respect of paragraph 11 (rates) of Schedule 3;
    - (gg) any amount allocated to the school under paragraph 1 (primary single sum) of Schedule 3 (or, where regulation 27(4) or (8) applies, the amount allocated to the school under that regulation);
    - (hh) any amount allocated to the school under paragraph 2 (secondary single sum) of Schedule 3 (or, where regulation 27(4) or (8) applies, the amount allocated to the school under that regulation);
    - (ii) any amount allocated to the school under paragraph 14 (primary population sparsity) of Schedule 3;
    - (jj) any amount allocated to the school under paragraph 15 (secondary population sparsity) of Schedule 3;
    - (kk) any amount added to the school's budget share under regulation 29 (pupils permanently excluded from, or leaving, maintained schools); and
  - (ii) include any amount that is deducted from a school's budget share under regulation 11(5) or (6) (determination of allocation of budget shares etc. for the funding period), 19(2) (Risk Protection Arrangement), 29 or 30 (correction of errors and changes in non-domestic rates).
- (2) For the purposes of this Schedule—



- (a) where a school opened during the previous funding period, its redetermined adjusted budget share for the previous funding period is the amount it would have been if the school had opened on 1st April 2020; and
- (b) where a school opens during the funding period, its redetermined adjusted budget share for the funding period is the amount it would have been if the school had opened on 1st April 2021,

in both cases adjusted in accordance with paragraph 1(e) or (f), 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, calculated by the authority, 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 the minimum funding number; and

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

3. Where a new 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, subject to paragraph 4.

4. In calculating the guaranteed level of funding under paragraph 3 the relevant number of pupils in the previous funding period under paragraph 1(b) is the sum of the relevant number of pupils in the discontinued schools on 3rd October 2019.

5. In calculating the redetermined adjusted budget share for the previous funding period, the authority may exclude any amount allocated to the school by virtue of paragraph 9 of Schedule 3 to the 2020 Regulations if it has not allocated amounts under paragraph 9 of Schedule 3 to these Regulations.

6. In calculating the redetermined adjusted budget share for the previous funding period, the authority may exclude any amounts allocated under the premises factor allocation to the school if it also excludes the amount from the redetermined adjusted budget share calculated for the funding period.

## SCHEDULE 5

Regulation 32

### 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 schools must comply with 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 the authority provides services and facilities for schools maintained by it.

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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 in section 49(4)(a) to (c) of the 1998 Act<sup>(96)</sup>.
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<sup>(97)</sup>.
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.
20. Insurance.
21. The use of delegated budgets by governing bodies to satisfy the authority's duties imposed by or under the Health and Safety at Work etc. Act 1974<sup>(98)</sup>.
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.

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<sup>(96)</sup> Section 49(4) was amended by section 215 of, and paragraph 100 of Schedule 21 to, the 2002 Act.

<sup>(97)</sup> Section 519 was amended by section 140 of, and paragraph 139 of Schedule 2 to, the 1998 Act.

<sup>(98)</sup> 1974 c.37.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for local authorities' financial arrangements in relation to the funding of maintained schools and providers of funded early years provision in England, for the financial year 2021-2022. They also make an amendment to the Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020.

The School and Early Years Finance (England) (No. 2) Regulations 2018 are revoked. The School and Early Years Finance (England) Regulations 2020 remain in force.

These Regulations define the non-schools education budget (regulation 4 and Schedule 1), the schools budget (regulation 6 and Schedule 2), 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 amounts to be allocated in respect of early years provision in their areas, in accordance with the appropriate formulae (regulations 10 and 11). They impose a minimum per pupil amount (regulation 22) and a minimum funding guarantee for schools (regulation 23 and Schedule 4). There is a requirement to pass 95 per cent of funding to early years providers (regulation 24) and a ten per cent limit on the amount of funding that may be attributable to the discretionary (supplementary) part of the early years formulae (regulation 25). There are also requirements in relation to local authorities' schemes (regulation 32 and Schedule 5). Regulation 19 makes provision in the event that a school enters into a Risk Protection Arrangement.

Regulation 35 amends the Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020 which amend the Schools Forums (England) Regulations 2012 to allow, in light of the coronavirus pandemic, for schools forums meetings by remote means. Regulation 35 removes the provision for these amendments ceasing to have effect on 1st April 2021.

An impact assessment has not been prepared for this instrument as it has minimal impact on businesses, civil society organisations and the public sector.