EXPLANATORY MEMORANDUM TO

THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) (NO. 2) REGULATIONS 2018

2018 No. 1185

1. Introduction

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

2. Purpose of the instrument

2.1 The School and Early Years Finance (England) Regulations 2018 (No.2) ("the 2019-20 Regulations") provide for how local authorities are to set their education budgets in the 2019-20 financial year. In particular, they require local authorities to set a non-schools education budget and a schools budget. They require authorities to deduct planned central expenditure from the schools budget to derive the individual schools budget (ISB). They also set out how local authorities are to allocate funding from the ISB to maintained schools and private, voluntary and independent providers of free early years provision (early years providers) through locally-determined formulae.

2.2 The 2019-20 Regulations relate only to the 2019-20 financial year.

2.3 To a large degree, the 2019-20 Regulations make the same provisions as in the School and Early Years Finance (England) Regulations 2018 ("the 2018 Regulations") but there are some changes relating to how local authorities are to spend their Dedicated Schools Grant ("DSG") allocation. In particular, local authorities will now be enabled to mirror the funding floor within the national funding formula for schools by setting a minimum percentage increase against a school's 2017-18 baseline, and set a higher minimum per pupil funding level for key stage 3 year groups, key stage 3-only schools and key stage 4-only schools. On early years funding, local authorities are now required to use a universal base rate in their formula, and there is new provision to ensure that funding to providers under the 'quality supplement' must cover the estimated cost of sharing expertise only.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

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

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The 2019-20 Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 ("SSFA 1998") which concerns the financing of maintained schools. They relate to the 2019-20 financial year and need to be made because the 2018 Regulations apply only up to the end of the 2018-19 financial year. Specifically, the regulations are made under the powers in sections 45A, 45AA, 47, 46ZA, 47A, 48, 49 and 138, and paragraph 2B of Schedule 14 of SSFA, and section 24(3) of the Education Act 2002.

7. Policy background

What is being done and why?

7.1 The Department for Education allocates the DSG to local authorities. A condition in DSG provides that local authorities may only spend it for the purposes of the schools budget. The schools budget is defined in regulation 6 of, and Schedule 2 to, the 2019-20 Regulations.

7.2 In 2019-20, core funding for schools and high needs will be £43.5 billion (compared to £42.4 billion in 2018-19 and almost £41 billion in 2017-18). The additional £1.3 billion that we announced in July 2017 was allocated across 2018-19 and 2019-20. The total funding for the schools block within the DSG will be published in December, after final allocations for local authorities have been calculated based on the latest pupil numbers. The provisional total for the 2019-20 schools block (before updated pupil numbers have been taken into account) is £34.1 billion. We anticipate that this will increase in December when we take updated pupil numbers into account.

7.3 We published provisional allocations for schools and local authorities under the 2019-20 national funding formula in July, providing local authorities with a good indication of their overall DSG allocation. The total amount that a local authority receives in 2019-20 for schools and high needs will be updated to take into account the latest pupil number data (from the October 2018 census) and final allocations will be published in December.

7.4 DSG comprises four blocks – for schools, high needs, early years, and central school services. Over the past six years, the department has been reforming the school funding system in England to make it simpler, fairer and more transparent. The national funding formula for early years was introduced in 2017-18, and the national funding formulae for schools, high needs and central school services were introduced in 2018-19.

7.5 Currently, we have a 'soft' national funding formula. Under the 'soft' system, we use the national funding formula to set notional budgets for each school. These are used to calculate the total schools block budget for each local authority. In 2018-19, 2019-20 and 2020-21 local authorities will continue to determine schools' budget allocations at a local level, through a local funding formula.

7.6 As the 2018 Regulations only apply to the 2018-19 financial year, the Department for Education is making the 2019-20 Regulations to set out the rules by which local authorities must determine school budgets for 2019-20.

7.7 The main changes compared with the 2018 Regulations are set out below.

The funding floor

7.8 The 2019-20 national funding formula for schools applies a funding floor protection, which ensures that all schools gain at least 1% per pupil against the relevant components of their 2017-18 per pupil funding.

7.9 We have included in the regulations a new optional factor that local authorities can use to mirror this funding floor in their local funding formula, giving each school a 1.0% per pupil increase compared to their 2017-18 national funding formula funding floor baseline. We have published a list of schools' 2017-18 funding floor baselines, which local authorities can use when applying this factor. This is set out at paragraph 17 of Schedule 3 to the 2019-20 Regulations.

Minimum per pupil funding level

7.10 We have made changes to the operation of the minimum per pupil funding level in the national funding formula for middle schools, key stage 3-only schools, key stage 4-only schools, and all-through schools. We have changed the regulations (paragraph 16 of Schedule 3) to allow local authorities to mirror these changes.

7.11 We have increased the factor value used for key stage 3 year groups in middle schools from £4,200 to £4,600. We have changed the regulations to allow local authorities to use a value up to £4,600.

7.12 We have introduced a specific minimum per pupil value for schools with only key stage 3 pupils, of £4,600. We have changed the regulations to allow local authorities to set a value up to this level for key stage 3-only schools.

7.13 We have introduced a specific minimum per pupil value for schools with only key stage 4 pupils, of £5,100. We have changed the regulations to allow local authorities to set a value up to this level for key stage 4-only schools.

7.14 We have changed the weighting of the minimum per pupil funding level for all-through schools to be in line with the national funding formula by fixing the number of primary and secondary years groups used in the weighting at 7 and 5 respectively.

Sparsity taper

7.15 We are allowing local authorities to replicate the sparsity taper within the national funding formula, which reduces the amount of sparsity funding a school attracts as its average year group size increases. This is in paragraphs 14 and 15 of Schedule 3.

Minimum funding guarantee

7.16 The minimum funding guarantee (MFG) is set out in regulation 21 and Schedule 4. When calculating it, we are giving local authorities the flexibility to exclude premises funding in line with the national funding formula calculation. In addition, we are requiring local authorities to exclude any deductions or increases relating to pupil exclusions (regulation 27) from both the current and previous year funding when applying the MFG.

Secondary low prior attainment

7.17 We are requiring local authorities to apply a weighting of 0.64 for pupils in year 7 when calculating secondary prior attainment. This will affect pupils assessed under the 2018 assessment and reporting arrangements (ARA). This change ensures that pupils assessed under more recent tests do not skew the low prior attainment factor. This is in line with the approach we have taken for the previous two years. The weighting is calculated based on the latest census data. This is set out in paragraph 4 of Schedule 3.

Early years funding

7.18 The regulations now require local authorities to have a universal base rate for all providers in their area (i.e. the same hourly base rate for all providers regardless of their type), multiplying it by the predicted number of hours of attendance of children. This is set out in regulation 10(5) and (6).

7.19 The regulations also clarify the funding that authorities can provide through the 'system leadership' aspect of the quality supplement (under which authorities can provide additional funding to providers who share their expertise with other providers). Paragraph 21 of Schedule 3 now ensures that this additional funding must cover the estimated cost of sharing expertise only.

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

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

9. Consolidation

9.1 This instrument makes an amendment to the Schools Forums (England) Regulations 2012. The Department for Education has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The changes to the regulations give effect to decisions announced following consultation on the introduction of the national funding formulae for schools, high needs and central school services. The Department for Education consulted extensively on the national funding formulae, through two formal public consultations. The first stage of the consultation was on the principles of the schools and high needs formulae and took place between 7 March and 17 April 2016.

10.2 The second stage of the consultation was on the details of the formulae, and took place between 14 December 2016 and 22 March 2017. It received responses from over 26,000 individual respondents and representative organisations. These responses were carefully considered when designing the final formulae, which took effect from April 2018.

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

10.4 In July this year we published another policy document setting out some small changes to the formula for 2019-20:

https://www.gov.uk/government/publications/national-funding-formula-for-schools-and-high-needs .

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

10.6 The Department did not conduct a public consultation on the 2019-20 Regulations. This is because to a large extent the changes made this year are implementing, or giving local authorities the option to implement, changes that have already been consulted on. The main change we are making to the Regulations is to give local authorities the option to mirror the funding floor used in the national funding formula, which ensures that in 2019-20 schools attract a 1% per pupil increase compared to their 2017-18 baselines. In the second stage of consultation on the national funding formula, 54% of respondents agreed with the principle of the funding floor, and 44% (the highest for any option) believed it should be higher than the level of the floor consulted on, which was -3% year-on-year. The final national funding formula changed the funding floor to +0.5% in 2018-19 and +1% in 2019-20.

11. Guidance

11.1 Operational guidance for local authorities for 2019-20, which was issued in July 2018, will be updated in December 2018 to cross-refer to the new regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for two, three and four year olds through the same formula that the local authority will use to determine the funding of this entitlement in maintained schools.

12.2 The impact on the public sector is that local authorities must comply with these regulations when allocating their schools budget and determining budget allocations for schools and amounts for early years providers.

12.3 An Impact Assessment has not been prepared for this instrument because it has minimal impact on businesses, civil society organisations, and on the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses, except for the early years providers referred to in 12.1 and 12.2 above.

13.2 The regulation applies to local authorities and it is for the local authority to determine how they fund their local providers, within the rules set out in these regulations.

14. Monitoring & review

14.1 The regulations will be monitored through the usual contact that the School Funding Team within the Department for Education has with schools and local authorities.

The team will log and review any correspondence from schools and local authorities relating to the instrument.

15. Contact

15.1 Danielle Watson at the Department for Education Telephone: 02073407286 or email: Danielle.watson@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tom Goldman, Deputy Director for the Funding Policy Unit, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

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