EXPLANATORY MEMORANDUM TO
THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2014

2014 No. 3352

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 2014 (the 2014 Regulations) provide how local authorities set their education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and how they allocate funding from the individual schools budget (ISB) to maintained schools and private, voluntary and independent providers of free early years provision in their area.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The 2014 Regulations are made under the provisions of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools). They relate to the 2015-16 financial year and need to be made because the 2013 Regulations relate only to the 2014-15 financial year.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Department for Education allocates dedicated schools grant (DSG) to local authorities. Local authorities then distribute the schools block element of this funding to their maintained schools through a locally determined formula. This arrangement will continue in 2015-16.

7.2 The main changes compared with the School and Early Years Finance (England) Regulations 2013 are set out below.

7.3 The regulations provide that places or top-up for 19- to 25-year-olds in maintained special schools and special academies cannot be funded from the schools budget.

7.4 The regulations increase the value for an AP place from £8,000 to £10,000 with effect from September 2015.

7.5 The regulations require local authorities to pay the early years pupil premium (EYPP) to all early years providers that are delivering government-funded early education to eligible three- and four-year-olds. The regulations also set out the criteria for EYPP eligibility.

7.6 The regulations make revised provision for the determination of budgets for new maintained schools and for schools that have opened in recent years and are still adding year groups.

7.7 The regulations provide that early years expenditure held centrally cannot relate to an excluded provider. An excluded provider is defined as (a) an independent school that does not meet the requirements regarding the spiritual, moral, social and cultural development of pupils set out in the Independent School Standards, or (b) any school which, in the reasonable belief of the relevant local authority, does not actively promote fundamental British values or promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations.

7.8 The regulations reflect a new policy for 2015-16 of setting thresholds for average year-group size rather than school size to decide whether a school is eligible to receive funding through the sparsity factor (a factor based on the distance pupils live from their second nearest school).

7.9 The regulations amend the Schools Forums (England) Regulations 2012 in relation to membership. If there are any special academies in a local authority's area, there must be at least one member representing them. If there are any alternative provision (AP) academies in a local authority's area, there must be at least one member representing them.

7.10 The regulations amend the Schools Forums (England) Regulations 2012 so that the forum must discuss special education needs (SEN) and AP places commissioned by the local authority, and the arrangements for paying top-up funding.

8. Consultation outcome

8.1 The consultation on the draft School and Early Years Finance (England) Regulations 2014 ran from 8 August 2014 to 17 October 2014. The consultation was targeted at finance officers at local authorities, chairs and clerks of schools forums, and national organisations. The consultation document and the draft regulations were published on the Department's website. There were 865 responses; including 32 from local authorities, 10 from schools forums, 17 from governors, 30 from individual schools, 4 from membership organisations and 3 from trade unions. The remaining responses came from members of the public, parents and churches.

8.2 The full response to the consultation document will be published on www.gov.uk.

8.3 There were 755 responses in relation to the definition of excluded early years providers in Regulation 1(4). An excluded provider is defined as (a) an independent school that does not meet the requirements regarding the spiritual, moral, social and cultural development of pupils set out in the Independent School Standards; or (b) any school which in the reasonable

belief of the local authority does not actively promote fundamental British values, or promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations. The definition of fundamental British values is drawn from the government's Prevent Strategy (2011) which is already given expression in the Independent School Standards, and the government believes that children in the early years should be taught these values in an age-appropriate way. The regulations also ensure that early years settings in independent schools which attract government funding do not teach creationism as evidence-based scientific fact. As the government believes children should be taught with British values in mind, and the regulations do not prevent the teaching of creationism in a religious context, no further change to the definition of excluded early years providers is to be made.

8.3 We asked about the requirement for representation of special and alternative provision academies on schools forums. 68% of responses agreed with the addition of representation of special academies, and 65% of responses agreed with the addition of representation of alternative provision academies. Many of those who disagreed were concerned that this policy could lead to disproportionate representation for a small sub-set of institutions. Others were concerned that this would make the forums too large. We are conscious of the need to balance the size of the forum while ensuring all interests are adequately represented. It is important that groups who represent distinct interests, and are of significant size, are adequately represented. We believe special and AP academies meet these requirements, and so warrant their own representation. Therefore, no change has been made to the regulations, which include this requirement.

8.4 We asked about the requirement for local authorities to consult the schools forum on the commissioning of places and the local authority's arrangements for top-up funding. 70% of responses agreed with this addition to the regulations. Many of those who disagreed were concerned about how this would work in practice. The good practice guidance for schools forums will be updated to provide more information about this process, and the final regulations include the new provision.

8.5 We asked about the changes which ensured DSG funding was not used to fund places or top-up for 19- to 25-year-olds in maintained special schools and special academies. 24 of the 50 responses received agreed with this proposal, and 17 disagreed. Some of those who disagreed believed that the changes would stop funding for 19-year-olds who began attending a course before they turned 18. We have confirmed that the regulations as drafted do not prevent this. We believe that there is a negative impact in allowing children and young people to remain in the same institution for, in some cases, more than twenty years, and that the needs of 19- to 25-year-olds with education, health and care plans can be better met outside special schools and academies. Given this, the final regulations include this provision.

8.6 We asked about the increase in value for an alternative provision place from £8,000 to £10,000 a year with transitional protection. Excluding those who were 'not sure', 78% of respondents agreed with this change. The vast majority of those who said they were 'not sure' stated they were unsure about the justification behind the increase. When we introduced the new high needs funding arrangements in 2013, we said that we would keep the level of funding for alternative provision places under review. We have concluded that changing the balance of place and top-up funding will give pupil referral units, and academies and free schools offering alternative provision places, more stability by increasing their guaranteed budget for the year. The final regulations include this provision.

8.7 We asked about the provision which changes how budgets are determined for new maintained schools and for schools that have opened in recent years and are still adding year groups. Local authorities will now have to fund these schools on estimated pupil numbers, and can reconcile any difference between estimated and actual pupil numbers the following financial year. Excluding those who were 'not sure', 80% of responses agreed with this measure. Of those that were 'not sure', many were unsure about the impact this would have on individual schools. The purpose of this change was to alleviate some of the difficulties local authorities have in funding new or recently opened schools. It provides a way for local authorities to fund these schools, without having to apply to the Secretary of State for a variation in every case. On this basis, this change has been included in the regulations.

8.8 One response identified that Schedule 3, paragraph 3 (which describes the foundation stage profile and key stage 2 assessments used for low prior attainment formula factors) only referred to the Foundation Stage Profile under the 2008 document and the 2014 document. This has been amended to that reference is also made to the 2012 document.

8.8 Four responses requested clarity on how the early years pupil premium would be administered for looked after children. In response, the regulations have been amended to make it clear that local authorities will allocate £302.10 per year (53p per hour for 570 hours) for the early education of each looked after three- or four-year-old who is receiving early education entitlement. We want the virtual schools head to have the same role administering the early years premium as they do for the school age pupil premium, and this change will allow them to better identify eligible looked after children.

9. Guidance

9.1 The government response outlining the changes and accompanying guidance, together with the regulations, will be published on www.gov.uk.

10. Impact

10.1 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 three- and four-year-olds through the same formula that the local authority will use to determine the funding of this free entitlement in maintained schools.

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

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business, except for the early years providers referred to in 10.1 and 10.2 above.

12. Monitoring & review

12.1 The changes will be monitored through the usual contact which 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.

13. Contact

Beth O'Brien at the Department for Education (tel: 020 7340 8352 or email: beth.o'brien@education.gsi.gov.uk) can answer any queries regarding the instrument.