STATUTORY INSTRUMENTS

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EDUCATION, ENGLAND

The School and Early Years Finance (England) Regulations 2015

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CONTENTS

PART 1
Introduction

1. Citation, commencement, application and interpretation
2. Revocation
3. Amendments

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

4. The non-schools education budget
5. Initial determination of a local authority's schools budget
6. The schools budget
7. Exceptions
8. Determination of the individual schools budget for the funding period and limit on increase in central expenditure
9. Consultation
10. Formulae for determination of budget shares etc for certain maintained schools and early years providers
11. Determination of allocation of budget shares etc for the funding period

CHAPTER 2
Further Deductions and Variations to Limits Authorised by Schools Forums or the Secretary of State

12. Applications to the schools forum and the Secretary of State

PART 3
Determination of Budget Shares etc
CHAPTER 1
Requirements, and Factors and Criteria Taken into Account
13. Pupil numbers
14. Places
15. Social deprivation
16. Special arrangements for pupils in maintained nursery schools and nursery classes and for children receiving relevant early years provision, exempt early years provision and community early years provision
17. Differential funding
18. Additional requirements, factors or criteria
19. Minimum funding guarantee
20. Sixth form funding
21. New schools, merged schools and closing schools
22. Federated schools

CHAPTER 2
Adjustments, Correction of Errors, and Alternative Arrangements Authorised by the Secretary of State
23. Pupils permanently excluded from, or leaving, maintained schools
24. Correction of errors and changes in non-domestic rates
25. Alternative arrangements approved by the Secretary of State

PART 4
Schemes
26. Required content of schemes
27. Approval by the schools forum or the Secretary of State of proposals to revise schemes
28. Publication of schemes

SCHEDULE 1 — CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE NON-SCHOOLS EDUCATION BUDGET OF A LOCAL AUTHORITY
SCHEDULE 2 — CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE SCHOOLS BUDGET OF A LOCAL AUTHORITY WHICH MAY BE DEDUCTED FROM IT TO DETERMINE THE INDIVIDUAL SCHOOLS BUDGET
PART 1 — Central Services
PART 2 — Central Schools Expenditure
PART 3 — Central Early Years Expenditure
PART 4 — Children And Young People With High Needs
PART 5 — Items That May Be Removed From Maintained Schools' Budget Shares
SCHEDULE 3 — ADDITIONAL REQUIREMENTS, FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT IN A LOCAL AUTHORITY'S FORMULA UNDER REGULATION 18

PART 1 — Applicable only to budget shares for maintained schools
PART 2 — Applicable only to budget shares for, and amounts to be allocated to, providers of prescribed early years provision
SCHEDULE 4 — MINIMUM FUNDING GUARANTEE
SCHEDULE 5 — CONTENTS OF SCHEMES

The Secretary of State for Education makes the following Regulations in exercise of powers conferred by sections 45A(**a**), 45AA(**b**), 47(**c**), 47ZA(**d**), 47A(4B) and (5)(**e**), 48(1) and (2)(**f**), 49(2) and (2A)(**g**), 138(7) of, and paragraph 2B(**h**) of Schedule 14 to, the School Standards and Framework Act 1998(**i**) and section 24(3) of the Education Act 2002(**j**).

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2015 and come into force on 7th January 2016.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2016.

(3) These Regulations apply in relation to England.

(4) In these Regulations—

"1989 Act" means the Children Act 1989(**k**);

"1996 Act" means the Education Act 1996(**l**);

"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(**m**);

"2005 Act" means the Education Act 2005(**n**);

"2006 Act" means the Education and Inspections Act 2006(**o**);

"2010 Act" means the Academies Act 2010(**p**);

"2014 Act" means the Children and Families Act 2014(**q**);

(**a**) 1998 c.31. Section 45A was inserted by section 41(1) of the Education Act 2002 (c.32) ("the 2002 Act") and amended by section 101 of, and paragraph 3 of Schedule 16 to, the Education Act 2005 (c. 18) ("the 2005 Act").
(**b**) Section 45AA was inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.
(**c**) Section 47 was amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.
(**d**) Section 47ZA was inserted by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) ("the 2009 Act").
(**e**) Section 47A was inserted by section 43 of the 2002 Act and amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2002 Act; section 57 of, and paragraph 2 of Schedule 5 to, the Education and Inspections Act2006 (c.40) ("the 2006 Act"); section 165 of the Education and Skills Act 2008 (c.25); and section 194 of the 2009 Act.
(**f**) Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act; section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act; and section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.
(**g**) 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.
(**h**) 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.
(**i**) 1998 c.31. For the meaning of "prescribed" and "regulations", see section 142(1) of the 1998 Act.
(**j**) For the meaning of "prescribed" and "regulations", see section 212(1) of the 2002 Act.
(**k**) 1989 c.41.
(**l**) 1996 c.56.
(**m**) 2003 c.26.
(**n**) 2005 c.18.
(**o**) 2006 c.40.
(**p**) 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).
(**q**) 2014 c.6.

"2014 Regulations" means the School and Early Years Finance (England) Regulations 2014(**a**);

"2008 Document" means the document entitled "Statutory Framework for the Early Years Foundation Stage" published by the Secretary of State on 19th May 2008(**b**);

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

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

"2014 ARA" means the document entitled "2014 Key Stage 2 Assessment and Reporting Arrangements"(**e**) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003(**f**), 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;

"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(**g**);

"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 2014 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 prescribed 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;

"the Early Years Foundation Stage Profile" has the meaning given in section 2 of the 2008 Document, the 2012 Document or the 2014 Document, as the context specifies more particularly;

"early years provision" has the meaning given in section 20 of the Childcare Act 2006(**h**);

(**a**) S.I. 2014/3352.

(**b**) Available at: http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00261-2008. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(**c**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271631/eyfs_statutory_framework_march_2012.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(**d**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335504/EYFS_framework_from_1_September_2014__with_clarification_note.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(**e**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278150/2014_KS2_assessmentandreportingarrangementsARA_DIGITAL_HO.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

(**f**) 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.

(**g**) 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.

(**h**) 2006 c.21.

"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 16(11);

"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(**a**);

"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(**b**) 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;

"exempt early years provider" means a provider of exempt early years provision;

"exempt early years provision" means early years provision which is not included in prescribed early years provision for the purposes of section 7(1) of the 2006 Act by virtue of regulation 2(2) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014(**c**);

"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;

"funding period" means the financial year beginning on 1st April 2016;

"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—

(i) a selective school;

(ii) a special school; 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;

(**a**) 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).

(**b**) 2008 c.25.

(**c**) S.I. 2014/2147.

"IDACI" means the Income Deprivation Affecting Children Index referred to in the document named "English Indices of Deprivation 2010" published by the Department for Communities and Local Government(**a**);

"IDACI score" means the score allocated to a child under IDACI;

"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(**b**) 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;

"learning difficulty assessment" has the meaning given in section 13(5) of the 1996 Act(**c**), and a reference to a person being subject to learning difficulty assessment has the meaning given in section 13(4) of the 1996 Act(**d**);

"looked after child" means a person who, for the purposes of the 1989 Act, is a child looked after by a local authority, and references to the authority looking after the child are to be read accordingly;

"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;

"non-domestic rate" has the meaning given in section 54 of the Local Government Finance Act 1988(**e**);

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

"previous funding period" means the financial year beginning on 1st April 2015 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(**f**);

"provider", in relation to prescribed 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;

(**a**) Available at: www.gov.uk/government/publications/english-indices-of-deprivation-2010. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
(**b**) Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.
(**c**) Subsection (5) of section 13 was inserted by section 59 of, and paragraphs 1 and 2 of Schedule 2 to, the 2009 Act.
(**d**) Subsection (4) of section 13 was inserted by section 59 of, and paragraphs 1 and 2 of Schedule 2 to, the 2009 Act.
(**e**) 1988 c.41.
(**f**) 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).

"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 2014 Document (or, as the case may be, the 2012 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 prescribed early years provision, other than the governing body of a maintained school;

"relevant early years provision" means prescribed early years provision provided by a relevant early years provider;

"school census" means the record of individual pupil information supplied by local authorities to the Secretary of State under section 537A of the 1996 Act(**a**);

"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;

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

"special Academy" means an 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) a grant named "Dedicated Schools Grant", paid to a local authority by the Secretary of State under section 14 of the 2002 Act; 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(**b**) 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.

(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

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(**a**) Section 537A was inserted by section 140(1) of, and paragraph 153 of Schedule 30 to, the 1998 Act.
(**b**) For the meaning of "school year", see section 579(1) of the 1996 Act.

(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;

(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 2015, unless otherwise stated;

(f) 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,

(iii) in respect of a prescribed early years provider, the children receiving prescribed 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,

(v) in respect of an exempt early years provider, the children receiving exempt early years provision from the provider, and

(vi) in respect of community early years provision, the children receiving such provision at the school;

(g) 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(**a**);

(h) a reference to "schools" in Schedules 1 and 2 includes maintained schools and Academies except where the context requires otherwise;

(i) a reference to "special educational needs transport costs", for the purposes of paragraph 4(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; and

(j) a reference to "termination of employment costs", for the purposes of paragraph 4(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.

Revocation

2. The School and Early Years Finance (England) Regulations 2013(**b**) are revoked on 1st April 2016.

(**a**) "Registered pupil" is defined in section 434(5) of the 1996 Act.
(**b**) S.I. 2013/3104.

Amendments

3. In regulation 8 of the Schools Forums (England) Regulations 2012(**a**), in both places where the words "the School and Early Years Finance (England) Regulations 2013" occur, substitute "the School and Early Years Finance (England) Regulations 2015".

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. 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, including expenditure on associated administrative costs and overheads; and

(b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget).

Initial determination of a local authority's schools budget

5. A local authority must, not later than 29th February 2016—

(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—

(**a**) S.I 2012/2261, amended by S.I. 2012/2991 and S.I. 2013/3104.

(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 learning difficulty assessment or 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 sub-paragraphs (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(**a**) (arrangements for patrolling school crossings).

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

8.—(1) Subject to paragraphs (2) to (10), not later than 29th February 2016, 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) Expenditure referred to in paragraphs 3 and 4 of Part 1 (Central Services) of Schedule 2 may only be deducted by the local authority where the expenditure is to be incurred as a result of decisions taken before 1st April 2013 that commit the authority to incur expenditure in the funding period.

(3) In deducting the expenditure referred to in Part 1 (Central Services) of Schedule 2, a local authority must not exceed the limits referred to in paragraph 5 of Schedule 2, unless it is authorised to do so under regulation 25(1)(a).

(4) A local authority must not deduct the expenditure referred to in paragraphs 8 to 10 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).

(5) A local authority must not deduct the expenditure referred to in Schedule 2 (other than expenditure referred to in paragraph 12 (expenditure on licences) and Part 4 (Children and Young People With High Needs) of Schedule 2) without authorisation from its schools forum under regulation 12(1), or from the Secretary of State under regulation 12(3).

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

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

(7) Any amount of expenditure which was deducted under paragraphs 8 (growth fund), 9 (falling rolls), 10 (new schools), and 11 (extra infant classes) of Schedule 2 to the 2014 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 8 to 11 of Schedule 2 to the 2014 Regulations that applied to such expenditure.

(8) Where a local authority treated any expenditure described in Part 5 of Schedule 2 to the 2014 Regulations (Items That May Be Removed From Maintained Schools' Budget Shares) as central expenditure for the previous funding period under regulation 11(4) of the 2014 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 5 of Schedule 2 to the 2014 Regulations that applied to such expenditure.

(9) A local authority may apply to the Secretary of State for authorisation under regulation 25(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).

(10) 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(**a**).

(11) 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 2014 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 or exempt 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 20 (Sixth form funding) or 23 (Excluded pupils).

(5) A local authority must consult its schools forum before incurring any of the expenditure referred to in paragraphs 8 to 10 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

(**a**) 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.

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;

(d) the amounts to be allocated to exempt early years providers in its area; and

(e) 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 (e) in respect of the funding period.

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

(6) 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), (5) and (6), not later than 29th February 2016, 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 20 (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 20(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) After the local authority has made a determination under paragraph (1) but before giving notice under paragraph (7), 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 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) 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.

(5) Not later than 31st March 2016, 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.

(6) Not later than 31st March 2016, 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;

(d) the amount to be allocated to each exempt early years provider in its area; and

(e) 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.

(7) Not later than 31st March 2016, a local authority must give notice of—

(a) each budget share or amount determined under paragraphs (1), (5) and (6); or

(b) the redetermined budget share, when the budget share has been redetermined under paragraph (4),

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

(8) 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), 17 (Differential funding), 20 (Sixth form funding), 21 (new schools, merged schools and closing schools), 22 (Federated schools), 23 (Excluded pupils), 24 (Correction of errors and non-domestic rates) and 25 (Alternative arrangements), the authority must not redetermine a school's budget share, or the amount allocated to a relevant early years provider or an exempt 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 8, 9 or 10 of Schedule 2, under regulation 8(4);

(b) the making of deductions from the authority's schools budget of expenditure under regulation 8(5);

(c) the funding of any deficit from the schools budget under regulation 8(6); or

(d) the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(4).

(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 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 $A-(B-C)-D$ where—

(a) A is the total number of pupils in the school;

(b) B is the number of places in the school which the authority has reserved for children with special educational needs;

(c) C is the number of children in places in the school which the authority has reserved for children with special educational needs where those places are occupied by a child in a nursery class, or by a child who is not a pupil at the school; and

(d) D 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 2015.

(4) Where a primary school had more pupils in reception classes on 15th January 2015 than on 2nd October 2014, 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.

(5) 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.

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).

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

(a) hospital education places; and

(b) places for pupils in respect of whom a sixth form grant is payable.

(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.

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 one or both of the following—

(a) a pupil's eligibility for free school meals on 1st October 2015 or a pupil's eligibility for free school meals recorded in any school census between and including Summer 2009 and Spring 2015;

(b) a pupil's IDACI score on 1st October 2015,

and where it is based on an IDACI score the authority may use factors which differentiate between different IDACI bands (that is, groupings of IDACI scores published by the Department for Education in the document named "Schools Block Dataset Technical Specification: 2015 to 2016"(**a**).

(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) 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;

(d) amounts to be allocated to exempt early years providers in its area; and

(e) 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 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;

(d) amounts to be allocated to exempt early years providers in its area; and

(e) 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

(**a**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386207/Schools_block_dataset_2015_to_2016_technical_specification.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

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, exempt early years provision and community early years provision

16.—(1) Subject to paragraphs (5) and (6), 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;

(d) amounts to be allocated to exempt early years providers in its area; and

(e) 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 prescribed 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 prescribed 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 that which is prescribed, 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 exempt 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 prescribed early years provision from the relevant early years provider, or exempt early years provision from the exempt early years provider, as the case may be, 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, the relevant early years provider, or the exempt 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 to exempt early years providers in its area;

(e) 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.

(10) A local authority must include in the amount to be allocated to each early years provider in its area which has one or more children eligible for the early years pupil premium an amount equivalent to 53 pence per eligible child for each hour of early years provision that the child receives, up to a maximum of 570 hours.

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

(a) is three or four years old;

(b) receives at least one hour of prescribed early years provision; and

(c) either—

(i) the child's parents are receiving one or more of the benefits in paragraph (12), or

(ii) the child has previously been looked after by the local authority and is no longer so looked after as a result of the making of an order in paragraph (13).

(12) The benefits are—

(a) universal credit;

(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.

(13) The orders are—

(a) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002(**a**);

(b) a special guardianship order within the meaning given by section 14A(1) of the 1989 Act(**b**); and

(c) a child arrangements order within the meaning given by section 8(1) of the 1989 Act(**c**) 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.

(14) 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.

(15) The allocation referred to in paragraph (14) 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(**d**)).

(16) In paragraph (15), "virtual school head" means a person appointed by a local authority under section 22(3B) of the 1989 Act(**e**) 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).

Differential funding

17. For the purpose of determining or 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;

(d) amounts to be allocated to exempt early years providers in its area; and

(e) 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.

Additional requirements, factors or criteria

18.—(1) Subject to paragraph (3), in determining budget shares, a local authority may take into account in its formula any or all of the requirements, factors or criteria in Part 1 of Schedule 3, and where it does the date for ascertaining pupil numbers is 1st October 2015, except where these Regulations provide otherwise.

(2) 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;

(**a**) 2002 c.38.
(**b**) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.
(**c**) Section 8(1) was amended by section 12 of the 2014 Act.
(**d**) S.I. 2010/959.
(**e**) 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.

(d) amounts to be allocated to exempt early years providers in its area; and

(e) 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 any or all of the requirements, factors or criteria in Part 2 of Schedule 3.

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

(4) Subject to paragraphs (5) to (7), 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.

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

(6) Where the local authority decides to take one or both of the actions described in paragraph (4)(a) and (b), this must be applied to the budget shares of all schools in the local authority area.

(7) Paragraph (4) 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 2008 and does not yet have pupils in each year group for which it proposes to provide education.

Minimum funding guarantee

19.—(1) Subject to paragraph (4), in determining and 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.

(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) In determining and 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 to exempt early years providers in its area,

a local authority must ensure that the number by which it multiplies the predicted total number of hours calculated under regulation 16(1) is no lower than 1.5% less than the number by which it multiplied the predicted total number of hours calculated under regulation 16(1) of the 2014 Regulations for making such determinations and redeterminations in the previous funding period.

(4) A local authority may change the operation of this regulation and the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State under regulation 25 (alternative arrangements).

Sixth form funding

20.—(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 in respect of that school's sixth form grant.

(2) A local authority may, in determining budget shares, use a factor which allocates funding in respect of the number of pupils in sixth forms on 1st October 2015 subject to the limitation in paragraph (3).

(3) Where a local authority uses a factor in determining budget shares under paragraph (2), it must ensure that the amount allocated per pupil in respect of this factor in the funding period is no greater than the amount that was allocated per pupil in sixth forms in the previous funding period.

(4) 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

21.—(1) Where in the funding period, but excluding 1st April 2016, 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 2008 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 2016 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 2016, 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 2016, 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 2016 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 2016, 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 2016, 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 25 (alternative arrangements).

(11) In this regulation, "prescribed alteration" means a prescribed alteration within the meaning of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013(**a**).

Federated schools

22.—(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

23.—(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

(**a**) S.I. 2013/3110. The regulations are made under section 18 of the 2006 Act.

(c) *C* is the amount of the adjustment made to the school's budget share under a financial adjustment order.

(3) Where a pupil who 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 by 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 £4,000 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(**a**) in respect of the exclusion of the pupil from the excluding school.

Correction of errors and changes in non-domestic rates

24.—(1) A local authority may at any time during the funding period redetermine a maintained school's budget share, the amount allocated to a relevant early years provider, or the amount allocated to an exempt 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 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

(**a**) S.I. 2012/1033.

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

25.—(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 5 of Schedule 2 when deducting any expenditure referred to in regulation 8(3) (central services expenditure);

(b) deduct any expenditure referred to in regulation 8(9)(a) (expenditure falling outside Schedule 2);

(c) alter the operation of regulation 11(3) (additional expenditure on children with special educational needs);

(d) determine or redetermine budget shares of schools maintained by it;

(e) determine or redetermine amounts to be allocated in respect of nursery classes in schools maintained by it;

(f) determine or redetermine amounts to be allocated to relevant early years providers in its area;

(g) determine or redetermine amounts to be allocated to exempt 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) vary the amount by which a school's redetermined adjusted budget share must be reduced for the purpose of determining the guaranteed level of funding in paragraph 1 of Schedule 4;

(k) disregard regulation 13 (Pupil numbers);

(l) alter the operation of regulation 21 (New schools, merged schools and closing schools) in respect of particular schools; and

(m) alter the operation of paragraphs 14 (primary sparsity) and 15 (secondary sparsity) of Schedule 3 in respect of particular schools.

(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

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

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

27.—(1) Where a local authority 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(**a**) 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

28.—(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.

Sam Gyimah
Parliamentary Under Secretary of State
Department for Education

9th December 2015

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**) 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.

(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(**a**) or regulations made under section 75 of the National Health Service Act 2006(**b**) (arrangements between NHS bodies and local authorities).

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

School improvement

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

(a) section 60(**c**) (performance standards and safety warning notice);

(b) section 60A(**d**) (teachers' pay and conditions warning notice);

(c) section 63(**e**) (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements);

(d) section 64(**f**) (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

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(**a**) 1999 c.8. Section 31 was repealed by section 6 of, and Schedule 4 to, the National Health Service (Consequential Provisions) Act 2006 (c.43) but section 4 of, and paragraph 1 of Schedule 2 to, that Act contains a savings provision which means that arrangements made under section 31 of the 1999 Act continue to have effect as if made under section 75 of the National Health Service Act 2006.
(**b**) 2006 c. 41.
(**c**) Section 60 was amended by section 203 of, and paragraph 3 of Schedule 13 to, the 2009 Act.
(**d**) Section 60A was inserted by section 203 of, and paragraph 4 of Schedule 13 to, the 2009 Act.
(**e**) Section 63 was amended by section 203 of, and paragraphs 5(2) and 5(3) of Schedule 13 to, the 2009 Act.
(**f**) Section 64 was amended by section 203 of, and paragraphs 6(2) to 6(5) of Schedule 13 to, the 2009 Act.

(f) section 66(**a**) (power of local authority to suspend right to delegated budget).

Access to education

10. Expenditure in relation to—

(a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions;

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

(c) the authority's functions in relation to the exclusion of pupils from schools, excluding any provision of education to excluded pupils, but including advice to the parents of such pupils;

(d) the authority's functions under sections 508A to 509A(**b**) (school travel) of the 1996 Act; and

(e) 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.

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

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

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

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

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

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

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

Additional education and training for children, young persons and adults

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

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

(**b**) Sections 508A to 509A were inserted by sections 57 and 76 to 78 of the 2006 Act and amended by section 103(1) of, and paragraph 23 of Schedule 2 to, the Childcare Act 2006 and section 54 of, and paragraphs 9(10) to 9(12) of Schedule 13 to, the Education Act 2011.

(**c**) 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), as amended by S.I. 2004/1038 and S.I. 2004/1792. These regulations describe the designated courses and methodology for calculating grants.

(**d**) 1998 c.30.

(**e**) 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.

(**f**) 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).

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

Strategic management

20.—(1) Expenditure on education functions related to—

(a) functions of the director of children's services and the personal staff of the director;

(b) planning for the education service as a whole;

(c) functions of the authority under Part I of the Local Government Act 1999(**b**) (Best Value) and the provision of advice to assist governing bodies in procuring goods and services with a view to securing continuous improvement in the way the functions of those governing bodies are exercised, having regard to a combination of economy, efficiency and effectiveness;

(d) revenue budget preparation, preparation of information on income and expenditure relating to education for incorporation into the authority's annual statement of accounts, and the external audit of grant claims and returns relating to education;

(e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools) and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;

(f) authorisation and monitoring of expenditure—

(i) which is not met from schools' budget shares, and

(ii) in respect of schools which do not have delegated budgets,

and all related financial administration;

(g) the formulation and review of the methods of allocating resources to schools and other bodies;

(h) 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;

(i) internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972(**c**);

(j) the authority's functions under regulations made under section 44 of the 2002 Act(**d**);

(k) recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares and who are paid for services carried out in relation to those of the authority's functions and services which are referred to in other paragraphs of this Schedule;

(l) investigations which the authority 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;

(m) functions of the authority in relation to local government superannuation which it is not reasonably practicable for another person to carry out, and functions of the authority in relation to the administration of teachers' pensions;

(**a**) Sections 507A and 507B were inserted by section 6(1) of the 2006 Act.
(**b**) 1999 c.27.
(**c**) 1972 c.70.
(**d**) Relevant regulations made under section 44 of the 2002 Act are the Consistent Financial Reporting (England) Regulations 2012 (S.I. 2012/674).

(n) retrospective membership of pension schemes and retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body of a school to meet the cost from the school's budget share;

(o) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school, including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such staff;

(p) determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff;

(q) the authority's functions regarding the appointment or dismissal of employees;

(r) consultation and functions preparatory to consultation with or by governing bodies, pupils and persons employed at schools or their representatives, or with other interested bodies;

(s) compliance with the authority's duties under the Health and Safety at Work etc Act 1974(**a**) and the relevant statutory provisions as defined in section 53(1) of that Act, in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, giving them advice;

(t) the investigation and resolution of complaints;

(u) legal services relating to the statutory functions of the authority;

(v) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;

(w) provision of information to or at the request of the Crown and the provision of other information which the authority is under a duty to make available;

(x) the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies); and

(y) the authority's functions under the discrimination provisions of the Equality Act 2010(**b**) in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, giving them advice.

(2) References to schools in this paragraph are to schools maintained by the authority.

Other functions

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

22. 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.

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

24. Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act(**c**) or

(**a**) 1974 c.37.
(**b**) 2010 c.15.
(**c**) Section 390 was amended by section 140(1) of, and paragraph 93 of Schedule 20 to, the 1998 Act.

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

25. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person except to the extent that these costs are chargeable to maintained schools' budget shares or fall within paragraph 4(b) of Schedule 2.

26. 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.

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

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

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

SCHEDULE 2

Regulations 6 and 8

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

PART 1

Central Services

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

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

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

4. 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

(**a**) 1933 c.12.
(**b**) Section 88C(2) was amended by section 51 of, and Schedule 4 to, the 2002 Act and sections 45 and 56 of the 2006 Act.

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.

5. Any deductions under any of paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d) and 4(e) must not exceed the amount deducted under each of the corresponding paragraphs of Part 1 of Schedule 2 to the 2014 Regulations for the previous funding period.

PART 2

Central Schools Expenditure

6. 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.

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

8. 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.

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

(a) schools 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 its 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.

10. 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.

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

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

13. 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.

(**a**) Section 18 was amended by article 5(1) of, and paragraph 7 of Schedule 2 to, S.I. 2010/1158.
(**b**) S.I. 2012/10.

PART 3

Central Early Years Expenditure

14. Expenditure on early years provision, excluding expenditure—

(a) on such provision in a maintained school;

(b) on relevant early years provision;

(c) on exempt early years provision;

(d) on community early years provision, and

(e) on excluded early years provision.

15. 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 prescribed early years provision; or

(c) the eligibility of a child for the early years pupil premium.

PART 4

Children And Young People With High Needs

16. 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, exempt 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 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.

17. 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 the general annual grant paid to an Academy by the Secretary of State.

18. Expenditure in respect of persons provided with further education who are—

(a) aged under 19 and have special educational needs; or

(b) aged over 18 but under 25 and are subject to learning difficulty assessment or an EHC plan, and are not attending a school or an Academy.

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

20. Expenditure for the purposes of encouraging—

(a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;

(b) the education of children with special educational needs at primary and secondary schools; and

(c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs,

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

21. 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.

22. Expenditure on the payment of fees in respect of children 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.

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

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

25. Expenditure on costs in connection with private finance initiatives and the programme known as "Building Schools for the Future" at special schools, special Academies, pupil referral units and alternative provision Academies as defined in section 1C of the 2010 Act.

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

PART 5

Items That May Be Removed From Maintained Schools' Budget Shares

27. 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.

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

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

30. 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(**a**);

(b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;

(c) performing public duties under section 50 of the Employment Rights Act 1996(**b**);

(d) undertaking jury service;

(**a**) 1992 c.52; section 168A was inserted by section 43 of the Employment Act 2002 (c.22).
(**b**) 1996 c.18.

(e) a safety representative under the Safety Representatives and Safety Committees Regulations 1977(**a**);

(f) a representative of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996(**b**);

(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(**c**);

(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(**d**);

(j) suspended from working at a school; or

(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.

31. 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.

32. 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.

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

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

35. Expenditure on library services.

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

37. Expenditure on the schools' specific contingency.

38. 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.

(**a**) 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.

(**b**) 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.

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

(**d**) 1996 c.14.

SCHEDULE 3

Regulation 18

ADDITIONAL REQUIREMENTS, OR FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT, IN A LOCAL AUTHORITY'S FORMULA UNDER REGULATION 18

PART 1

Applicable only to budget shares for maintained schools

1. A single sum for primary 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.

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.—(1) Subject to sub-paragraph (5), in respect of pupils at key stages 1 and 2, a single per pupil amount based on the number of pupils in Year 1, Year 2, Year 3, Year 4, Year 5 and Year 6 to whom either sub-paragraphs (2) and (4), or sub-paragraphs (3) and (4), apply.

(2) This sub-paragraph applies to pupils who achieved fewer than 73 points on the Early Years Foundation Stage Profile under the 2008 Document.

(3) This sub-paragraph applies to pupils who achieved fewer than 78 points on the Early Years Foundation Stage Profile under the 2008 Document.

(4) This sub-paragraph applies to pupils who did not achieve expected development in relation to the relevant early learning goals in the Early Years Foundation Stage Profile under the 2012 Document or the 2014 Document.

(5) Where, in respect of the total number of pupils in the local authority, the percentage of those pupils to whom sub-paragraph (4) applies is greater than either—

(a) the number of pupils to which sub-paragraph (2) applies, expressed as a percentage of the total pupils in the local authority, where the local authority is using sub-paragraph (2) to determine a single per pupil amount under sub-paragraph (1); or

(b) the number of pupils to which sub-paragraph (3) applies, expressed as a percentage of the total pupils in the local authority, where the local authority is using sub-paragraph (3) to determine a single per pupil amount under sub-paragraph (1),

the authority may moderate the number of pupils to whom sub-paragraph (4) would otherwise apply, in accordance with sub-paragraph (6).

(6) The local authority may moderate the number of pupils to whom sub-paragraph (4) would otherwise apply by multiplying that number by a number between zero and one, but only where the resulting number, expressed as a percentage of the number of pupils in the authority's area, is not less than the number referred to in sub-paragraph (5)(a) or (b), as appropriate.

4. In respect of pupils at key stages 3 and 4, a single per pupil amount based on—

(a) the number of pupils who were assessed as achieving level 3 or lower in English or mathematics at key stage 2 under any arrangements predating the 2014 ARA, and

(b) the number of pupils who were assessed under the 2014 ARA as achieving level 3 or lower in mathematics or English reading under the tests referred to in paragraph 4.1 of the 2014 ARA or the teacher assessment of English writing referred to in the 2014 ARA.

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 3rd October 2013;

(b) the pupil was not recorded as attending a school or schools in England on any school census before 2nd October 2014; or

(c) the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2015.

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 3rd October 2013;

(b) the pupil was not recorded as attending a school or schools in England on any school census before 2nd October 2014; or

(c) the pupil was not recorded as attending a school or schools in England on any school census before 1st October 2015.

7.—(1) Where the total number of pupils to whom sub-paragraph (2)(a) and (b) applies is more than 10% 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 10%.

(2) This sub-paragraph applies to pupils at key stages 1 and 2 who joined the school in the previous three academic years at any time other than August or September, 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 at any time other than August or September is more than 10% of the total number of pupils at key stages 3 and 4, a single per pupil amount for every pupil in excess of that 10%.

9. A single per pupil amount, based on the number of pupils who were looked after children on 31st March 2015.

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 salaries of teachers 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) and (4).

(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) Subject to sub-paragraph (4), the amount is either—

(a) a single sum of up to £100,000, and each school must be allocated the same sum, or

(b) a sum of the amount $A \times (1 - B / C)$ where—

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 number of pupils in the school; and

C is the number determined by the authority in sub-paragraph (2)(b).

(4) 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) and (4).

(2) This sub-paragraph applies where—

(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) Subject to sub-paragraph (4) the amount is either—

(a) a single sum of up to £100,000, and each school must be allocated the same sum, or

(b) a sum of the amount $A \times (1 - B / C)$ where—

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 number of pupils in the school; and

C is the number determined by the authority in sub-paragraph (2)(b).

(4) 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 prescribed early years provision

16. Incidence of looked after children.

17. Prior attainment of pupils entering a school or children entering a relevant early years provider, exempt early years provider or school where they will receive community early years provision.

18. Pupils and children whose first language is not English.

19. A single sum for each school, relevant early years provider, exempt early years provider and school providing community early years provision, which may vary according to the type of provider.

20. Funding for schools, relevant early years providers, exempt early years providers and schools providing community early years provision with split sites, where the funding must be in accordance with criteria published by the authority.

21. Non-domestic rates payable in respect of the premises of each school, relevant early years provider, exempt early years provider or school providing community early years provision (including actual or estimated cost).

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

23. Differential salaries of teachers 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.

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

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

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

(a) an electoral division or ward of the authority; or

(b) such other appropriate geographical division into which the authority has notionally divided its area.

SCHEDULE 4

Regulation 19

MINIMUM FUNDING GUARANTEE

1.—(1) In this Schedule—

(a) references to the number of pupils exclude those funded by a sixth form grant and those in places which the local authority has reserved for children with special educational needs;

(b) the "relevant number" of pupils for the previous funding period is the number of pupils at the school on 2nd October 2014;

(c) the "relevant number" of pupils for the funding period is the number of pupils at the school on 1st October 2015;

(d) references to a redetermined adjusted budget share for the previous funding period exclude—

(i) any amount allocated under regulation 14(2) (places reserved for children with special educational needs) of the 2014 Regulations;

(ii) any amount included under regulation 20 (Sixth form funding) of the 2014 Regulations;

(iii) any amount included under regulation 24 (Correction of errors and changes in non-domestic rates) of the 2014 Regulations;

(iv) the difference between (a) any amount allocated to the school under regulation 21(4) of the 2014 Regulations, and (b) the single sum which the school would have

received under paragraph 1 or 2 of Schedule 3 to the 2014 Regulations if regulation 21(3) of the 2014 Regulations had not applied;

(v) any amount allocated to the school under Schedule 3 to the 2014 Regulations where such amount has been deducted from the schools budget under Part 4 (Children And Young People With High Needs) of Schedule 2;

(vi) any amount allocated to the school under regulation 10(3) (early years single funding formula) of the 2014 Regulations;

(vii) any amount included in respect of paragraph 11 (rates) of Schedule 3 to the 2014 Regulations;

(viii) any amount allocated to the school under paragraph 1 (primary single sum) of Schedule 3 (or, where regulation 21(4) or (8) applies, the amount allocated to the school under that regulation);

(ix) any amount allocated to the school under paragraph 2 (secondary single sum) of Schedule 3 (or, where regulation 21(4) or (8) applies, the amount allocated to the school under that regulation);

(x) any amount allocated to the school under paragraph 14 (primary sparsity) of Schedule 3; and

(xi) any amount allocated to the school under paragraph 15 (secondary sparsity) of Schedule 3;

(e) 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 25, but exclude—

(i) any amount allocated under regulation 14(2) (places reserved for children with special educational needs);

(ii) any amount included under regulation 20 (Sixth form funding);

(iii) any amount included under regulation 24 (Correction of errors and changes in non-domestic rates);

(iv) 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 2014 Regulations that the authority deducted in the previous funding period;

(v) any amount allocated to the school under regulation 10(3) (early years single funding formula);

(vi) any amount included in respect of paragraph 11 (rates) of Schedule 3;

(vii) any amount allocated to the school under paragraph 1 (primary single sum) of Schedule 3 (or, where regulation 21(4), (8) or (9) applies, the amount allocated to the school under that regulation);

(viii) any amount allocated to the school under paragraph 2 (secondary single sum) of Schedule 3 (or, where regulation 21(4), (8) or (9) applies, the amount allocated to the school under that regulation);

(ix) any amount allocated to the school under paragraph 14 (primary sparsity) of Schedule 3; and

(x) any amount allocated to the school under paragraph 15 (secondary sparsity) of Schedule 3.

(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 2015; 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 2016,

in both cases adjusted in accordance with paragraph 1(d) or (e), whichever is applicable.

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

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

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

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

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

3. Where a 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 2nd October 2014.

SCHEDULE 5

Regulation 26

CONTENTS OF SCHEMES

1. The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares.

2. Amounts which may be charged against schools' budget shares.

3. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.

4. The imposition, by or under the scheme, of conditions which 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.

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(**a**).

10. The use of delegated budgets and of sums made available to a governing body by the local authority which do not form part of delegated budgets.

11. Borrowing by governing bodies.

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

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(**a**).

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(**b**).

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

23. Funding for child protection issues.

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

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for local authorities' financial arrangements in relation to the funding of maintained schools and providers of prescribed early years provision in England, for the financial year 2016-2017.

The School and Early Years Finance (England) Regulations 2013 are revoked. The School and Early Years Finance (England) Regulations 2014 ("the 2014 Regulations") 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 funding guarantee (regulation 19 and Schedule 4) and requirements in relation to local authorities' schemes (regulation 26 and Schedule 5).

No impact assessment has been prepared for these Regulations as they have minimal impact on businesses, civil society organisations and the public sector.

(**a**) Section 519 was amended by section 140 of, and paragraph 139 of Schedule 2 to, the 1998 Act.
(**b**) 1974 c.37.

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