EXPLANATORY MEMORANDUM TO

THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2015

2015 No. 2033

1. Introduction

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

2. Purpose of the instrument

2.1 The School and Early Years Finance (England) Regulations 2015 ("the 2015 Regulations") provide how local authorities set their education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and set out how local authorities are to allocate funding from the individual schools budget (ISB) to maintained schools and private, voluntary and independent providers of free early years provision (relevant early years providers) through a locally determined formula.

2.2 The 2015 Regulations relate only to the 2016-17 financial year.

2.3 To a large degree, the 2015 Regulations make the same provisions as in the School and Early Years Finance (England) Regulations 2014 ("the 2014 Regulations") but there are some minor technical changes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 This instrument applies only to England because it applies only to Local Authorities in England, who determine the budgets of schools in England (see regulation 1(3) of the instrument). The instrument does not have minor or consequential effects outside England.

3.4 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2015 Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools). They relate to the 2016-17 financial year and need to be made because the 2014 Regulations apply only up to the end of the 2015-16 financial year. These regulations are made under the provisions of Sections 45A, 45AA, 47, 46ZA, 47A, 48, 49 and 138, and paragraph 2B of Schedule 14 of the School Standards and Framework Act 1998 (SSFA 1998) (financing of maintained schools), and Section 24 (3) of the Education Act 2002.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Department for Education allocates Dedicated Schools Grant (DSG) to local authorities. Local authorities then distribute the schools block element of this funding to their maintained schools through a locally determined formula. Ministers announced on 16 July 2015 that this arrangement will continue in 2016-17. A consultation is expected to begin in the early New Year regarding proposals for a reformed funding system, which could be introduced in 2017-18.

7.2 As the 2014 Regulations only apply up to the end of the 2015-16 financial year, the Department for Education is making the 2015 Regulations to enable local authorities to determine school budgets for 2016-17.

7.3 The main changes compared with the 2014 Regulations are set out below.

7.4 The 2015 Regulations allow local authorities to carry forward any unspent centrally retained funding, from 2015-16, to support outstanding schools with falling pupil numbers where their capacity will be needed within three years, and any unspent funding retained centrally to support the opening of new schools (funding the appointment of staff and enable the purchase of any goods and services). The unspent funding can be used for the same purposes in 2016-17. This is provided for by regulation 8(7).

7.5 Regulation 14(5) provides that local authorities must include at least the equivalent amount per hospital education place, as they have included in the budget share for special schools or pupil referral units in the previous funding period. This allows local authorities to increase the funding for hospital school places if they wish.

7.6 Regulation 16(8) now provides that local authorities must fund all 2 year olds eligible for the early years entitlement using participation-based funding. Local authorities may continue to use place-based funding for two year olds with special educational needs and children in need.

7.7 Regulation 21 requires a local authority to calculate the budget share of a new, amalgamated school by adding together the budget share of the discontinued schools which it replaced. The 2015 Regulations expand the definition of amalgamated schools to include situations where a school has closed and another school has had its upper or lower age ranged changed to accommodate the school closure. Under the previous regulations, this procedure was limited to circumstances where a school discontinued and another was established.

7.8 Regulation 21 now permits local authorities to add all or part of the unspent budget of a closed school to the budget of the successor or expanded school, where a

school's age range is expanded, or a new school is established, as a result of the closure of another school.

7.9 The 2015 Regulations clarify that where a local authority choose to spend money on their functions in respect of education for persons over 19 under section 15B of the Education Act 1996, that money is to form part of the authority's non-schools education budget.

7.10 The 2015 Regulations allow local authorities to authorise top up funding in respect of pupils at special academies and alternative provision academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an academy.

8. Consultation outcome

8.1 The Consultation on the draft 2015 Regulations ran from 11 September 2015 to 13 November 2015. The consultation document is available here: https://www.gov.uk/government/consultations/school-and-early-years-finance-england-regulations-2015. There were 35 responses; 17 from Local Authorities, 7 from Schools Forums, 1 combined response from a Local Authority and its School Forum, 4 from Governors, 2 from Trade Unions, 2 from Multi-Academy Trusts, 1 from an Early Years Provider, and 1 from a religious education agency. The low response rate indicates that the changes proposed were not in general deemed contentious.

8.2 In order to publicise the consultation, a note was sent to local authorities and academies via the Education Funding Agency and an item on the consultation was presented twice at the School and Academy Funding Group.

8.3 The full response to the consultation document is published on https://www.gov.uk/government/consultations/school-and-early-years-finance-england-regulations-2015 .

8.4 We asked about allowing local authorities to carry forward any unspent funding retained centrally to support outstanding or good schools with falling pupil numbers where their capacity will be needed within three years, for the same purpose. 91% of those who responded to the consultation agreed with this change. An amendment was suggested to the drafting of the regulation, so that regulation 8 (7) and (8), refer to 'planned expenditure' instead of 'unspent expenditure'. We have considered this amendment but have not made a change because the effect of the words in the regulation is clear.

8.5 We also asked whether local authorities should be able to carry forward any unspent funding retained centrally to support the opening of new schools (funding the appointment of staff and enable the purchase of any goods and services), to be used for the same purpose. Of those who responded to the question, 89% agreed with this change. Therefore, we have included this provision in the final regulations.

8.6 Furthermore, we asked about restricting the flexibility for local authorities to fund all eligible 2 year olds for the early years entitlement from place-based to participation-based funding. Local authorities will continue to be able to use place-based funding for 2 year olds with Special Educational Needs and those who are children in need. All other eligible 2 year olds must be funded on a participation basis. 46% agreed with this change, whilst 23% disagreed and 31% were 'not sure.' The intention that local authorities should fund the two-year-old entitlement on a

participation basis was made clear from the beginning of the programme.[1] This was also confirmed in December 2013 when the Department made the 2014-15 Local Authority allocations and the Minister for Education and Childcare wrote to all Directors of Children's Services.[2] Therefore, the final regulations contain this provision.

8.7 We asked whether respondents agreed that the definition of amalgamated schools should be extended to include situations where a school has closed and another school has had its upper or lower age range changed. 89% agreed with this change, as it reflected how amalgamations occur in practice. It was suggested that the definition of "unspent budget" also included any "unspent surplus." This has been made clear in the regulations and therefore given that the majority were in favour of this proposal, the final regulations include this provision.

8.8 Following on from this, we asked whether, where a school's age range is expanded, or a new school is established, as a result of the closure of another school, the local authority should be allowed to add all or part of the unspent budget of the closed school to the budget of the successor or, expanded school. It was suggested that balance brought forward should be outside of the Minimum Funding Guarantee the year it is added to the budget of the successor or expanded school, and excluded from the Minimum Guarantee baseline the following year, with Schedule 4 re-drafted to reflect this. 91% of respondents agreed with this change, and so the final regulations include this provision, and include the suggested revised drafting of Schedule 4.

8.9 We proposed to update schedule 1 paragraph 18 so that local authorities' functions under section 15B of the Education Act 1996 are included under the agreed expenditure that can be incurred from their non-schools education budget. 77% agreed with this change, 6% disagreed and 17% were unsure. As the majority of respondents agreed with this change, this update has been made.

8.10 We also proposed to updated paragraph 17 of Schedule 2 to allow local authorities to authorise expenditure in respect of pupils at special academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an academy. 23% disagreed, 9% were not sure and 69% agreed with this change. Therefore, this amendment has been made in the final regulations.

8.11 We also asked whether respondents agreed with the proposed update to paragraph 21 of Schedule 2 so that local authorities are able to authorise expenditure in respect of pupils at alternative provision academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an alternative provision academy. 73% agreed with this change, with 18% of respondents disagreeing and 9% were not sure. Consequently, this provision has been included in the final regulations.

8.12 The other changes introduced by the regulations reflect current practice, as well as updating references to reflect the financial year 2016 to 2017. For these changes, we asked whether respondents had any comments on the drafting of the regulations. Except for the comments received on the drafting of regulation 8 outlined above in 8.4, there were no comments on the drafting of the regulations.

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[1] http://media.education.gov.uk/assets/files/pdf/w/written%20ministerial%20statement%20on%202yo%20funding.pdf

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266738/Letter_to_DCSs_-_2014-15_2_YO_allocation.pdf

8.13 We have chosen to amend regulation 14 (5) without formally consulting upon this change, which we were unable to do due to on-going Spending Review negotiations. However, we continually received feedback from relevant stakeholders on this issue, which has driven our inclusion of this amendment. This is unlikely to be a controversial change, as local authorities must include at least the equivalent amount per hospital education place, as they have included in the budget share for special schools or pupil referral units in the previous funding period. This allows them to increase the value of hospital education, but this is not compulsory.

9. Guidance

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

10. Impact

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

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

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

11. Regulating small business

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

11.2 The regulation applies to Local Authorities and it is for the Local Authority to determine how they fund their local providers.

12. Monitoring & review

12.1 The changes will be monitored through the usual contact which the School Funding Team within the Department for Education has with schools and local authorities. The team will log and review any correspondence from schools and local authorities relating to the instrument.

13. Contact

13.1 Chris Jones at the Department for Education Telephone: 02073407600 or email: Chris4.JONES@education.gsi.gov.uk can answer any queries regarding the instrument.