EXPLANATORY MEMORANDUM TO

THE SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2020

2020 No. 83

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 2020 ("the 2020 Regulations") provide instruction on how local authorities are to set their education budgets in the 2020-21 financial year.

2.2 In particular, they set the parameters that local authorities must abide by in determining schools' budgets, and the budgets which are allowed to be retained centrally. They also set out how local authorities are to allocate funding to maintained schools and private, voluntary and independent providers of free early years provision through locally-determined funding formulae.

2.3 The Department for Education makes these regulations annually; the 2020 Regulations will apply only to the 2020-21 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

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

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The 2020 Regulations are made under chapter 4 of Part 2 of the School Standards and Framework Act 1998 ("SSFA 1998"), which concerns the financing of maintained schools. They relate to the 2020-21 financial year and need to be made because the School and Early Years Finance (England) Regulations (No. 2) 2018 ("the 2018 (No.

2) Regulations") apply only up to the end of the 2019-20 financial year. The Department for Education makes these regulations annually.

7. Policy background

What is being done and why?

7.1 The regulations largely relate to how local authorities spend their Dedicated Schools Grant ("DSG") allocation, which consists of funding for: core provision for 5-16 year olds in mainstream schools; central services carried out on behalf of local schools; provision for children and young people (aged 0-25) with complex needs; government-funded childcare entitlements for two, three and four year olds.

7.2 The National Funding Formulae ("NFF") determine local authority DSG allocations. These were introduced in 2018-19 for schools, high needs and central school services; and in 2017-18 for early years. The schools NFF calculates notional school-level allocations, which are aggregated to form local authorities' school funding within the DSG. The introduction of the NFF is in line with reforms by the Department for Education to make the funding system simpler, fairer and more transparent.

7.3 In 2020-21, local authorities will continue to determine schools' budget allocations at a local level, through a local funding formula. This is known as a 'soft' schools NFF. We have announced that we will implement a 'hard' schools NFF in future, whereby schools receive what they attract through the national formula, rather than through different local authority funding formulae.

7.4 To a large degree, the 2020 Regulations make the same provisions as in the School and Early Years Finance (England) Regulations (No. 2) 2018("the 2018 (No. 2) Regulations") but there are some changes relating to how local authorities distribute the school funding element of their DSG allocation to local schools. These changes mainly relate to ensuring, or allowing for, the distribution of school funding by local authorities to more closely mirror the distribution of the NFF at school-level.

7.5 Most notably, in the 2020 Regulations the minimum per pupil levels within the national formula are mandatory for local authorities to use, as an important step towards a 'hard' schools NFF.

7.6 The main changes compared with the 2018 (No. 2) Regulations are set out below.

Minimum per pupil funding levels

7.7 The minimum per pupil funding levels set in the NFF will become mandatory to use in local formulae for 2020-21, as set out in Regulation 22. This is a factor of the funding formula which ensures that, in addition to distributing funding based on the particular characteristics of individual schools and their cohorts, every school receives a minimum level of funding. It therefore benefits the lowest funded schools.

7.8 As reflected in the 2020 Regulations, local authorities will implement the minimum per pupil funding levels by applying the same methodology used in the NFF. This is detailed in the government consultation outcome and the NFF policy document referenced in paragraphs 9.2 and 9.7. It ensures consistency for all schools, including those with non-standard year group structures. Regulation 22 outlines the new calculation.

7.9 In light of the increase to school funding in 2020-21, and the Prime Minister's commitment to increase the minimum per pupil funding levels, we have also increased the values used in this funding factor. The value for primary year groups has increased from £3,500 to £3,750 per pupil; for Key Stage 3 year groups it has increased from

£4,600 to £4,800; and for Key Stage 4 year groups it has increased from £5,100 to £5,300. We have changed the Regulations to reflect these new values.

7.10 For primary schools and secondary schools with standard structures of 7 and 5 year groups respectively, the minimum levels will always come to £3,750 per pupil and £5,000 per pupil respectively. For middle schools, all-through schools and other schools with a non-standard year group structure this will produce a specific minimum per pupil value that relates to the number of year groups in each phase.

Minimum funding guarantee

7.11 The minimum funding guarantee (MFG), as set out in Regulation 23 and Schedule 4, guarantees a minimum increase, per pupil, for every school under the local authority funding formula. In the 2020 Regulations, the range of the MFG has been raised such that local authorities must set the minimum increase between +0.5% and 1.84% per pupil.

7.12 This will allow local authorities to mirror the NFF funding floor, set at +1.84% per pupil, if they wish to, or to set the MFG as low as 0.5%, in the context of local decisions about their own funding formulae. As in previous years, local authorities will need to consult on the level of the MFG, which is set out in Regulation 9.

Removal of the funding floor

7.13 The NFF funding floor, which is similar to the local authority MFG, provides a minimum increase in per-pupil funding for all schools. This provides protection and stability for all schools.

7.14 In 2020-21, the NFF funding floor is based on the individual school's per-pupil increase compared to their NFF allocation in 2019-20. This is a change to last year's calculation, which was based on the allocation the school received from their local authority two years' previously (before the NFF was introduced). As the funding floor in 2020-21 is now based on a one-year-old baseline, local authorities can use the minimum funding guarantee factor to achieve the same result as the NFF funding floor. We have therefore removed the option to use the funding floor factor as obsolete.

Mobility factor

7.15 The mobility factor, referenced in Part 1 of Schedule 3 of the 2020 Regulations, targets funding at schools with a high proportion of pupils starting at non-standard times in the school year. For the past two years we have calculated this funding based on what local authorities have previously spent on this as there had not been a reliable data source.

7.16 To reflect changes to the way this factor is calculated in the NFF, the 2020 Regulations re-define what are considered 'mobile' pupils: those who have joined the school in the previous three academic years and were recorded in the census for the first time in either the spring or summer school census. The threshold for schools to attract this funding has also been lowered from having 10% 'mobile' pupils, to having 6%.

Extending Risk Protection Arrangement

7.17 The Risk Protection Arrangement (RPA) is an alternative to commercial insurance, which was introduced in September 2014 to help reduce the cost to the public purse of

protecting against certain risks and losses for academies (e.g. property damage, business interruption, employers liability and public liability). The RPA has generated significant savings for the academies sector. For example, insurance costs have reduced from an average of £58.25 in 2014, to £27.99 (non RPA members) and £23.67 (RPA Members) in 2019.

7.18 The Department has decided to extend the RPA to provide equivalent protection for local authority maintained schools. This will widen the choice of risk protection cover and offer them the opportunity to make similar savings to those achieved by the academy sector. They will not be obliged to join the RPA and will be able to continue using commercial insurance or other alternative arrangements. Local authority maintained schools will be able to join the RPA at any point during the 2020-21 financial year.

7.19 We have made changes to the Regulations to allow for two methods by which maintained schools can join the RPA. The first is to add the RPA to Part 6 of Schedule 2, at paragraph 47, so that local authorities and their schools forums can decide under Regulation 11(5) that all maintained primary and/or secondary schools will join the RPA and their budget shares will be redetermined accordingly (£18 per pupil for the 2020-21 financial year). The second is the insertion of Regulation 19, to deal with cases where individual governing bodies of maintained schools decide to join the RPA. If a governing body does join RPA, Regulation 19 requires local authorities to deduct £18 per pupil (or £18 per place for a special school or pupil referral unit) for the 2020-21 financial year from its budget share, proportionate to the part of the year that the school is in membership of RPA. The Department will in turn charge the local authority by making a reduction to its DSG.

Handling deficits in the schools budget

7.20 We have made changes to how a local authority should handle deficits in their schools budget in order to make clear, on a statutory basis, that the schools budget is a ring-fenced fund. Therefore, where a local authority decides not to deduct the deficit from its schools budget, it must carry forward the deficit to future financial years rather than fund it from other sources. A local authority will now only be able to fund a deficit from a previous financial year from other sources where the Secretary of State has given authorisation to disregard the requirements in the regulations.

7.21 To reflect this, a number of changes have been made in Regulations 8(7) and 8(8) and Part 8 of Schedule 2 on dealing with the handling of deficits in a local authority's schools budget. The impact of these changes will be that a local authority with a deficit in its schools budget from a previous funding period ("funding period" is defined as a financial year) must either: (i) deduct the whole of the deficit from its schools budget for the current financial year; (ii) deduct part of the deficit from its schools budget for the current financial year and carry forward the rest of it into the next financial year; (iii) carry forward the whole of the deficit into the next financial year.

7.22 The Regulations allow local authorities to apply to the Secretary of State for authorisation to disregard the listed requirements if they wish to fund any part of the deficit from a source other than the DSG, such as their general reserves.

Early years funding

7.23 The Disability Access Fund (DAF) was introduced in April 2017 to help disabled children access childcare entitlements for 3 and 4 year olds. It gives early years providers £615 per year for each child meeting the eligibility criteria.

7.24 In 2018-19 the Department changed the methodology for providing DAF funding to local authorities, from using early years census numbers, to using Disability Living Allowance (DLA) data.

7.25 However, as not all DLA recipients claim DAF, the new methodology means that some local authorities receive more DAF funding from government than they can distribute. The Department has therefore asked local authorities to spend any surplus DAF funding on services in line with the principles and aims of the DAF.

7.26 To address these circumstances, we have amended Regulation 18(1) so that it now states that local authorities should pass on *at least* £615 per eligible child to early years providers. This will enable local authorities with surplus funding to increase children's individual DAF funding.

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

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

9. Consolidation

9.1 This instrument makes an amendment to the Schools Forums (England) Regulations 2012 to update the references in those regulations to the 2018 (No 2) Regulations with the 2020 Regulations. The Department has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department did not conduct a specific public consultation on the 2020 Regulations. As below, we ran government consultations related to the substantive changes, while changes relating to alignment with the NFF build on extensive consultation carried out when it was introduced.

10.2 We consulted on the implementation of mandatory minimum per pupil levels in autumn 2019. The consultation covered the methodology local authorities must use to calculate the minimum per pupil levels, cases for exceptional disapplication of the requirement, wider comments for consideration, and an equalities impact assessment. There was broad support from respondents for the government's proposals, and the outcome can be found here: https://www.gov.uk/government/consultations/implementing-mandatory-minimum-per-pupil-funding-levels

10.3 The Department carried out an 8-week public consultation in autumn 2019 to seek views from stakeholders on proposals to extend the RPA to local authority maintained schools. There was a total of 148 responses from schools-related stakeholders, local authority representatives and the commercial insurance sector. The response from the schools sector was very positive, supporting the extension and noting the potential financial benefits. The full consultation outcome is available at: https://www.gov.uk/government/consultations/extending-the-academies-risk-protection-arrangement-to-la-schools

10.4 The Department also ran a consultation in autumn 2019 on clarifying the specific grant and ring-fenced status of the DSG. The purpose was to clarify that any deficit that a local authority may have on its DSG account (the schools budget) is expected to be carried forward to the next year's schools budget and is not required to be covered by the authority's general reserves. The response to the consultation was generally positive, with the majority of local authority respondents in agreement with making clarificatory changes. The formal government response will be published at the same time as these Regulations are laid in Parliament, but the original consultation can be found here: https://www.gov.uk/government/consultations/consultation-on-changing-the-dedicated-schools-grant

10.5 More broadly, recent funding reforms to introduce the NFF for schools, high needs and central school services were developed through two formal public consultations. The first stage of the consultation was on the principles of the schools and high needs formulae and took place between 7 March and 17 April 2016. The second stage of the consultation was on the details of the formulae, and took place between 14 December 2016 and 22 March 2017. It received responses from over 26,000 individual respondents and representative organisations. These responses were carefully considered when designing the final NFF, which took effect from April 2018.

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

10.7 In October 2019, we published an updated NFF policy document setting out changes for 2020-21 at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838394/National_funding_formula_policy_document_-_2020_to_2021.pdf

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

11. Guidance

11.1 Operational guidance for local authorities for 2020-21, which was issued in September 2019, will be updated in February 2020 to cross-reference the new Regulations. This is available at: https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2020-to-2021.

12. Impact

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

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

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

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses, except for the early years providers referred to in 11.1 and 11.2 above.

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

14. Monitoring & review

14.1 The regulations will be monitored through the usual contact that the Funding Policy Unit within the Department for Education has with schools and local authorities. The team will log and review any correspondence from schools and local authorities relating to the instrument.

15. Contact

15.1 Richard Mensah at the Department for Education Telephone: 0207 654 6044 or email: Richard.Mensah@education.gov.uk can be contacted with any queries regarding the instrument.

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

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