EXPLANATORY MEMORANDUM TO

THE SCHOOL FINANCE (ENGLAND) REGULATIONS 2012

2012 No. 335

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 Finance (England) Regulations 2012 (the 2012 Regulations) define the local authority 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 2012 Regulations relate only to the 2012-13 financial year because there is to be a wider review of the school funding system for 2013-14 onwards.

2.3 To a large degree, the 2012 Regulations re-enact provisions in the School Finance (England) Regulations 2011 (the 2011 Regulations) but there are some minor changes, relating to the Minimum Funding Guarantee, funding for excluded pupils and definitions of allowable expenditure within the schools budget. .

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

3.1 None

4. Legislative Context

4.1 New regulations need to be made because the 2011 Regulations apply only to the end of the 2011-12 financial year. These Regulations are made under the provisions of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (SSFA 1998) (financing of maintained schools).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Ministers announced on 19 July 2011 that school funding for 2012-13 would continue under the existing system whereby the Department for Education allocates Dedicated Schools Grant (DSG) to local authorities and then local authorities distribute funding to their maintained schools through a locally determined formula. Consultation has taken place on proposals for a reformed funding system, which could be introduced in 2013-14.

7.2 The main changes compared to the 2011 Regulations are set out below.

7.3 The school funding settlement announced that the Minimum Funding Guarantee (MFG) would continue at a rate of -1.5% per pupil. The MFG provides protection to schools against changes to local formulae or other data changes unrelated to pupil numbers. The regulations extend the circumstances in which a local authority can vary its MFG, with the approval of its schools forum and without applying to the Secretary of State (regulation 25).

7.4 The Regulations give effect to Ministerial commitments made that the pupil premium should move between schools and other providers where a pupil is excluded.

7.5 The Regulations clarify that remission of boarding fees and the deficits of closing schools can be charged to the schools budget.

8. Consultation outcome

8.1 Consultation on the School Finance Regulations 2011 lasted from 13 October to 11 November 2011. There were 19 responses - 17 from local authorities, and 2 from teacher associations. The length of the consultation period and the low response rate reflect the small number of changes being proposed.

8.2. There was general support for the proposal to widen the extent to which exceptions to the MFG could be agreed locally, based on the decisions made by Ministers last year. There were some comments that there needed to be a clearer definition of the exceptions allowed for site/school specific factors where the school’s circumstances have changed; the final Regulations have clarified that these only relate to factors allocated to specific schools and not to general allocations such as floor area. There were also some concerns that the requirement to re-apply for exceptions where the method of calculating the formula factor had changed was unduly restrictive, as there could be minor changes to factors or some indicators may no longer be collected. As the purpose of the MFG is to protect schools from the effects of significant

formula changes, the requirement will remain but there will be the opportunity for local authorities to apply for exceptions in such cases.

8.3. Some authorities wanted there to be much greater local discretion so that they could change their funding formula without the effects being constrained by the MFG. They saw the MFG as preventing schools in an authority and with similar circumstances from being funded at the same level. Ministers have, however, repeatedly made it clear that there need to be significant levels of protection in any local or national formula change.

8.4. There was general support for, and acceptance of, the principle of the pupil premium following excluded pupils. Some concerns were expressed about potential extra administration. The concerns were, however, expressed with reference to the pupil premium for looked after children, where the issues are different.

8.5. There was general agreement that remission of boarding fees should be an allowable charge to the schools budget.

8.6. A couple of responses favoured moving elements of the non-schools education budget into the schools budget: one relating generally to those services within the grant paid to Academies for central services and the other specifically to termination of employment costs. Roles and responsibilities are being reviewed as part of the consideration of how a future school funding system might operate.

9. Guidance

9.1 A guidance note is to be sent to all local authorities outlining the changes, together with the Regulations, and these will be published on the Department for Education website www.education.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that relevant early years providers will continue to be funded in respect of the free entitlement for three and four year olds through the same formula that the local authority will use to determine the funding of this free entitlement in maintained schools. There is no change, however, as a result of these Regulations.

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

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The current regulatory framework will be considered as part of the review of the whole school funding system from 2013-14 onwards.

12.2 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. It will log and review any correspondence from schools and local authorities relating to the instrument.

13. Contact

Keith Howkins at the Department for Education Tel: 020 7227 5163 or email: keith.howkins@education.gsi.gov.uk can answer any queries regarding the instrument.