

# THE SCHOOL FINANCE (ENGLAND) REGULATIONS 2008

## GUIDANCE

1. The School Finance (England) Regulations 2008 (the 2008 Regulations) relate to the three year funding period covering the financial years 2008-09, 2009-10 and 2010-11. To a large degree they duplicate provisions in the School Finance (England) Regulations 2006 (the 2006 Regulations), but also incorporate within them the text of the Schools Finance (England) (Amendment) regulations 2007 (the 2007 Regulations).
2. There are, however, important changes, some of which have been made following the extensive policy consultation on school funding conducted from March – May 2007, and some of which have been made following the technical consultation on the draft Regulations in October 2007.
3. The purpose of this guidance is to explain changes to the law implemented by the 2008 Regulations.

### Part 1: Introduction

4. This part of the regulations provides **definitions** of phrases used within the regulations. Many remain as in the 2006 regulations or 2007 amendments, but changes have been made to the following:
  - 4.1 Removal of references to regulations that will be revoked (the 2004 regulations, the LEA budget, Schools Budget and Individual Schools Budget regulations 2004 and their amending regulations of 2005);
  - 4.2 Rewording of the definition of 'expenditure on schools specific contingency' to assist understanding;
  - 4.3 Change of the definition from 'vocational education' to 'practical and applied learning' to better reflect what is happening in schools;
  - 4.4 Addition of a new definition of 'PVI providers' for providers of the free early years entitlement for 3 and 4 year olds who are not in maintained schools or academies;
  - 4.5 The definition of 'school year' has been changed to refer to s579 of the 1996 Education Act;
  - 4.6 Rewording the reference to SEN transport costs to aid understanding;
  - 4.7 A minor rewording of the reference to 'summer term' to take account of schools having 6 terms in a school year;
  - 4.8 And all references to specific dates or monetary values in regulations have been changed where necessary.

## **Part 2: Action to be taken by a Local Education Authority.**

- 5 This part covers The LEA Budget, Schools Budget, Individual Schools Budget (ISB) and how schools receive budget shares.
- 6 The **LEA Budget** which is defined in Schedule 1 to the regulations is the funding to pay for the Local Authority's (LA) responsibilities for SEN, school improvement, access to education, further education and training for young persons and adults and the local authority strategic management. None of these items defined in this schedule may be charged to the Schools Budget (except where specifically delegated prior to April 2003)
- 7 There have been no changes to the LEA Budget regulation text, but in Schedule 1 changes have been made as follows:
  - 7.1 Paragraph 9 (a) revised wording to bring this into line with other current legislation
  - 7.2 Paragraph 10; removal of reference to the School Organisation Committee which no longer exists and removal of sentences referring to the CYPP and admissions as these obligations are contained within paragraph 20.
  - 7.3 Paragraph 20; removal of references to the Chief Education Officer: this post no longer exists and has been superseded by the Director of Children's Services.
  - 7.4 Paragraph 31; new reference to costs in connection with the Local Authority's powers with regard to the employment of children.
- 8 Incidentally, the terms "Local Education Authority or LEA" are still used in these regulations because they still have meaning under the Education Acts. An Order is being prepared under provisions in the Education and Inspection Act 2006 which will replace all references to these terms in primary and secondary legislation, but for the time being this phrase remains in use in these regulations.

The **Schools Budget** is split into two, the centrally retained schools budget and the individual schools budget. Items that may be retained centrally by the local authority from the Schools Budget are defined in Schedule 2

- 8.1 Regulation 5(1) is now shown to be subject to regulation 5(2).
- 8.2 Regulation 5 (1)(c) is new and widens the definition of the schools budget to include expenditure incurred *in connection* with the expenditure referred to in 5(1) (a) and (b). This has been included, in particular, to allay local authority concerns that delegations to maintained special schools for boarding costs may not previously have been properly chargeable to the schools budget.

- 8.3 Regulation 6(a) (ii) is new and clarifies that payments of arrears of pay including those that have been capitalised to spread the cost of payment may be met from the schools budget. Where schools are incurring back pay (whether as back pay or as an award in lieu of pay owed) resulting from single status settlements these may be paid from the schools budget even if the local authority has borrowed the funding to pay them as capital. The DCSF has always been of the view that this was implicitly allowed in previous regulations, but, following several enquiries and discussions the opportunity was taken in revising the regulations to make this clear beyond any doubt.
- 9 Changes to Schedule 2 are:
- 9.1 Heading: A drafting change to make clear that the classes and descriptions of planned expenditure which may be deducted from the schools budget are also part of that budget (although this has always been the case).
- 9.2 Paragraph 15 revised wording regarding school meals and milk to simplify the wording to aid understanding.
- 9.3 Paragraph 25 new; to allow additional expenditure related to the back pay of staff paid from the schools budget to be centrally retained from the schools budget where it cannot be charged to individual schools. Further guidance on this will be issued jointly by Communities and Local Government and DCSF.
- 9.4 Paragraph 26 additional wording to clarify that this expenditure includes payments to early years providers for the free 3 and 4 year old entitlement at private voluntary and independent providers, which it to be spent in accordance with other guidance.
- 9.5 Paragraph 29 revised wording to add clarity to the wording regarding library services for schools
- 9.6 Paragraph 35; reflects the revised definition of practical and applied learning.
- 10 The funding remaining in the Schools Budget after removal of funding to be centrally retained is delegated to schools and collectively known as the **Individual Schools Budget**. Regulation 7 deals with the determination of the ISB and the Central Expenditure Limit (CEL).
- 10.1 The calculation of the **Central Expenditure Limit (CEL)** has been fundamentally changed and no longer requires a separate schedule. The revision in these regulations adds new paragraphs 7 (2) and (3), which change the calculation so that it is a minimum increase in percentage terms of the ISB plus funding for the 3 and 4 year old free entitlement paid to Private, Voluntary and Independent (PVI) Nursery Providers (Section 52 line 1.0.9), which must be greater than or equal to the percentage increase in

the Schools Budget. The inclusion of PVI funding with the ISB is intended to ensure that where policy changes to funding for all early years provision are implemented, the funding to PVI providers is not constrained by the CEL calculation.

[(ISB + PVI) % increase  $\geq$  % increase in Schools Budget].

- 10.2 Regulation 11 has been incorporated in its entirety from the 2007 amending regulations with a minor wording change at 11(7) to emphasise the need for a new school's pre opening delegated budget to be sufficient and reworded at 11(3) to be consistent with primary powers in the School Standards and Framework Act.
- 10.3 Regulation 12 (2) is a drafting change, subsuming what was formerly three sub-paragraphs into one.
- 10.4 Regulation 12 (3) is new and provides that a local authority must advise schools in advance of the multi year funding period if they know that they are likely to make any redetermination of budgets within the multi year funding period. The local authority does not have to provide specific information, but should highlight, in advising schools of their budgets, potential changes to funding as a result of (for example)
  - data changing each year (as agreed with the Schools Forum) or
  - changes to formulae that will happen in the multi year period. For example, as local authorities change to a single early years formula, this is likely to affect schools with maintained nursery provision. Local authorities should be advising those schools in advance of the three year period that there will be a change to the indicative budgets for years 2 and 3 as a result of the new formula.
- 10.5 Regulation 12 (4) provides that where a budget is redetermined under this regulation, schools must be given notice of the change within 28 days.
- 10.6 Regulation 13 provides that the local authority must inform the governing body of each school of their budget share funding periods 2 and 3 at the start of each new funding period.
- 10.7 Regulations 14 (4) and (5) make clear that for each funding period any authorisations given by the schools forum or secretary of state in a previous year will continue to apply unless it was clear that this was not the intention when the authorisation was given. This was implied in the 2006 Regulations, but this revision to the regulations makes it explicit.

### **Part 3: Formulae for determination of budget shares.**

- 11 This part outlines how local authorities may determine formulae for the delegation of the ISB to schools. Schedule 3 outlines the factors that may be taken into consideration in formulae for delegation to schools.

- 11.1 References in Regulation 15: Pupil Numbers to nursery pupils are now contained within a separate new regulation – regulation 17.
  - 11.2 Regulation 15 (3) now makes particular reference to places in special schools or schools with boarding accommodation.
  - 11.3 Regulation 15(4) (g) now uses the revised definition for practical and applied learning.
  - 11.4 Regulation 17 gives effect to new policy changes to early years funding which take effect over a three year period and bring the funding for PVI providers and maintained nursery schools and classes closer together through the development of a single formula for early years funding. These provisions, which apply only to the maintained sector, have been amended to change the emphasis from place funding nursery pupils to funding the actual amount of provision nursery pupils take up. With effect from 2009-10 actual numbers and hours of attendance must be used other than in exceptional circumstances set out in the regulation.
  - 11.5 Schedule 3 paragraph 18 is amended to clarify that a formula factor may be used for salaries and this may include back pay of salaries (or pay in lieu of thereof). See also the guidance to be issued by CLG and DCSF (and paragraph 9.3). The proposal to disallow the use of actual salaries as a formula factor has been postponed and will be subject to further consultation at a later date.
  - 11.6 Schedule 3 paragraph 37 is new. Given the increased emphasis at national level on personalised learning for all pupils it was decided to allow local authorities to provide funding in their formula aimed specifically at gifted and talented pupils – they are already allowed or required to distribute funding for pupils with other additional educational needs such as SEN, being from a deprived background or English as an additional language (for example) and this was seen to complement the requirements of personalisation.
- 12 Details of the **Minimum Funding Guarantee (MFG)** are contained within regulation 20 and Schedule 4. The changes since the last regulations are:
- 12.1 Calculations for schools with rising rolls now mirror the calculation for schools with falling rolls. Previously schools with rising rolls received the full amount of baseline funding per pupil for each additional pupil, whilst schools with falling rolls only lost 80% (Primary) or 87.5% (Secondary) of the baseline funding per pupil, to reflect the fact that some costs do not change with pupil numbers. From April 2008 schools with rising rolls will equally only gain the marginal funding per pupil.

- 12.2 Funding for pupils in sixth forms in schools will no longer be included within the MFG calculations. Changes to the formula for funding from the LSC will have their own transitional arrangements, and will not in addition be protected by the MFG. Schedule 4 has been amended to reflect this change. Any abatement to schools funding as a result of the move to funding by the LSC is part of the local formula and is not excluded from the MFG.
- 12.3 The MFG has been set at 2.1% per pupil for each of the three years of the funding period for all schools.
- 12.4 Regulation 20(2)(b) is new and makes particular reference to closing schools. This is to enable local authorities to redetermine the minimum funding guarantee for a school which was not confirmed as closing until after the start of the financial year. Where it becomes known after the start of the financial year that a school will close during the year (probably in August), but the school has been given a full year's budget, the local authority may adjust the budget and the MFG accordingly.
- 13 The **Schools Forum** has been able to approve changes to the operation of the MFG where these affect 20% of schools or less. Regulation 25 alters that limit to changes that will affect 50% of pupils in schools or less. Under the previous criteria a schools forum could implement a change which would affect all secondary schools, but not one which affected all primary schools. The new limit should ensure equity for phases of schools. Changes that affect the operation of the MFG for more than 50% of pupils may be approved by the Secretary of State upon application, but the views of the local Schools Forum will be taken into account in that decision.
- 13.1 There are further drafting changes but these do not affect the substance of what of provisions in regulation 25 of the 2006 Regulations.

#### **Part 4: Schemes.**

- 14 **Schemes of Financial Management** must be prepared by a local authority and the requirements as to what must be contained within a scheme are set out in Schedule 5. Further guidance on schemes with model text is available on Teachernet.
- 14.1 Regulation 27 is incorporated in its entirety from the 2007 amending regulations and in conjunction with paragraph 2A of Schedule 14 to the Schools Standards and Framework Act 1998 allow a Schools Forum to approve changes to the local scheme provided that the Governing body and Headteacher of every school have been consulted on the proposed variations first.
- 14.2 In regulation 28 the second sentence has been removed as this obligation is now in primary legislation

14.3 Schedule 5 now specifically states that schemes must include a balance control mechanism.

If you require further assistance on these regulations, please contact Margaret Judd, via email at [margaret.judd@dcf.gov.uk](mailto:margaret.judd@dcf.gov.uk) or on 0207 925 3756 or Jeremy Cogle at [jeremy.cogle@dcf.gov.uk](mailto:jeremy.cogle@dcf.gov.uk) or on 0207 925 6705

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February 2008