

Explanatory Notes to the School Finance (England) (Amendment) Regulations 2010

Summary

1. The Schools Finance (England) (Amendment) Regulations 2010 will make changes to the rules that local authorities must work to when funding maintained schools. These regulations amend the School Finance (England) Regulations 2008 which relate to the financial years 2008-09, 2009-10 and 2010-11. The proposed amending regulations principally cover the requirement for all local authorities to implement from 1 April 2010 a single funding formula; to fund, using the same principles, all providers of the free entitlement to nursery education for three and four year olds.
2. Additionally, apart from the changes associated with the EYSFF changes are also proposed to:
 - Require local authorities to publish schemes of financial management on a public website showing the date of revision and coming into force;
 - And consider a recent matter brought to our attention by a local authority that the regulations require local authorities, where pupils are attending two schools to undertake diplomas, to fund both schools as if the pupil attends each full time. The regulations are amended to allow LAs to discount the secondary registration of pupils in Key Stage 4 where they are undertaking diplomas if that is the only reason they attend the second school.

Background

3. The School Finance (England) Regulations 2008 relate to the financial years 2008-9, 2009-10 and 2010-11. In principle these regulations should not change during the three year funding period, but these amending regulations are required to allow implementation of The Early Years Single Funding Formula (EYSFF) from 2010. We are also taking the opportunity to make a couple of other small changes, but not the opportunity for wider change. New regulations will be required from April 2011 to take into account the next funding periods and changes arising from the review of the Dedicated Schools Grant.
4. This amendment brings together the funding mechanisms for maintained providers with the funding mechanisms for private voluntary and independent providers (PVI) into the Individual Schools Budget. It is dependent upon clause 195 of the Apprenticeships, Skills, Children and Learners Bill currently before Parliament, which we hope will receive Royal Assent in November.
5. The changes proposed to the regulations are those required to enable local authorities to implement the EYSFF in 2010, based upon the participation of children rather than the number of places in a setting

6. A list of the specific changes to the regulations that are proposed for the EYSFF is provided at the end of this note.
7. The additional changes not related to the EYSFF are to regulation 28 in Part 4 (Schemes), so that LAs will be required to publish their scheme of financial management on a public website along with a coming into force date. Schemes define the financial working relationship between schools and their local authority. This change has arisen as a result of instances of schools not knowing which scheme was the latest published scheme to which they should be working, and this causing dispute and difficulties. Schemes should be on a public site to ensure that Governors in particular have access to the local scheme easily and without having to work via their school intranet site. Additionally there are occasions when it would be helpful for department officials to be aware of the latest scheme when answering correspondence so that a specific answer may be given instead of a vague answer referring correspondents to their local scheme.
8. Finally, the Department has been approached by local authorities pointing out that when pupils are registered at two schools for the purposes of undertaking a diploma, according to the current regulations both schools have to be funded in full for the pupil. These regulations include a way of dealing with this.

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- **Definitions:** revised definitions of early years provision, prescribed early years provision, and relevant early years provider to bring them in line with the Childcare Act 2006.
- Some consideration was given to the definition of **practical and applied learning**. This remains as it was in the 2008 regulations, because although not explicitly mentioning diplomas, this definition when written was intended to include diplomas as well as other practical and applied learning courses. On review we still believe this definition does include diplomas.
- **Part 2, reg 5(1);** addition of sub paragraph (d) to allow the Schools Budget to cover all expenditure on early years provision not in maintained schools or other specified providers (eg non maintained special schools, PRUs).
- **Part 2, reg 7 (3);** amending the wording of the calculation of the Central Expenditure Limit given that the funding for early years will now all be part of the ISB. The change does not affect the calculation of the CEL because the current regulations add the centrally retained PVI funding to the ISB as part of the calculation, but the revision to where the funding is placed (in the ISB) means this adjustment will no longer be needed.
- **Part 2, reg 9, (3) and (6)** (both of which add subject to paragraph 7) **and (7):** which requires a local authority to consult their schools forum about and decide upon an EYSFF which they must use in 2010-2011.
- **Part 2, reg 13;** local authorities must redetermine school budget shares that they have already made for 2010-2011 (funding period 3) in accordance with part 3 of the regulations and notify schools of the changes. Nursery schools and nursery classes are now dealt with separately under the EYSFF. If this is lower than already notified to nursery schools or nursery classes this is permissible. As with sixth forms, authorities are allowed to reduce funding to affected schools from their main formula to avoid any overlap with the new EYSFF.
- **Part 3, reg 15 (4) (g) or 15 (2) (d):** local authorities may choose not to fund pupils who have a secondary registration at a school solely because they undertake a practical and applied learning course (which includes diplomas) at the school. This is to avoid a need to double fund the pupil because they are dually registered. This only applies in this specific instance and other dually registered pupils will need to be funded at both schools.
- **Part 3, reg 16 (1):** funding for early years SEN places in 2010-11 is now covered separately by reg 17A (5)..
- **Part 3, reg 17;** limits all this regulation to apply only to 2008-09 and 2009-10.
- **Part 3, reg 17A;** provides a replacement regulation for regulation 17 for 2010-2011. This says that LAs:
 - must provide indicative budgets for early years provision using the most recently available data;
 - must review the data during or after the year using either attendance data collected during three sample weeks (census week for example) or total actual hours of attendance;

- must recalculate the provider's budget as appropriate;
 - and must implement the redetermination when they consider it appropriate – which may be different for different providers;
 - They must notify providers within 28 days of recalculating the budget;
 - This regulation also removes the option for local authorities to provide funding based upon places, except where there are places specifically reserved for pupils with SEN in any setting, (although there is a later option to provide an additional formula factor in support of maintaining sufficient places for children in an area in Part 2 of Schedule 3);
 - It does allow the LA to weight the hours depending upon whether pupils have been admitted in excess of the admission number, or for SEN. The option of weighting based upon age at admittance has been removed because it was felt that the EYSFF provided the funding for pupils accessing the free provision and this should take precedence.
- **Part 3, reg 18 (4);** allows differential funding to types of providers to reflect unavoidable costs.
 - **Part 3, reg 19 reg (1A) and (1B) and (2A);** Specify which parts of schedule 3 may be used for the various funding periods for respectively the school funding formula and the EYSFF. It also requires that the EYSFF must (as is currently the case for the schools funding formula) have a factor that takes the incidence of deprivation into account.
 - **Part 3, reg 28;** has been rewritten to require LAs to publish their scheme of financial management on a public website by the date on which it comes into force along with a statement describing the date by which it comes into force. Given that changes to schemes are now agreed (after consultation with the Head and Governors of all schools) by the Schools Forum, it would be hoped that publication of the scheme would be linked to the minutes of the Forum's agreement or a statement was provided by the Chair of the Forum showing that the scheme had been ratified and its coming into force date. This is to avoid confusion and leave schools in no doubt as to which scheme they are working to.
 - **Schedule 2;** the schedule that specifies what may be centrally retained from the schools budget does not allow the retention of funding for the provision of early years funding for provision of the free entitlement, but does allow a contingency budget for that provision (to enable adjustments to funding to be made in year)
 - **Schedule 3;** the schedule that provides the heading under which formula factors may be provided is split into 2 parts, part 1 applicable to all maintained schools and PVI providers and part 2 applicable to the EYSFF only. Part 2 allows factors for
 - the improvement of quality,
 - to take account of flexibility in hours of attendance the provider makes available and
 - to allow LAs to secure or sustain a sufficiency within an area