



Department
for Education

School and Early Years Finance (England) Regulations 2013

Government consultation response

December 2013

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Introduction

Consultation on the School and Early Years Finance (England) Regulations 2013 and Dedicated School Grant (DSG) conditions of grant lasted from 1 August 2013 to 11 October 2013. The consultation documents included a draft of the proposed new set of finance regulations and DSG conditions of grant. The majority of the changes had previously been published as part of the “School funding reform: findings from the review of 2013 and 2014 – arrangements and changes for 2014 and 2015” published 4 June and “2014 to 2015 revenue funding arrangements: operational information for local authorities” published on 7 June. There were 36 responses – 23 from local authorities and school forums, six from teacher, college and special school associations and seven from schools in Wokingham.

The Department conducted this consultation online and made available all the appropriate documents at: [School and early years finance regulations 2013 consultation](#)

Summary of responses received and the government's response

School and Early Years Finance (England) Regulations 2013

The majority of consultation responses supported the proposals and agreed with the principles to introduce new regulations and update the conditions of grant in light of the changes to the school funding system in 2013-14 and 2014-15. The low response rate (36 responses were received) indicates that the changes were not in general deemed contentious. The references to the regulation numbers in bold below, are references to the number of the regulations in the consultation draft. Where this number has changed in the final version of the Regulations this is explained in italics.

1. In **regulation 3** of the draft Regulations the Department sought to clarify the position concerning school meals and ensure that provisions in legislation are in line with the current funding arrangements for schools. By amending the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999 the Department wished to confirm the current position that the duty to provide school lunches in accordance with section 5123(3) and (4) of the Education Act 1996, and the duty to provide school lunches free of charge in accordance with section 512ZB(1) of that Act, is transferred from local authorities to the governing body of each maintained school in England.

2. Prior to this amendment being made, the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999 provided that certain obligations on local authorities in respect of school lunches were transferred from local authorities to the governing bodies of maintained schools in England where the schools' "budget share" (within the meaning of section 47(1) of the School Standards and Framework Act 1998) included an amount in respect of meals and other refreshment.

3. Schools' budget shares have for some time not included specific amounts for meals and other refreshments, but rather the funding for providing school lunches is included in their general budget share allocation. The purpose of the amendment was therefore to clarify what is already common practice: that the responsibility in respect of school lunches falls on all maintained schools, rather than on local authorities, and this is not dependent on there being a specific amount of budget share allocated in respect of school lunches.

4. The Department received 17 responses on our proposal to update the wording in regulation 3, which was generally welcomed. Five responses objected to the transfer of responsibility for schools meals to schools. This is a misunderstanding as schools already fund school lunches from their mainstream budget and this responsibility was transferred to schools in 1999. As this is a technical change and not a policy change, the Department will introduce the amendment as consulted on. *However, on reflection we*

feel this is better done through a separate amending order rather than through the School and Early Years Finance Regulations. Accordingly, at the same time as laying the Finance Regulations we will be laying before Parliament the Transfer of Functions Concerning School Lunches Etc. (England) (Amendment) Order 2013 to make these amendments.

5. **Regulation 4** proposed to amend the Schools Forums (England) Regulations 2012 to require the inclusion of 16 to 19 provider representatives while removing the reference to 14 to 19 partnerships. The Department received 16 responses and there was general support to make these amendments. There were no objections to the amendments so the Schools Forum (England) Regulations will be amended accordingly. *This is now provided for in regulation 3 of the final version of the Regulations.*

6. **Regulation 6 and regulation 12** proposed to move the date at which local authorities must make their initial determination of their 2014-15 schools budget from 15 March to 28 February. The Department received 20 responses on our proposals for regulation 6 and regulation 12. There was general support to change these Regulations as consulted on, but some concerns were raised that this proposal would be a challenge for local authorities and there could be a risk that local authorities might either over or under commit funding to schools. Responses from schools welcomed the early notice of budgets, but local authorities wanted the Department to send data to them earlier to enable them to reach the deadline in this proposal. Five responses expressed their disappointment that the deadline for informing special schools and pupil referral units of their budget had been moved back. It was suggested that schools should be notified of all budgets at the same time. The concerns raised about this proposal were in relation to the delivery of processes and they do not negate the advantages of earlier notification of budgets to schools so the Department will bring into effect the changes as consulted on. *This is now provided for in regulation 5 and regulation 11 of the final version of the Regulations.*

7. We proposed in **regulation 9(7)** to change what was the position in the previous financial year, and require local authorities to put any unspent money from the 2013-14 growth and infant class size funds back into the individual schools budget. The Department received 23 responses on our proposals for regulation 9(7). Though there was support for this proposal, 30% of responses recommended that the regulations should exclude any allocation of the underspend from the Minimum Funding Guarantee to avoid funding being locked in for future years or suggested that it would be more appropriate for Schools Forums to decide on the use of the underspend. Based on these concerns, we have revised our proposals and decided that local authorities should be able to carry such underspends forward from year to year to be used for the same purpose. This will avoid any future impact on the Minimum Funding Guarantee. *This is now provided for in regulation 8(7) of the final version of the Regulations.*

8. Regulation 9(8) proposed to allow local authorities to carry over to 2014-15 unspent de-delegated central expenditure to be used for the same purpose as it was used in 2013-14. The Department received 17 responses on our proposals for Regulation 9(8). There were no objections to this proposal and the regulations will be amended accordingly. *This is now provided for in regulation 8(8) of the final version of the Regulations.*

9. Regulation 12(3) proposed to require local authorities to calculate a notional Special Educational Needs budget for schools with reference to a threshold of £6,000. The Department received 19 responses and only five of these objected to the setting of a threshold. Concerns were raised that the threshold would constrain local freedom and that there should be a factor in the formula that allows local authorities to give schools £6,000 for pupils with statements to ensure that schools do not take money away from other pupils. The introduction of a standard threshold is a necessary precursor to developing a National Fair Funding Formula for schools. We consulted on these changes as part of our review of 2013-14 funding arrangements¹ and we did not receive significant objections, so the Department is going ahead with the proposal. Local authorities will continue to have plenty of flexibility to give additional funding outside the formula to a school that has high levels of SEN that are not adequately reflected in the formula. *This is now provided for in regulation 11(3) of the final version of the Regulations.*

10. Regulation 12(8) proposed to clarify the circumstances in which local authorities can re-determine a school's or early years provider's 2014-15 budget once it has been set. The Department received 16 responses including four responses from local authorities who were concerned that the proposal restricted local authorities' flexibility. Two responses from schools said that the proposal was too rigid and suggested that there should be a mechanism for in-year adjustments. The Department believes that schools should have clarity about their budgets at the start of the year and they should not in general be subject to subsequent change, so will proceed with the proposal. *This is now provided for in regulation 11(8) of the final version of the Regulations.*

11. Regulation 14(2)(a) proposed that designated SEN places will not count towards a school's pupil numbers for the purpose of calculating its budget through the mainstream local funding formula. The Department received 18 responses and eight of these responses (22% of all respondents) highlighted concerns. Concerns included whether the proposal was a fair way of funding mainstream schools with a specialist resource base, whether the proposal could create a perverse incentive for other schools to place pupils in the base if they had to "pay" for the place and if the proposal penalised

¹ The Department undertook a short consultation in February to March 2013 to understand the changes which we would need to make to funding arrangements in 2014-15. The document [Findings from the Review of 2013-14 Arrangements and Changes for 2014-15](#) explains our proposals and Annex A provides details of the 260 consultation responses which the Department received.

schools that had units for low incidence needs. The final version of the regulations clarifies that places should not be deducted if they are occupied by nursery pupils or by pupils not registered at the school. But otherwise the Department believes that schools should not receive both £10,000 base funding and pupil funding in respect of an empty place. *This is now provided for in regulation 13 of the final version of the Regulations.*

12. Regulation 14(5) proposed that the basic per pupil amount in a local authority's formula must be at least £2,000 for primary and £3,000 for secondary pupils. The Department received 16 responses on our proposals for 14(4) and some concern was raised that the minima would be seen as the norm not the floor and that the proposal removed local flexibility. The Department consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections. Therefore after consideration of the responses it was decided that the proposal should go ahead. All local authorities used figures higher than £2,000 and £3,000 in 2013-14 so these are clearly a floor rather than the norm and local authorities are already exercising local flexibility. *This is now provided for in regulation 13(5) of the final version of the Regulations.*

13. Regulation 15 proposed that all places (including sixth form places) for maintained special schools will attract £10,000 per annum. The Department received 24 responses on our proposal for regulation 15. 20 responses (83%) welcomed the proposal to make the process of managing place funding simpler. However, there was some concern about the possible implications for other providers and for student choice if this provision meant that there would be a presumption to remain in a Special School Sixth Form to age 18. There is no such presumption so the Department is proceeding with the proposal. *This is now provided for in regulation 14 of the final version of the Regulations.*

14. Regulation 17 proposed to fund exempt early education providers from the Individual Schools Budget. The Department received 15 responses with no objections to this proposal, which is going ahead. Regulation 17 has also been amended to enable local authorities to fund government funded early education (the free entitlement for two, three and four year olds) where this is delivered by schools using their community use powers (section 27 of the Education Act 2002). As government funded early education is increasingly being delivered in maintained schools, local authorities need to be sure of their ability to fund this provision. We have therefore taken this opportunity to clarify this position. The change is limited to the provision of government funded early education for two, three and four year olds, and does not place any duty on local authorities to fund other early years activities or services delivered by schools using their community use powers. *This is now provided for in regulation 16 of the final version of the Regulations.*

15. Regulation 17(6) was in square brackets in the consultation because the Department proposed to remove the provision that enabled local authorities to vary funding paid to providers of funded early education if the number of children admitted by a provider is in excess of any number agreed by the local authority. The Department

proposed this removal because of concerns that this provision could restrict parental choice, which is not the intention of the sufficiency duty. The Department received 11 responses with five of these not supporting the change to this provision. Those who opposed the removal of this proposal believed it would result in a loss of flexibility for local authorities and argued this provision was needed for local authorities to carry out their statutory duty to provide sufficient early years provision. After consideration of the responses to the consultation, the Department has decided that this provision will be removed and *it does not appear in the final version of the Regulations*.

16. Regulation 19(7) proposed to exclude schools that opened in the previous seven financial years (which are still adding year groups) from the capping of budgets to pay for the minimum funding guarantee. The Department received 16 responses on this proposal. Though there were no objections to our proposal, one respondent noted that there was a lack of detail in the consultation document and another suggested that this provision should be kept under review. As there are no objections, the Department will proceed with regulation 19(7) as set out in the consultation document. *This is now provided for in regulation 18(7) of the final version of the Regulations*.

17. Regulation 24 proposed to pay schools that have merged in 2013-14 a lump sum equal to 85% of the two (or more) lump sums that the schools would have received in 2014-15. The Department received 15 responses. It was suggested that the proposal could create a perverse incentive for schools not to merge, while one respondent said that the proposal did not go far enough to ensure that budgets of merging schools are protected through the transitional period. The Department has clarified that when an amalgamation takes place after 1 April 2014, the schools will continue with the sum of the predecessor school budgets added together. This is to ensure schools have the stability to plan their budgets with no in-year budget reductions. The Department believes that the 85% provision for the lump sum provides sufficient protection for schools and the Department also consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections, so we will go ahead with the proposal. *This is now provided for in regulation 21 of the final version of the Regulations*.

18. Regulation 25(8) proposed to set the sum for an excluded pupil in a sixth form at £4,000 on an annual basis. The Department received 11 responses with a few of these raising concerns. Concerns included whether the rate of £4,000 should only reflect the 16 to 19 national base funding rate and whether other “pupil led” factors such as disadvantage funding should be included. The Department believes that the £4,000 is appropriate since it reflects the base funding for a post-16 student. Other post-16 funding is not linked to specific students so it would be very difficult to specify how any variable sum should be calculated. *This is now provided for in regulation 23(8) of the final version of the Regulations*.

19. Schedule 2, paragraph 8 proposed to allow local authorities to retain a falling rolls fund. The Department received 20 responses and nine of these responses (25% of

all respondents) had concerns that this funding was only permitted for good or outstanding schools (including Academies). It was suggested that this provision does not recognise the potential for school improvement and does not sufficiently address the issue of rising pupil numbers. It was suggested that eligibility for this funding should rest with the local authority, in consultation with the Schools Forum, to be managed in the best interests of the pupils involved. However, the Department is clear that the quality of schools is vital and that it is not right to prop up schools with falling rolls that are not rated by Ofsted as at least good. The Department also consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections so the proposal will be implemented as consulted on.

20. Carbon Reduction Credits: The Department proposed not to reproduce the provision that appeared in paragraph 11 of Schedule 2 to the School and Early Years Finance Regulations 2012 concerning Carbon Reduction Credits. In the 2012 Regulations the local authority was allowed to retain central expenditure from the schools budget for expenditure on Carbon Reduction Credits in schools. We proposed this change because of changed funding arrangements for 2014-15. From 1 April 2014, schools (other than pupil referral units) will be excluded from the Carbon Reduction Credit scheme. The Department received three responses about this amendment to the Regulations. Two replies from local authorities asked for further information as to how the Dedicated Schools Grant will be affected due to this change in policy. As this is a technical change and not a policy change, the Department will proceed on the basis it consulted on. A provision at paragraph 26 of Schedule 2 of the final version of the Regulations allows local authorities to retain money centrally for the purchase of CRC allowances for pupil referral units.

21. Schedule 3, paragraphs 1 and 2, proposed to allow local authorities to set as part of the formula for determining budget shares for schools, a different lump sum for primary and secondary schools. The Department received 18 responses and four of these responses (11% of all respondents) raised their concern that the upper limit for the lump sum had been reduced to £175,000. One respondent favoured an approach that the lump sum should reflect the size of the school rather than its phase. Since small rural schools can now be helped by using the new sparsity factor, the Department believes that it is justifiable to reduce the maximum size of the lump sum. A lump sum that varied by size of school would unfairly divert funding towards smaller schools at the expense of pupils in larger, more efficient schools. The Department also consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections so the proposal will be implemented as consulted on.

22. The Department sought to change what was the position under the School and Early Years Finance Regulations 2012, in **Schedule 3, paragraph 3** to reflect the use of data from the new Early Years Foundation Stage (EYFS) profile in deciding whether a pupil attracts prior attainment funding. The Department received 16 responses. There was some concerns that the change to datasets may increase turbulence and that the

EYFS profile is about to change radically. At the time of the consultation, a local authority noted that data had not yet been seen so a judgement could not be made on its impact on the formula. Other comments from local authorities included that the proposal makes formula decisions more complex and that clarity is needed as to what level of pupils will attract low attainment funding. It is necessary to make a change since the old early years foundation stage profile is no longer in operation. However, the Department recognises the validity of the point about turbulence and will allow local authorities, if they wish, to adjust the number of pupils counted under the new profile so that the percentage is closer to that under the old profile.

23. Schedule 3, paragraph 4 proposed to allow pupils who did not achieve level 4 in either of mathematics and English to attract prior attainment funding. The Department received 20 responses. A local authority noted their concern that pupils who are not present for Key Stage 2 tests are currently given a notional level 4 grade – this deprives schools of necessary funding. Other concerns raised by local authorities included that this proposal will lead to spreading resources too widely and that it is likely this change will have a knock on effect for other factors in the local funding formulae. There was also a suggestion that those pupils who failed to achieve level 4 in both mathematics and English should be counted twice. However, there is evidence to show that pupils who fail to achieve level 4 in English or Maths also achieve significantly below average at GCSE. The reason for making this change was that the number of pupils who did not achieve level 4 in both English and maths had declined rapidly because of rising test results. That remains true and the change will go ahead. If the percentage of pupils counted in a particular authority rises substantially, it is open to the authority to reduce the unit value attributed to the factor. The Department also consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections so the proposal will be implemented as consulted on.

24. Schedule 3, paragraphs 7 and 8 proposed to provide funding through a mobility factor only where more than 10% of pupils in a school are mobile. The Department received 18 responses. One local authority felt strongly that the current mobility factor is inadequate. Another local authority expressed their disappointment that the provision did not support schools that had high pupil mobility but did not reach the 10% threshold. Some of the responses suggested other methods, such as allowing local authorities discretion in applying this factor, application of an “exceptional circumstances” factor and that the factor should apply to those schools regularly affected rather than those schools that met the threshold. The majority of responses welcomed making this factor more restricted by applying a threshold. The Department does not want to make the factor more complex and the proposal will go ahead as consulted on.

25. Schedule 3, paragraph 9 proposed to allow pupils who have been looked after (regardless how long they have been looked after) to attract funding through the looked after children factor. The Department received 14 responses and 11 of these responses

(30% of all respondents) supported this proposal and only one local authority wished to retain current arrangements. The proposal will therefore go ahead.

26. Schedule 3, paragraph 14 and 15 proposed to introduce a new sparsity factor. The Department received 15 responses. There was general support for the proposal and only eight responses (22% of all respondents) did not agree with the proposals. Some responses did not agree with the proposal to use a distance of 2 miles as the crow flies – it was suggested that road distances and not as the crow flies should be used, and a few schools thought the distance was too high and should be set at 1.5 miles. Concern was also raised that no additional funding would be made available to those local authorities with a large number of sparse schools. The Department understands the concern about using a “crow flies” measure but it is the only one available at present: the Department will continue to work on other measures. The regulations allow local authorities to apply to the Secretary of State to treat schools as sparse where the distance is less than 2 miles but there are exceptional geographical circumstances. The Department consulted on these changes as part of our review of 2013-14 funding arrangements and we did not receive significant objections so the proposal will go ahead as consulted on.

Conditions of Grant

There was broad support for the proposals to amend the 2014-15 Dedicated Schools Grant: additional conditions of grant. The Department received 20 responses on the proposed changes.

27. There was support for proposals to include a new condition **(c)** to require local authorities to allocate at least 80% of funding through pupil-led factors. The Department received 16 responses. One respondent raised some concern about the Department moving too quickly and too far to higher levels of funding driven solely by pupil factors at the cost of other factors. It was suggested that the conditions of grant should set out the levels of funding or delegation expected within the permitted factors. Given that all authorities currently allocate at least 80% of funding through pupil-led factors, the Department is going ahead with the proposal.

28. There was general support for the proposal to include a new condition **(d)** to allow local authorities to cap or scale school budgets only to the extent that is required to fund the minimum funding guarantee (MFG). The Department received 16 responses and three of these responses had concerns about the proposal. There was concern that without a cap some schools could gain significantly at the expense of other schools and it was suggested that this new requirement should be phased in over time. However, the initial purpose of allowing capping and scaling was to fund the MFG rather than to prevent gains that would be due under the local formula. The new condition of grant just clarifies this and will go ahead.

29. There was general support for the proposal to update conditions **(g)** and **(h)** in relation to the operation of top-up funding for high needs pupils. The Department received 20 responses. Concerns raised by local authorities included that there appeared to be some inconsistency between the proposed conditions of grant and the Department's operational guidance about year on year protection of funding for special schools: however, the draft condition of grant correctly reflects the intention. There was also concern that the amended condition (h) could be seen as a perverse incentive for schools to retain pupils who may be better placed at another institution. It is however open to the authority to review a statement of SEN (or in future Education Health and Care Plan) if they think the placement is no longer meeting the child or young person's needs.

Next steps

After due consideration of the responses to the consultation, the Department will lay the School and Early Years Finance (England) Regulations 2013 in the Houses of Parliament for a period of 21 days. These Regulations will come into force on 1 January 2014.

Annex A: List of organisations that responded to the consultation

1. Aldryngton Primary School, Wokingham
2. All Saint CE (Aided) Primary School, Wokingham
3. AoC
4. ASCL
5. Barnsley Council
6. Cheshire West and Cheshire Council and Schools Forum
7. Crazies Hill CE Primary School, Wokingham
8. Durham County Council
9. Emmbrook Junior School, Wokingham
10. Gateshead Council
11. Gloucestershire County Council
12. Hampshire County Council
13. Hatch Ride Primary School, Wokingham
14. Hawkedon Primary School, Wokingham
15. Hertfordshire County Council
16. Lambs Lane Primary School, Wokingham
17. Lancashire County Council
18. NASS
19. NASUWT
20. Natspec
21. Newcastle City Council
22. North Somerset Council
23. NUT
24. Oxfordshire County Council
25. Oxfordshire Schools Forum
26. Sandwell Metropolitan Borough Council
27. Sefton Council and Schools Forum
28. Shropshire Council
29. Slough and Schools Forum
30. St Helens Council
31. Surrey County Council
32. Tower Hamlets (London Borough of)
33. Trafford Council
34. Wandsworth (London Borough of)
35. Warrington Borough Council
36. Wokingham Borough Council



Department
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