
STATUTORY INSTRUMENTS

2008 No. 228

The School Finance (England) Regulations 2008

PART 3

FORMULAE FOR DETERMINATION OF BUDGET SHARES

CHAPTER 1

FACTORS AND CRITERIA TAKEN INTO ACCOUNT

Pupil numbers

15.—(1) Subject to regulation 17 (Special arrangements for maintained nursery schools and pupils in nursery classes) and paragraphs (2) and (5), in determining and redetermining budget shares for primary and secondary schools, a local education authority must take into account in their formulae for funding periods 1, 2 and 3 the number of registered pupils at those schools on the dates specified in paragraph (6), weighted, if the authority consider it appropriate, in accordance with paragraph (4).

(2) For the purposes of paragraph (1), the number of registered pupils does not include pupils—

(a) in places—

(i) in primary or secondary schools which the authority recognise as reserved for children with special educational needs, and

(ii) in boarding accommodation at boarding schools other than special schools

where the authority exercise their discretion to take these places into account under regulation 16(1) (b) or (c);

(b) in respect of whom grant is payable to the authority by the LSC (sixth form pupils); or

(c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 35 of Schedule 3.

(3) Where a local education authority exercise their discretion under regulation 16(1) to take into account places, they may also take into account in their formulae the number of registered pupils in special schools or schools with boarding accommodation, or in reserved places at primary or secondary schools, as referred to in that paragraph, on the dates specified in paragraph (6).

(4) A local education authority may weight pupil numbers according to any or all of the following factors—

(a) age, including weighting according to key stage or year group;

(b) in the case of pupils aged under five, their exact age when admitted to the school;

(c) in the case of pupils aged under five, whether they have been admitted to the school in excess of the admission number agreed with the authority;

(d) in the case of pupils aged under five, hours of attendance;

(e) whether a pupil has special educational needs;

- (f) whether the pupil is attending a middle school;
- (g) whether the pupil is at key stage 4, and is accessing practical and applied learning;
- (h) whether the pupil, although registered at a school, is also attending a college of further education or a course delivered by any training provider; and
- (i) whether the pupil is in an infant class (in cases where an infant class is not taken into account as an additional factor under paragraph 35 of Schedule 3).

(5) Subject to paragraphs (7) and (8), for the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10, a local education authority must estimate the number of pupils they will take into account under paragraph (1) for that funding period.

(6) The dates for ascertaining pupil numbers are—

- (a) 17th January 2008 in respect of funding period 1;
- (b) 15th January 2009 in respect of funding period 2; and
- (c) 21st January 2010 in respect of funding period 3.

(7) Subject to paragraph (8), where a primary school—

- (a) operates a policy of admitting children into reception classes in the summer term; and
- (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in paragraph (6),

a local education authority may determine a number representing the number of pupils who will be admitted in that summer term, and take such number into account in their formulae for funding period 1, 2 or 3.

(8) In determining the number of pupils they will take into account under paragraph (7), a local education authority—

- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before any of the dates specified in paragraph (6); and
- (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

(9) A local education authority may adjust the number of registered pupils used to determine or redetermine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly, the permanent exclusion of a pupil from the school or the admission of a pupil to the school following his permanent exclusion from another school.

Places

16.—(1) In determining and redetermining budget shares for funding periods 1, 2 and 3, a local education authority may take into account the number of places they wish to fund in—

- (a) special schools;
- (b) primary or secondary schools with places which the authority recognise as reserved for children with special educational needs; and
- (c) schools with boarding accommodation.

(2) In determining and redetermining budget shares for funding periods 1, 2 and 3 a local education authority may take into account the nature of any special educational needs in question when funding places under paragraph (1)(a) or (b).

(3) A local education authority must provide that, if any places are taken into account in accordance with paragraph (1)(a), the number must be no fewer than the number of registered pupils at the school on the relevant date in regulation 15(6).

(4) For the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10(a), a local education authority must estimate the number of places they wish to fund under paragraph (1) for that funding period.

Special arrangements for pupils in maintained nursery schools and nursery classes

17.—(1) For the purpose of initially determining budget shares for maintained nursery schools and other primary schools, a local education authority may take into account in their formulae for funding periods 1, 2, and 3 either—

- (a) the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes on the date specified in regulation 15(6) and their hours of attendance; or
- (b) the number of places they wish to fund in those schools or those classes.

(2) For the purpose of initially determining budget shares for maintained nursery schools for funding periods 2 and 3, a local education authority must estimate the number of pupils or places they wish to fund under paragraph (1).

(3) In redetermining budget shares for maintained nursery schools and other primary schools, a local education authority must take into account in their formulae for funding periods 2 and 3—

- (a) the number of registered pupils in maintained nursery schools and the number of registered pupils in nursery classes on the dates specified in regulation 15(6)(b) and (c); and
- (b) the number of hours each of those registered pupils spends in school per week,

except where paragraph (4) applies, and except in the circumstances referred to in paragraph (5).

(4) Where it appears to a local education authority that it is necessary to fund places, as opposed to numbers of pupils, in order to ensure that a maintained nursery school remains open or, in the case of other primary schools, that they are able to continue to provide nursery classes, a local education authority may take into account in their formulae for funding periods 2 and 3 the number of places they wish to fund in those schools or classes.

(5) Subject to paragraph (6), where—

- (a) a primary school operates a policy of admitting children into nursery classes in the summer term; and
- (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in regulation 15(5)(b) or (c),

a local education authority may determine a number representing the number of pupils who will be admitted in that summer term and the number of hours per week each pupil spends in school, and take such number into account in their formulae for funding periods 1, 2 or 3.

(6) In determining the number of pupils they will take into account under paragraph (5), a local education authority—

- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before either of the dates specified in regulation 15(5)(b) or (c); and
- (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

(7) Where a local education authority take into account in their formulae the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes under paragraph (1)(a) or (3)(a), they may weight pupil numbers according to any or all of the following factors—

- (a) the age of pupils when admitted to the school;

- (b) whether any pupils have been admitted to the school in excess of the admission number agreed with the authority; and
- (c) the special educational needs of any such pupils.

Differential funding

18.—(1) For the purpose of initially determining budget shares in respect of funding periods 1, 2 and 3, a local education authority must use factors or criteria which differentiate between different categories or descriptions of schools insofar as the functions of the governing bodies of those schools justify such differentiation, but may not otherwise do so except as required or expressly permitted by these Regulations.

(2) A local education authority must use factors or criteria which differentiate between a school and other schools of the same category or description if such differentiation is justified by reference to the choice that that school's governing body have made as to the inclusion in their school's budget share of funding in respect of expenditure of the kinds referred to in paragraph 15(a) and (b) (meals), 27 (insurance) or 29 (library services) of Schedule 2.

(3) A local education authority are not required to use factors or criteria in their formulae which differentiate between maintained nursery schools, primary schools, secondary schools, special schools, or schools whose pupils are in different age ranges, but they may do so.

Additional factors or criteria

19.—(1) Subject to regulation 18 (differential funding), a local education authority may, in determining budget shares in respect of funding periods 1, 2 and 3, take into account in their formulae any or all of the factors or criteria set out in Schedule 3.

(2) A local education authority must, in determining budget shares for both primary and secondary schools which they maintain, take into account in their formulae a factor or factors based on the incidence of social deprivation among pupils registered at all such schools if they have no factor elsewhere in their formulae which is based on such incidence.

(3) A factor included in a local education authority's formula pursuant to paragraph 17 of Schedule 3 (school milk, meals and refreshment) is not, for the purpose of paragraph (2), a factor based on the incidence of social deprivation among pupils registered at a school.

(4) The factors and criteria set out in Schedule 3 may not be taken into account by a local education authority on the basis of actual or estimated cost unless otherwise stated in that Schedule.

(5) Where a local education authority make changes to the factors or criteria taken into account in their formula from one funding period to the next, they may make such transitional provision as they consider reasonable.

Minimum funding guarantee

20.—(1) Subject to paragraph (4), in determining and redetermining budget shares for all schools maintained by them in respect of funding periods 1, 2 and 3, a local education authority must ensure—

- (a) in respect of primary and secondary schools (other than maintained nursery schools), that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1-4 of Schedule 4;
- (b) in respect of special schools, that the formulae must provide for an increase in those schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of Schedule 4; and
- (c) in respect of maintained nursery schools either—

- (i) that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1-4 of Schedule 4, or
 - (ii) that the formula must provide for an increase in schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of that Schedule as if every reference to a special school were a reference to a maintained nursery school.
- (2) For the purposes of determining budget shares in respect of funding periods 1, 2 and 3, paragraph (1) does not apply to any school—
- (a) opening during any of these funding periods, except in the circumstances set out in paragraph 4 of Schedule 4; or
 - (b) closing during any of these funding periods in circumstances where a local education authority have redetermined that school's budget share during the relevant funding period.
- (3) For the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10(a), a local education authority must apply the relevant provisions in Schedule 4 using estimates of—
- (a) the number of registered pupils in schools funded on the basis of pupil numbers in accordance with regulations 15(5) and 17(2); or
 - (b) the number of places they wish to fund in accordance with regulation 16(4).
- (4) A local education authority may make changes to the operation of this Regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State or their schools forum under regulation 25 (additional arrangements).

Sixth form funding

- 21.**—(1) A local education authority must include in a secondary school's budget share for funding periods 1, 2 and 3 an amount equal to any sum notified to the local education authority by the LSC as being the allocation in respect of that school's sixth form⁽¹⁾.
- (2) A local education authority may, in determining budget shares, use a factor which allocates funding in respect of sixth forms.
- (3) A local education authority may, in determining budget shares for schools with sixth forms, reduce the amount payable to each such school under their formulae by a sum representing any element which has been duplicated in the LSC's allocation.
- (4) A secondary school's budget share for funding periods 1, 2 and 3 must be redetermined before the end of the relevant funding period where the authority receive a written notification from the LSC of a revised allocation in respect of the sum referred to in paragraph (1).

New, reorganised and closing schools

- 22.**—(1) A local education authority must include factors or criteria in their formulae which enable them to determine, or redetermine, a school's budget share for funding periods 1, 2 and 3 so as to take into account the particular needs of that school in the following cases—
- (a) a proposed school;
 - (b) a school, proposals for the establishment of which have not been fully implemented⁽²⁾;

(1) The authority's funding in respect of sixth forms is paid by the LSC in the form of a grant under section 7 of the 2000 Act. Section 7 was amended by section 215(1) of, and paragraph 124(1) and (2) of Schedule 21 to, the 2002 Act, and section 117 of, and paragraph 12 of Schedule 18 to, the 2005 Act.

(2) Proposals for the establishment of a school may be published under sections 7, 10 or 11 of the 2006 Act.

- (c) a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act⁽³⁾;
 - (d) a school which is to be discontinued; and
 - (e) a school which is to be the subject of a significant change, as determined by the authority.
- (2) In the case of schools falling within sub-paragraph (1)(c), such factors or criteria may not be used for a period of more than seven years after the date of implementation of the relevant alteration.
- (3) For the purposes of these Regulations, proposals for the establishment of a school have been fully implemented when the number of pupils admitted to the school in each age group has, in the opinion of the local education authority, reached either—
- (a) the number of pupils indicated, when proposals for the establishment of the school were published, as the number of pupils to be admitted to each age group when the proposals were fully implemented; or
 - (b) if no such number was indicated, such number as the authority may determine.

CHAPTER 2

ADJUSTMENTS, CORRECTION OF ERRORS, AND ADDITIONAL ARRANGEMENTS APPROVED BY THE SCHOOLS FORUM OR THE SECRETARY OF STATE

Pupils permanently excluded from, or leaving, primary or secondary schools

23.—(1) Where a pupil is permanently excluded from a school maintained by a local education authority, the authority must redetermine the school's budget share for that funding period in accordance with paragraph (2).

(2) The school's budget share must be reduced by the amount $A \times (B/52)$ where—

A is the amount, in the funding period in which the permanent exclusion takes effect, determined by the authority in accordance with this Part, to be attributable for the full funding period to a registered pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority:

for the purposes of this definition, the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula as determined in accordance with these Regulations by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom grant is payable to the authority by the LSC under section 7 of the 2000 Act, the amount attributable to that pupil is £3197 for funding period 1, £3264 for funding period 2 and £3332 for funding period 3); and

B is the number of complete weeks remaining in the funding period calculated from the relevant date:

except that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date.

(3) Where a pupil is admitted to a school maintained by a local education authority ("the admitting school") who has been permanently excluded from another maintained school in that financial year, the authority must redetermine the admitting school's budget share in accordance with paragraph (4).

(3) Regulations made under this section are the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ([2007/1289](#) as amended by [2007/3646](#)).

(4) The admitting school's budget share must be increased by an amount which may not be less than the amount $D \times (E/F)$ where—

D is the amount by which the authority reduce the budget share of the school from which the pupil was permanently excluded, or would have reduced it had that school been maintained by the authority;

E is the number of complete weeks remaining in the funding period during which the pupil is a registered pupil at the admitting school; and

F is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) For the purposes of this regulation, the relevant date is the sixth school day following the date on which the pupil has been permanently excluded.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act, the school's budget share must be increased by an amount which is no less than $G \times (H/I)$ where—

G is the amount by which the authority has reduced the school's budget share;

H is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and

I is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school for reasons other than permanent exclusion, and is receiving education funded by a local education authority other than at a school which is maintained by that authority.

Correction of errors and changes in non-domestic rates

24.—(1) A local education authority may at any time during funding period 1, 2 or 3 redetermine a school's budget share for a previous funding period, or the current funding period, in order to correct an error in a determination or redetermination under these, or previous Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise, provided the error is of a kind not provided for by any specific error correction provision in the authority's formula.

(2) A local education authority may redetermine a school's budget share for funding period 1, 2 or 3 to take into account any changes in that school's non-domestic rates liability in relation to a current funding period or previous funding period.

(3) Insofar as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the regulations in force during the funding period in which the error occurred.

Additional arrangements approved by the schools forum or the Secretary of State

25.—(1) Subject to paragraph (2), on application by a local education authority to the Secretary of State for any authorisation or authorisations to determine or redetermine budget shares, the Secretary of State may authorise the authority to determine or redetermine budget shares to such extent as he may specify in accordance with arrangements approved by him in place of the arrangements provided for by these Regulations.

(2) The Secretary of State may not authorise a local education authority to determine or redetermine budget shares in the cases referred to in paragraph (3) unless—

- (a) the authority has first made an application to their schools forum for such authorisation which has been refused; or

(b) the authority is not required to establish a schools forum for their area.

(3) In cases where a local education authority seeks any authorisation, or authorisations, to determine or redetermine budget shares which—

(a) relate to the operation of regulation 20 and Schedule 4 (minimum funding guarantee) and which, either individually or when taken together in the funding period to which the application relates, will affect no more than 50% of pupils in schools maintained by the authority; or

(b) relate to a change to the formula determined under regulation 9(1) in respect of funding period 2 or 3,

their schools forum may authorise such determinations or redeterminations.

(4) Unless the contrary intention appears in any such authorisation or arrangements, authorisations given and arrangements approved by the Secretary of State or any schools forum under previous regulations continue to apply in relation to funding period 1.

(5) Unless the contrary intention appears in such authorisation or arrangements, authorisations given and arrangements approved by the Secretary of State or any schools forum in relation to funding period 1 continue to apply to funding periods 2 and 3, and authorisations given and arrangements approved by the Secretary of State or any schools forum in relation to funding period 2 continue to apply to funding period 3.