



Department
for Education

School and Early Years Finance (England) Regulations 2015

Government consultation response

December 2015

Contents

Introduction	3
Summary of responses received and the government's response	4
Main findings from the consultation	4
Question analysis	5
Question 1	5
Government response	5
Question 2	6
Government response	6
Question 3	8
Government response	9
Question 4	10
Government response	10
Question 5	11
Government response	12
Question 6	13
Other changes	13
Next steps	14
Annex A: List of organisations that responded to the consultation	15

Introduction

The purpose of the School and Early Years Finance (England) Regulations is to put in place arrangements for local authorities to set school budgets and allocate funding to early years providers.

The Regulations largely provide for the same arrangements as the School and Early Years Finance (England) Regulations 2014. Some of the changes update references to key dates, to make them relevant to the financial year 2016-17.

Other changes introduced by the regulations are more substantial, but are mostly technical changes or changes to simplify the process. The consultation made 6 proposed changes to the:

- Ability of local authorities to carry forward any unspent falling rolls fund or new schools fund;
- Ability of local authorities to use place-based funding for 2 year olds;
- Definition of amalgamated schools;
- Budgets of closed and amalgamated schools;
- Expenditure a local authority can incur from their non-schools education budget; and
- Authorised expenditure in respect of Children and Young People with High Needs.

The consultation took place from 11 September 2015 to 13 November 2015. It was conducted online using the government's consultation software, but alternatively respondents were able to email or send a response form.

Summary of responses received and the government's response

This section sets out the views that we have heard in response to the consultation on the School and Early Years Finance (England) Regulations. It also sets out the decisions that have been taken as a result.

In total there were 35 responses to the consultation. The majority of responses received came from local authorities (49%).

Respondent type	Number of responses	Percentage
Local authority:	17	49%
Schools forum:	7	20%
Combined LA/Schools forum	1	3%
Other:	6	17%
Governor:	4	11%

Table A- Types of respondents

A full list of the organisations that have responded can be found at Annex A.

Some respondents chose only to answer a subset of the questions that were posed. Throughout the report, the number of responses for each question is given and the percentages are expressed as a proportion of those answering each question, not as a proportion of all responses.

Main findings from the consultation

The majority of respondents to the consultation agreed with the changes to the Regulations.

The proposals were broadly welcomed as providing consistency, clarity and flexibility to the current funding system. We therefore intend to proceed with the proposed revisions to the School and Early Years Finance (England) Regulations, as set out in the consultation document, with some minor technical clarifications in the drafting of the Regulations in light of responses to the consultation.

Question analysis

Question 1

1a) Do you agree that local authorities should be able to carry forward any unspent funding retained centrally to support outstanding or good schools with falling pupil numbers where their capacity will be needed within three years, for the same purpose?

There were 34 responses to this question.	Total	Percentage
Agree	31	91%
Disagree	2	6%
Not sure	1	3%

1 b) Do you agree that local authorities should be able to carry forward any unspent funding retained centrally to support the opening of new schools (funding the appointment of staff and enable the purchase of any goods and services), to be used for the same purpose?

There were 35 responses to this question.	Total	Percentage
Agree	31	89%
Disagree	3	9%
Not sure	1	3%

The majority of respondents agreed that local authorities should be able to carry forward any unspent funding retained centrally to support outstanding or good schools with falling pupil numbers and to support the opening of new schools. A number of respondents provided positive comments around bringing this funding in line with centrally retained funding for other purposes and having a consistent approach. Respondents also welcomed the increased flexibility this would provide, allowing local authorities to plan and manage uncertainty.

It was suggested that the wording of regulation 8 (7) and 8 (8) is changed to refer to 'planned expenditure' rather than unspent expenditure.

Government response

The proposed changes bring the treatment of funds for new schools and the falling rolls fund in line with those to support basic need growth and infant class sizes. We think the meaning of the regulations is plain without the drafting change suggested, and so as there was overwhelming support for this proposal, we will therefore be proceeding with the change.

Question 2

Regulation 16 (8) amends the provision for local authorities to fund all 2 year olds eligible for the early years entitlement using place-based funding. This is to be limited to children with special educational needs (SEN) and children in need. For all other eligible 2 year olds, local authorities are to use participation-based funding. Do you agree with this change?

There were 35 responses to this question.	Total	Percentage
Agree	16	46%
Disagree	8	23%
Not sure	11	31%

Respondents who agreed with the change, were in favour because the policy intention had already been announced and the change consulted upon was to bring the regulations in line with the policy, which respondents called sensible. The consistency with the allocation of funding for 3 and 4 year olds this change brings was also welcomed.

23% of respondents disagreed with the proposed changes, raising concerns about the practicalities of participation based funding.

The exemption of 2 year olds with special educational needs (SEN) and children in need also caused some concern. Questions were raised on how “children in need” and SEN are defined in this context.

Government response

The intention to fund local authorities for the two-year-old entitlement on a participation basis from 2015-16 was made clear from the beginning of the programme. It was announced in a written ministerial statement when the Department made the 2013-14 funding allocations in November 2012. This was confirmed again in December 2013 when the Department made the 2014-15 LA allocations and the Minister for Education and Childcare wrote to all Directors of Children’s Services.

Prior to 2015-16, local authorities were funded on the number of eligible children. The government provided local authorities with £525 million in 2013-14 and £755 million in 2014-15 which included trajectory funding to build capacity and £100m in capital funding.

In addition, in 2012 the Department contracted with Achieving Two Year Olds to support local authorities to build capacity and increase the take-up of funded places. The contract was extended for a further year from April 2015.

For 2015-16 we allowed flexibility for local authorities to fund providers on a place basis for all eligible two-year-olds to allow local authorities to continue building capacity. Since we have now moved to participation-based funding, we are limiting this flexibility to children with special educational needs and children in need from 2016-17. This change is in line with the way three- and four-year-olds are currently funded. Therefore, the final regulations contain this provision.

As is stated in the draft regulations, “special educational needs” is defined by section 20 (1) of the Children and Families Act 2014 and “children in need” refers to children in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17 of the 1989 Act.

Question 3

3 a) Do you agree that the definition of amalgamated schools should be extended to include situations where a school has closed and another school has had its upper or lower age range changed?

There were 35 responses to this question.	Total	Percentage
Agree	31	89%
Disagree	0	0%
Not sure	4	11%

3 b) Where a school's age range is expanded, or a new school is established, as a result of the closure of another school, the local authority is allowed to add all or part of the unspent budget of the closed school to the budget of the successor or, expanded school. This is provided for by regulation 21(8) and (9). Do you agree with this change?

There were 34 responses to this question.	Total	Percentage
Agree	31	91%
Disagree	0	0%
Not sure	3	9%

The majority of respondents welcomed these changes as they reflect the way in which school amalgamations often take place, provide greater flexibility and remove the burden of applying for a disapplication of the regulations.

Furthermore, some respondents who agreed with the change, suggested an amendment to the definition of "unspent budget" so that it also included any "unspent surplus" brought forward by the closing school.

It was also suggested that the balance brought forward should be outside of the Minimum Funding Guarantee the year it is added to the budget of the successor or expanded school, and excluded from the Minimum Guarantee baseline the following year. Schedule 4 should be re-drafted to reflect this.

Concerns were raised, in response to both questions, as to whether an amalgamation and the rolling forward of the unspent budget should occur if the closing school has a budget deficit. Clarification was requested on this point.

Government response

The proposed change brings the regulations into line with other departmental guidance on amalgamations. There was overwhelming support for the proposal and we will be proceeding with the change, subject to amending the drafting of Schedule 4 as suggested in the comments outlined above. The reference to “unspent surplus” has been made clear in the latest version of the regulations. Where a closing school in this situation has a deficit, it reverts to the local authority as a matter of law.

Question 4

Schedule 1 paragraph 18 has been updated so that local authorities' functions under section 15B of the Education Act 1996 are included under the agreed expenditure that can be incurred from their non-schools education budget. Do you agree with this change?

There were 35 responses to this question.	Total	Percentage
Agree	27	77%
Disagree	2	6%
Not sure	6	17%

The majority of respondents agreed with this change, as it ensures that the Regulations reflect local authorities' existing responsibilities under section 15B of the Education Act 1996.

However, some respondents raised concerns that this change might have financial implications, and one argued that the responsibility for post-19 education should rest with the Skills Funding Agency rather than local authorities.

Government response

This change to the regulations has no financial implications and makes no changes to authorities' legal responsibilities. It simply ensures that where a local authority decides to spend money under section 15B of the Education Act 1996, that money forms part of the authority's non-schools education budget. We are therefore proceeding with the change.

Question 5

5a) Paragraph 17 of Schedule 2 has been updated to allow local authorities to authorise expenditure in respect of pupils at special academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an academy. Do you agree with this change?

There were 35 responses to this question.	Total	Percentage
Agree	24	69%
Disagree	8	23%
Not sure	3	9%

5 b) Paragraph 21 of Schedule 2 has been updated so that it also allows local authorities to authorise expenditure in respect of pupils at alternative provision academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an alternative provision academy. Do you agree with this change?

There were 33 responses to this question.	Total	Percentage
Agree	24	73%
Disagree	6	18%
Not sure	3	9%

The majority of respondents agreed with the proposed changes to allow local authorities to authorise expenditure in respect of pupils at special academies and alternative provision academies, where it is unreasonable for the expenditure to be met from the general annual grant paid to an academy, as it brings the regulations into line with current policy and practice. It was suggested that all such authorisations be reported to Schools Forums to guarantee transparency.

A number of comments received in relation to these changes queried whether it was the local authority's duty to support academies. These respondents argued that funding from the Education Funding Agency or the Education Services Grant paid to academies should be used for the purpose. There were also concerns that this would put pressure on high needs budgets and the Dedicated Schools Grant more generally.

Clarification was requested that this change applies to the top-up funding element and that this did not constitute double funding for special academies and alternative provision academies. Clarification was also sought on how "unreasonable" would be defined, with some respondents arguing that the definition cannot be unrestricted and requested guidance on what this covers. Conversely, one respondent argued that local authorities should not be obliged to follow a nationally determined definition.

Government response

The proposed changes bring the regulations into line with current responsibilities and practice, whereby local authorities are responsible for paying top-up funding to all types of high needs providers, including special and alternative provision academies. They will not create additional pressure on high needs budgets or on the Dedicated Schools Grant, and do not constitute double funding. The approach of referring to “unreasonable” has been used in the regulations for some years in this context and in relation to other high needs institutions without causing problems. It is for local authorities to decide and therefore, we do not see a need for further definition of “unreasonable”. We are therefore proceeding with the changes as drafted.

Question 6

The other changes introduced by the regulations reflect current practice, as well as updating references to reflect the financial year 2016 to 2017. For these changes we are therefore only consulting on the drafting of the regulations rather than the substance of the policy. Do you have any comments on the drafting?

Aside from comments on the drafting of regulation 8, which is addressed above under question 1, no comments were received on the drafting of these changes.

A number of comments were received relating more widely to school funding policy. We will consider these comments in developing policy for future years.

Other changes

We are also amending regulation 14 (5) so that local authorities must include at least the equivalent amount per hospital education place, as they have included in the budget share for special schools or pupil referral units in the previous funding period. This does not compel local authorities to increase the funding for hospital school places, but provides them with the ability to increase the value of hospital education should they wish to do so.

We acknowledge that we did not consult on this, but we are making this change as a result of feedback from external stakeholders. External stakeholders have raised the disparity between other High Needs institutions benefiting from an uplift through top-up funding, that hospital education providers did not receive. Therefore, this change will provide local authorities with the opportunity to increase the funding for hospital education providers, should there be local demand and agreement to do so.

Next steps

The Department will therefore make these regulations. They will be laid in Parliament and come into force on 7 January 2016.

Annex A: List of organisations that responded to the consultation

- Achieving for Children
- Association of School and College Leaders
- Bright Kids
- Catholic Education Service
- CfBT Schools Trust
- Cheshire East Council
- Cheshire East Schools Forum
- Council of the Isles of Scilly
- Dorset County Council
- Hertfordshire County Council
- Hull City Council
- Knowsley Schools Forum
- Lancashire Schools Forum
- Lindridge CE Primary School
- London Borough of Barking and Dagenham
- London Borough of Croydon
- London Borough of Islington
- London Borough of Islington Schools Forum
- London Borough of Waltham Forest
- NASUWT – The Teachers’ Union
- North East Lincolnshire Council
- North Lincolnshire Council
- Nottingham City Council
- Our Lady and St Philip Neri Catholic Primary
- Oxfordshire County Council Schools Forum
- Ready Teddy Go Pre School
- Slough Borough Council
- Slough Borough Council Schools Forum

- Surrey County Council
- The Kemnal Academies Trust
- Warrington Borough Council
- Warwickshire County Council
- Worcestershire Association of Governors



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