



Education & Skills  
Funding Agency

**This document has  
been withdrawn as it is  
out of date.**

# **High needs funding: 2020 to 2021**

**Operational guide**

**February 2020**

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## Purpose

1. This guide describes how the 2020 to 2021 high needs funding system will work for all types of provision. Some sections are also relevant for the ongoing operational arrangements in the current financial and academic year. It's primarily for local authorities and institutions but will also be useful to anyone with an interest in high needs funding.

1.1. We use the term "institution" as a generic term covering all distinct types of provider, including maintained schools, academies and colleges.

## Introduction

2. This guide explains how the high needs funding system operates for local authorities and a number of different institution types, including pre-16 alternative provision (AP). It can be used to progress local budget planning and consultations over the autumn term and beyond.

3. High needs funding is provided to local authorities through the high needs block of the dedicated schools grant (DSG). Local authorities must spend that funding in line with the associated conditions of grant, and School and Early Years Finance Regulations. High needs funding is also provided directly to some institutions by the Education and Skills Funding Agency (ESFA).

4. The high needs funding system supports provision for children and young people with special educational needs and disabilities (SEND) from their early years to age 25, enabling both local authorities and institutions to meet their statutory duties under the Children and Families Act 2014. High needs funding is also intended to support good quality AP for pre-16 pupils who, because of exclusion, illness or other reasons, cannot receive their education in mainstream or special schools. The high needs funding block provides local authorities with resources for place funding and top-up funding for institutions, and funding for high needs services delivered directly by the authority or under a separate funding agreement with institutions (including funding devolved to institutions), as permitted by regulations.

5. Funding arrangements for students with SEND who are aged 19 to 25 without an education health and care plan (EHCP) and students who are over the age of 25 are not included in this guide. Links to the funding arrangements for these students are at annex

## February 2020 update

Key updates include:

- the updated references to the [2020 to 2021 dedicated schools grant](#) and [School and Early Years Finance \(England\) Regulations 2020](#), which have recently been published

## Changes in 2020 to 2021

6. This section sets out some changes to the 2020 to 2021 high needs funding system, although the national funding formula and underpinning operational processes and principles remain largely unchanged from 2019 to 2020. We have clarified certain aspects of this guidance, particularly relating to the sections on place and top up funding.

### National funding formula

7. The funding floor factor in the high needs national funding formula for 2020 to 2021 provides for every local authority to receive an underlying increase of at least 8.0% per head of 2 to 18 population. This is based on local authorities' high needs allocations in 2019 to 2020, including the additional £125 million announced in December 2018. These increases are not calculated on elements of the formula that are subject to later updates and are in proportion to estimated population changes (so a projected decrease in population will result in a lower overall cash percentage increase, subject to a cash protection).

8. The limit on gains is set at 17%, allowing authorities to see up to this percentage increase under the formula, again calculated on the basis of per head of population, and using the 2019 to 2020 funding baseline. Full details of the national funding formula for 2020 to 2021 and provisional allocations to local authorities were published in October 2019 and the updated DSG allocations were published in December.

### Block movements

9. Local authorities will continue to be able to transfer up to 0.5% of their schools block to other blocks of the DSG, with schools forum approval. A disapplication will be required for transfers above 0.5%, or any amount without schools forum approval; this applies to any transfers over 0.5%, even if approval was given for a transfer in excess of 0.5% previously. More information is available in the schools revenue funding 2020 to 2021 operational guidance.

### Special schools minimum funding guarantee

10. A special schools protection will continue to apply to maintained special schools and special academies (including special free schools) in 2020 to 2021. In the context of the increase in high needs funding noted above, the protection is being raised from minus 1.5% to 0% next year. Exceptions can be made, as now, by a request from the local authority to the Secretary of State for a disapplication of the relevant condition of grant. See annex 1 for further information.

## Timeline

11. The timeline below shows the implementation of the 2020 to 2021 high needs funding arrangements, including actions for local authorities and institutions.

12. Institutions must ensure the school census or Individual Learner Record (ILR) guidance is followed on all items that are used, or will be used, for funding purposes, including elements of the national funding formula. It's critical that all institutions check the latest guidance to make sure that they understand what is required, including identifying those pupils or students for whom they receive top-up funding.

## January 2020

### Department for Education:

- 2020 to 2021 high needs place change notification outcomes published on GOV.UK
- 2 week 'enquiry window' for local authorities and institutions to raise place change related issues

### Local authorities:

- check published outcomes and ensure queries are discussed with relevant institution(s) and, if necessary, raised during the 2 week 'enquiry window'
  - this should include checking the outcomes for institutions located in other local authorities where a local authority places large volumes of students
- deadline for submitting final 2020 to 2021 authority proforma tool (APT) to ESFA
  - includes pupil numbers on the October 2019 census in RP and SEN units to support the calculation of funding for occupied and unoccupied places

### Institutions:

- check 2020 to 2021 funded place numbers are correctly reflected in the published outcomes, ensure any queries are discussed with your local authority and if necessary, raised with ESFA during the 2 week 'enquiry window'
- all schools, including academies, NMSS and PRUs to complete spring 2020 school census

## February 2020

### Local authority:

- 2-week enquiry window closed for raising queries with ESFA regarding 2020 to 2021 funded place numbers
- review of, and amendments to, an EHC plan must be completed for pupils moving into or between schools in that calendar year
- budgets issued to maintained mainstream schools, special schools and PRUs

### Institutions:

- 2-week enquiry window closed for raising queries with ESFA regarding 2020 to 2021 funded place numbers
- FE institutions, ILPs and SPIs to submit 2019 to 2020 ILR R06

## March 2020

### Department for Education:

- publication of institution level high needs place numbers
- 2020 to 2021 academic year allocations issued to FE institutions, free schools, academies, non-maintained special schools, SPIs and ILPs

### Local authorities:

- review of, and amendments to the EHC plan, including specifying the post-16 provision and naming the institution, must be completed for students moving from secondary school to a post-16 institution or apprenticeship, in that calendar year
- complete EHC plan review process for students moving between post-16 institutions, where a young person is expected to transfer to a new institution in the new academic year

### Institutions:

- check allocation is received and is correct

## **April 2020**

### **Department for Education:**

- DSG update, to reflect the outcome of the place change notification process in high needs place deductions (DSG allocations updated termly for in-year academy conversions)

## **June 2020**

### **Department for Education:**

- further 2020 to 2021 DSG updates to reflect final institution level allocation decisions, import and export adjustments and special free school adjustments

### **Local authorities:**

- review import/export data

### **Institutions:**

- FE institutions, ILPs and SPIs to submit 2019 to 2020 ILR R10

## Funding for schools and high needs: the DSG

### The dedicated schools grant (DSG)

13. The DSG is the main source of government funding for the provision of education by local authorities and institutions in England. Its use is governed by the conditions of grant, one of which requires the grant to be spent in accordance with the School and Early Years Finance Regulations. The DSG cannot be used for other purposes.

14. The Early Years Finance Regulations: are made under sections 45A(1), 45AA(2), 47(3), 47ZA(4), 47A(4B) and (5)(5), 48(1) and (2)(6), 49(2) and (2A)(7), 138(7) of, and paragraph 2B(8) of Schedule 14 to the School Standards and Framework Act 1998(9) and section 24(3) of the Education Act 2002.

15. The DSG is divided into four notional blocks – the schools block, the high needs block, the central school services block (which allocates funding to local authorities for their ongoing responsibilities towards both maintained schools and academies), and the early years block. Each of the four blocks of the DSG are determined by a separate national funding formula.

16. Local authorities can transfer funding between the high needs or early years funding blocks but should ensure adequate consultation with the schools forum and providers likely to be affected by the transfer. The schools block will again be ring-fenced in 2020 to 2021, but local authorities can transfer up to 0.5% of their schools block to other blocks of the DSG, with schools forum approval. A disapplication will be required for transfers above 0.5%, or any amount without schools forum approval; this applies to any transfers over 0.5%, even if approval was given for the same amount to be transferred this year or last year. Further information is included in the movement between blocks section of the schools revenue funding 2020 to 2021 operational guide.

17. In consultation with their schools forum, local authorities make decisions about the delegation of funds to schools, which for primary and secondary schools is on the basis of a local formula, and on the spending of funds held centrally, most of which is used for making high needs provision. These spending decisions are most effective when there is a strong partnership between the local authority and the institutions providing education. The schools forum is one way in which partnership working can be strengthened, particularly with schools. However, local authorities should engage with all of those providing education in their area, including early years settings and post-16 institutions, as well as parents and young people, in fulfilling their statutory duties to keep the services and provision for children and young people with SEND under review, as required by the Children and Families Act 2014.

## High needs funding: local authority allocations

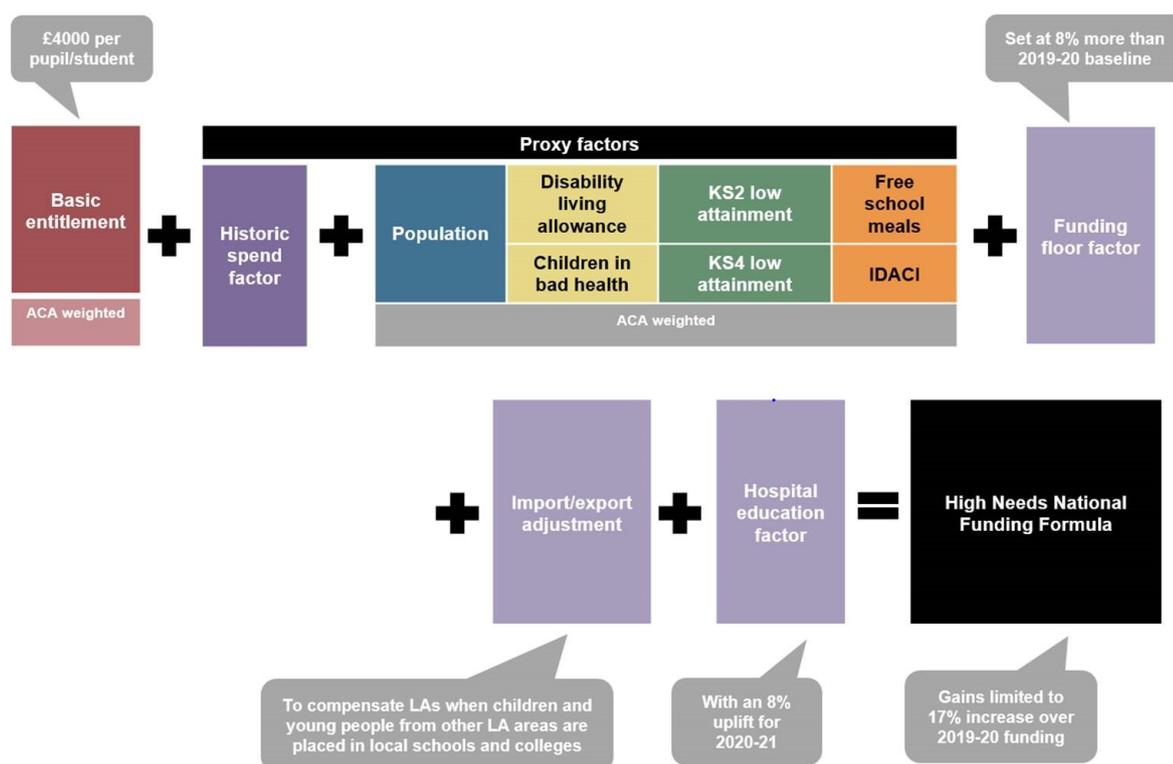
18. ESFA makes an allocation to local authorities for high needs as part of the DSG to support them in meeting their responsibilities for children and young people with SEND set by the Children and Families Act 2014, and for those who need alternative provision (including hospital education). High needs block allocations are calculated through the high needs national funding formula.

19. Local authorities decide how much to set aside in their high needs budget for place and top-up funding given to institutions, central high needs services (which may be devolved to schools or other institutions and funded through a service level agreement), and other aspects of provision related to SEND and AP as permitted by the School and Early Years Finance Regulations. Schedule 2 to the regulations sets out the categories of central spend permitted to local authorities.

## High needs funding formula factors

20. There are 12 elements to the high needs national funding formula. These form the basis for local authority high needs block allocations. The following diagram shows the funding factors in the high needs national funding formula. Further information on the 2020 to 2021 high needs formula, including provisional allocations, was published in October 2019.

## High needs national funding formula



21. The limit on gains under the formula is 17%, for example, local authorities will receive increases in funding up to 17% more than the funding they received in their 2019 to 2020 allocation.

22. Further adjustments outside the normal formula distribution and allocation arrangements may be necessary to reflect other changes, in particular for those local authorities with a special free school in their area, or pupils resident in their area attending a special free school in another local authority. Information on how adjustments for special free schools have been calculated is available in the 2020 to 2021 local authority funding: special free schools adjustments guide. Adjustments may also be made as a result of local changes, for example if a non-maintained special school becomes a special academy or a further education (FE) college merges with another college in a neighbouring local authority area, depending on the timing of the changes.

23. A brief description of each factor is given below.

### Basic entitlement factor

24. The factor allocates funding on the basis of data on the pupil and student numbers in special schools and special post-16 institutions. The funding rate is £4,000 per pupil or student and is subject to an area cost adjustment.

## Historic spend factor

25. This factor is based on the local authority baselines published in August 2017, with adjustments to avoid double-counting through other factors including basic entitlement. A weighting of 50% was then applied to give the final figure for the formula.

## Other proxy factors

26. The remaining high needs funding, after deducting funding for the basic entitlement, hospital education and historic spend factors, is then available for the proxy factors listed below:

- population factor
- free school meals (FSM) factor
- income deprivation affecting children index (IDACI) factor
- bad health factor
- disability factor
- key stage 2 low attainment factor
- key stage 4 low attainment factor

27. Weightings are assigned to determine how much of the remaining amount is allocated through each of the proxy factors. The weightings are applied separately for SEN (90% of funding) and AP (10% of funding), then combined.

## Funding floor factor

28. This ensures local authorities do not fall below a minimum level of funding. The factor is applied to the funding calculated through historic spend factor and proxy factors. There are two elements:

- a per head floor ensuring relevant elements of the funding increase on a per head basis from the 2019 to 2020 funding baseline by at least 8% in 2020 to 2021, based on the ONS estimated population of 2 to 18-year olds
- an absolute floor ensuring funding does not drop below the 2019 to 2020 baseline

## Hospital education factor

29. The local authority allocations for 2020 to 2021 include a hospital education factor equivalent to the amount received in 2019 to 2020 plus an 8% uplift.

## Import/export adjustment

30. The majority of the high needs national funding formula is designed to allocate funding to local authorities for the needs of the children and young people who live in the local authority's area, regardless of where they are educated. However, we recognise

that local authorities face higher costs if they attract more pupils and students with high needs who live outside the local authority area into their schools and colleges (counted as 'imports' in the formula calculation), for example because they are expected to pay for the costs of high needs places in schools and colleges in their area.

31. Conversely, authorities that 'export' pupils and students to other local authority places face lower costs. We have therefore included an import/export adjustment in the funding formula that reflects the movement of high needs pupils and students between local authorities, where they live in one authority and attend a school or college in another.

32. The calculation uses school census and ILR data and compares the number of 'imported' and 'exported' pupils for each local authority. Where the imports and exports balance, the cost to the local authority is neutral and no adjustment is made. Where there are more imports than exports, or vice versa, a positive or negative adjustment is made using a unit value of £6,000.

33. The pupils and students counted in the calculation of the adjustment are as follows:

- from the January school census (age 4 to 18)
  - pupils with top-up funding in mainstream schools and academies
  - pupils in special schools and academies
- pupils in non-maintained special schools
- from R06 ILR (age 16 to 18 and 19 to 24-year olds with EHC plans)
  - students in SPIs
  - students with top-up funding in FE institutions

34. The import/export adjustment does not use any data relating to pupils in AP as the data is not accurate enough for making the adjustments. Taking into account the development of policy on AP, we will explore more widely whether any consequential changes to the funding formula should be considered.

35. In relation to looked after children (LAC), the current financial arrangements are on the basis that the local authority responsible for securing the provision specified in an education, health and care (EHC) plan is the authority in whose area the young person is ordinarily resident, as is normally the case. Consequently, the import/export adjustment in the high needs national funding formula is based on school census or ILR data using the local authority area in which a pupil or student is resident.

36. We recognise this may differ from the local authority responsible for looked after children and for paying the costs associated with their EHC plan. If these funding arrangements do not adequately compensate authorities that are bearing the cost of educating such looked after children living in their area, those authorities still have

recourse to the provisions of the Inter-authority Recoupment (England) Regulations 2013.

37. For FE institutions and special schools, the institution-level data used for the import/export adjustments and associated adjustments referred to above should be broadly consistent with the numbers of places funded in that academic year. It should be noted that places for post-16 students with high needs may be funded through a local arrangement with the provider local authority, not necessarily as places in the institution's allocation.

38. Institutions must ensure that only those pupils and students with high needs are included on the relevant school census and ILR. Pupils and students with high needs are those who have additional support assessed by the local authority as costing more than £6,000 per annum and for whom the authority is paying top-up funding to the institution. It is also important that local authorities, in their discussions with institutions, are aware of the number of pupils and students with high needs that are included on the school census and ILR, and understand how that number affects a local authority's funding.

### **Import/export data 2019 to 2020**

39. The 2019 to 2020 import/export adjustment data was published in June 2019 with the January 2019 School Census data and the February 2019 ILR data. An institution level breakdown was available to local authorities on document exchange. The following example shows how the 2019 to 2020 adjustments were calculated and how the 2020 to 2021 adjustments will compare.

### **Example**

40. A local authority is 'importing' a total of 25 pupils in January/February 2018, and 'exporting' a total of 20 pupils in January/February 2018. Their net import/export adjustment for the baseline year (2018 to 2019) is +£30,000 ( $+5 * £6,000$ ).

40.1. In January/February 2019, the local authority is 'importing' a total of 40 pupils, and 'exporting' a total of 25 pupils. Their net import/export adjustment for 2019 to 2020 is +£90,000 ( $+15 * £6,000$ ).

40.2. Between the final position in 2018 and that in 2019 to 2020 their high needs NFF allocation has therefore increased by £60,000 ( $£90,000 - £30,000$ ), not by £90,000.

40.3. If, in January/February 2020, the local authority is 'importing' a total of 35 pupils and 'exporting' a total of 35 pupils, their net import/export adjustment for 2020 to 2021 will be £0 ( $0 * £6,000$ ).

## High needs place deductions

41. The place numbers used for the high needs place deductions are a combination of published place numbers, and data from local authorities collected through the place change notification process. These place numbers must reflect the total number of places required to meet the needs of all local authorities, not just those of the provider local authority.

42. For some institutions, such as academies and FE institutions, place funding is included in local authorities' initial DSG allocation and then deducted by ESFA so that it can pay the funding direct. The academic year place funding rates are shown in the institution funding table, with further information in the section on institution types. The 2019 to 2020 and 2020 to 2021 academic year place amounts are prorated as follows to calculate DSG deductions for the 2020 to 2021 financial year, by place and institution type:

### Pre-16 DSG deductions by institution type

Pre-16						
	AP		SEN unit or resourced provision		Special schools	
	19/20 A/Y (*5/12)	20/21 A/Y (*7/12)	19/20 A/Y (*5/12)	20/21 A/Y (*7/12)	19/20 A/Y (*5/12)	20/21 A/Y (*7/12)
<b>Mainstream Academies and free schools</b>	N/A	N/A	£2,500 or £4,167	£3,500 or £5,833	N/A	N/A
<b>Special academies and free schools</b>	£4,167	£5,833	N/A	N/A	£4,167	£5,833
<b>AP academies</b>	£4,167	£5,833	£4,167	£5,833	N/A	N/A

### Post-16 DSG deductions by institution type

Post-16 (SEN places)						
	Schools		Post-school (16-18)		Post-schools (19-24 with EHC plans)	
	19/20 A/Y (*4/12)	20/21 A/Y (*8/12)	19/20 A/Y (*4/12)	20/21 A/Y (*8/12)	19/20 A/Y (*4/12)	20/21 A/Y (*8/12)
<b>Mainstream Academies and free schools</b>	£2,000	£4,000	N/A	N/A	N/A	N/A
<b>Special academies and free schools</b>	£3,333	£6,667	N/A	N/A	N/A	N/A
<b>AP academies</b>	£2,000	£4,000	N/A	N/A	N/A	N/A
<b>16-19 academies and free schools</b>	N/A	N/A	£2,000	£4,000	£2,000	£4,000
<b>FE / Independent Learning Providers (ILPs)</b>	N/A	N/A	£2,000	£4,000	£2,000	£4,000

43. The above rates are multiplied by the number of places to calculate the total deduction amount. The place numbers used for the calculation are a combination of published place numbers, and data from local authorities collected through the place change notification process.

## High needs funding: institution allocations

44. Institutions receive high needs funding in different ways:

- core funding: the annual allocation an institution receives either directly from the provider local authority (for maintained schools and PRUs, based on the financial year), or from ESFA (for academies, free schools, colleges, independent learning providers (ILPs), non-maintained special schools and special post-16 institutions, based on the academic year)
- top-up funding: the funding required, over and above the core funding, to enable a pupil or student with high needs to participate in education and training.
- funding under a service level agreement: where a service relating to SEND or AP has been commissioned by a local authority and is delivered by an institution, the local authority can pay for that service from its high needs budget where permitted by the funding regulations

## Core funding and top-up funding by institution

45. The following summarises how high needs provision is funded in different types of provider for both pre and post-16 pupils and students. Further information is available in the section on provider types.

### Mainstream schools, mainstream academies and mainstream free schools:

- pre-16 core funding: included within the funding through the local schools funding formula
  - schools meet the first £6,000 of additional support costs from delegated funds within school budget share and academy grant, calculated under the local schools funding formula
- pre-16 top up funding (real time): Agreed per pupil top up paid by commissioning local authority
- post-16 core funding: element 1 (based on 16 to 19 national funding formula) plus element 2 (£6,000 per place) based on the number of places to be funded
- post-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority

### SEN units and resourced provision in mainstream schools, academies and free schools:

- pre-16 core funding: a combination of per-pupil funding through the local schools funding formula, plus £6,000 per place for those occupied by pupils on roll, and £10,000 per place for the remainder of places to be funded

- pre-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority
- post-16 core funding: element 1 (based on 16 to 19 national funding formula) plus element 2 (£6,000 per place) based on number of places to be funded
- post-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority

### **Maintained special schools, special academies, special free schools, and non-maintained special schools (NMSS):**

- pre-16 core funding: £10,000 per place based on number of places to be funded
- pre-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority
- post-16 core funding: £10,000 per place based on number of places to be funded
- post-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority

### **Maintained pupil referral units, AP academies and AP free schools**

- pre-16 core funding: £10,000 per place based on number of places to be funded
- pre-16 top up funding (real time): agreed per pupil top-up paid by commissioning school or local authority
- post-16 core funding: element 1 (based on 16 to 19 national funding formula) plus element 2 (£6,000 per place) based on number of SEND places to be funded
  - they will not receive AP place funding for post-16 students because these institutions are, by definition, schools set up to educate children of compulsory school age
  - in the event that an AP institution does have post-16 high needs students with special educational needs, usually with an EHC plan, these places are funded on the same basis as post-16 students in mainstream schools
- post-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority

### **Nursery schools**

- pre 16 core funding: per pupil funding through the early years funding formula
  - the place funding system doesn't operate in 0 to 5 year only settings
- pre 16 top up (real time): agreed per pupil funding paid by commissioning local authority for costs assessed by the authority and not met through the early years funding system

### **Independent schools (including independent AP)**

- pre-16 core funding: place funding system doesn't operate in independent schools

- pre-16 top up funding (real time): agreed per pupil funding paid by commissioning local authority
- post-16 core funding: place funding system doesn't operate in independent schools
- post-16 top up funding (real time): agreed per pupil funding paid by commissioning local authority

### **FE institutions, special post 16 institutions (SPIs) and independent learning providers (ILPs)**

- post-16 core funding: element 1 (based on 16 to 19 national funding formula) plus element 2 (£6,000 per place) based on number of places to be funded
- post-16 top up funding (real time): agreed per pupil top-up paid by commissioning local authority

## High needs place funding

46. Place funding should broadly reflect both local authorities' recent commissioning activity and strategic planning to secure suitable SEND provision and AP, in line with their statutory responsibilities. In determining the number of funded places, local authorities should consider all high needs providers in their area and take account not only of their own commissioning decisions but also of the commissioning decisions of other local authorities. In the case of AP, local schools' commissioning activity and plans should also be considered.

47. Local authorities may, with the agreement of the relevant members of their schools forum, retain part of the place funding of maintained special schools and pupil referral units to fund specified central services relating to maintained schools only. Further information about place funding for alternative provision (PRUs, AP academies and AP free schools) can be found in annex 2, including information on the different funding arrangements for pre and post-16 pupils.

48. Place funding is allocated as an annual amount of core funding. Once place funding is allocated, it is not associated with or reserved for a specific local authority or individual pupil or student. It is for the institution to decide how best to apportion their total allocated core funding across the actual number of places commissioned by local authorities, taking into account the provision and support that may be specified in the individual pupils' or students' EHC plans.

49. Place funding is not withdrawn if an individual does not occupy a funded place. It provides institutions with a guaranteed budget for the year and gives them a degree of financial stability. A local authority may not seek to recover funding for places which it perceives as being unused from the previous or current academic year. Similarly, local authorities should not automatically be charged an extra £6,000 or £10,000 per head top-up funding for a pupil or student with high needs, if an institution has filled all funded places (irrespective of which local authority has filled them).

50. Dialogue between local authorities and institutions is important when preparing for the allocations of high needs place funding to institutions. Local authorities should consult with institutions in their area, and discuss both current numbers of places being taken up, which will be included on the school census and ILR returns, and the number of places required in future. Where an institution believes it is not being funded for the correct number of places it should raise this with the provider local authority. These discussions must take into account the total number of places required to meet the needs of all local authorities, not just those of the local authority in which the institution is located. This is particularly important for FE institutions and special schools as the import/export adjustment should ensure that funding in the local authority's DSG reflects those pupils and students with high needs resident in one local authority area that attend institutions in other areas.

51. Local authorities have local flexibility to change funded place numbers at maintained schools and PRUs, and these numbers should be included on each authority's section 251 budget return for 2020 to 2021. If a local authority maintained school or PRU converts to an academy, place numbers must be agreed between the local authority and school. To ensure that the institution is funded on the correct basis, the local authority should notify the department's project lead of the agreed places. This is done by completion of the departments 'notification of changes to funded high needs places' form. This form is supplied by the departments project lead and the completed form must be returned to the department before the school converts. If no notification is received place numbers, recorded in the 2019 to 2020 section 251, will be rolled forward. A form must be completed for all institutions where post 16 places are required. This is because post 16 place data is not set out within the section 251, and may even be included within the recorded pre 16 place numbers. In these cases, completion of the form will ensure clarity of the split between pre and post 16 requirements.

52. ESFA must be notified of changes using the ESFA's 'notification of changes to funded high needs places form' supplied by the project lead. A form must be supplied for all institutions where post 16 places are required because this information is not set out in the section 251 data. If no notification is received, 2019 to 2020 section 251 place numbers will be rolled forward upon conversion.

53. Where an institution is admitting students with high needs from a number of different local authorities, the provider local authority should first seek information from the institution on the number of places currently being commissioned from each local authority and how those numbers are expected to change in the following academic year. Significant changes may be confirmed with the commissioning local authorities concerned and they should proactively contact the relevant provider local authority in such circumstances. When doing so commissioning local authorities should provide clear and accurate information to the provider local authority in good time to enable collation of this information in advance of the place change notification process deadline. We are aware of particular issues that may arise when FE colleges in different areas merge into a single college and we expect that the above approach is adopted in these circumstances.

54. ESFA guidance: the high needs place change notification 2020 to 2021: technical note, published in October, explains the process for notifying ESFA of changes to 2020 to 2021 high needs place numbers at academies, free schools and post-16 institutions, and to hospital education provision. High needs place change notification outcomes providing information about funded place numbers for academic year 2020 to 2021 were published in January 2020. A two-week enquiry window followed, allowing local authorities and institutions to raise significant issues. AP free schools have received guidance on notifying ESFA of their requests for 2020 to 2021 high needs place numbers in November 2019.

55. 2020 to 2021 place funding allocations for non-maintained special schools and SPIs will be based on the latest available data.

56. In the event that the number of places commissioned change after the annual processes above have been followed, ESFA are unlikely to revise allocations to academies or post-16 institutions. We recognise that often the number of funded high needs places and actual pupils or students will vary. However, as explained earlier, place funding is not reserved for individuals and it is for institutions to apportion the total allocated place funding across the actual number of pupils and students with high needs. In most cases, the variance between place numbers and pupils or students is small with no, or marginal, impact on cost.

57. An institution should approach the provider local authority if the number of pupils or students, agreed as having high needs by the relevant local authority, exceeds the number of funded places to an extent that results in the institution incurring additional costs of special provision not met through the top-up funding amount normally paid. We expect the provider local authority to engage with the institution and agree how the costs of the additional special provision required are to be met, and these conversations should take place as early as possible in the academic year.

58. The provider local authority should not automatically be charged an additional £6,000 or £10,000 per pupil or student. The amount should reflect the actual costs of making additional special provision available, which may only be marginal, and an agreement between the provider local authority and the institution on how those costs are to be met. The import/export adjustment compensates the provider local authority for actual pupils or students living in other local authority areas who attend the institution, albeit in the subsequent financial year. This will avoid the position where the commissioning local authority effectively funds twice – both through increased top-up funding direct to the institution and through the £6,000 import/export adjustment in the national funding formula. These arrangements apply in particular to FE institutions and special schools that are experiencing year-on-year growth in the number of pupils and students with high needs that they admit.

## **Where pupil and student numbers exceed allocated places - an example**

59. The following is an example of how the high needs funding arrangements should operate when an institution has more pupils or students with high needs than the number of places for which it has been funded. Although it is illustrated using a college located in a local authority area (the provider local authority) with several other local authorities also commissioning places, similar arrangements may also apply to other institutions, including special academies. The example illustrates how the place funding for institutions and consequent deductions from local authorities' high needs allocations and the import/export adjustment work together. This shows the flow of high needs funding

between local authorities and institutions when an institution has to make additional special provision for a number of pupils or students that exceeds the funded place number.

60. Following discussion with the college, and where there is a change from the previous academic year, the provider local authority submits the total high needs place numbers to the ESFA in November, in advance of the start of the academic year, through the place change notification process. In this example the local authority and college have agreed on 100 places for the 2020 to 2021 academic year and this includes places to be filled by high needs students from all local authorities. The number of places to be funded is published in January by ESFA and during the subsequent enquiry window the college and local authorities check the number and are content it reflects the discussions.

61. ESFA issues an allocation to the college in March in advance of the academic year reflecting the 100 place numbers, providing £600,000 high needs funding, (100 places x £6,000 element 2 funding). The provider local authority's DSG will also be updated and 100 places deducted from their high needs allocation at £6,000 per place, pro-rata for the academic year, based on August to March (100 places x £4,000).

62. The commissioning local authority (i.e. the authority in which the student is ordinarily resident) agrees top up funding with the college directly. The provider local authority (if not commissioning the place) and ESFA do not need to be involved in these conversations. We would encourage neighbouring local authorities to collaborate on the special provision required for their students, and on associated commissioning arrangements and top-up funding levels.

63. In this example, in the lead up to the academic year, several local authorities have commissioned further high needs places in excess of the 100 places that the college has received (element 2) funding for. The college therefore has 120 high needs students at the start of the academic year, and it doesn't matter which local authorities fill these places because place numbers are not reserved for individual pupils or specific local authorities. This has resulted in additional costs for the special provision required by these 20 students that the college cannot meet through its existing funding streams, which include the £600,000 high needs place funding in their allocation and standard top-up funding rates in respect of the 120 high needs students.

64. The college therefore discusses with the provider local authority the scale of the additional special provision that it is being expected to make available and the costs involved. It is agreed that the provider local authority will fund a further £50,000 through a local agreement to contribute to the additional costs incurred by the college. This is to help meet the additional costs of making the provision required by the additional students, on top of the normal funding streams. These costs could be marginal, and we would not necessarily expect the provider local authority to have to pay an extra £6,000 for every extra student placed over and above the colleges 100 places.

65. The provider local authority should be compensated for the costs of the high needs places filled by students resident in other local authorities, including the additional 20 students, through the import/export adjustment in the 2021 to 2022 financial year. In this example, 50 students live in other local authorities. This is recorded on the college's ILR and +£300k (50\*£6k) will therefore contribute to the provider local authority's net import/export adjustment in their DSG.

66. It is important to note that this example is provided for a college and some details may vary depending on the institution or place type.

## Top-up funding

67. Top-up funding is the funding required, over and above the core funding an institution receives, to enable a pupil or student with high needs to participate in education and learning. This is paid by the commissioning local authority and should reflect the costs of additional support to meet the individual pupil or student's needs. Top-up funding can also reflect costs that relate to the facilities required to support a pupil's or student's education and training needs (either for individuals or on offer to all) and can take into account expected place occupancy levels and other factors.

68. Although many of the pupils and students receiving high needs funding will have EHC plans, local authorities have the flexibility to provide high needs funding outside the statutory assessment process for all children and young people with high needs up to the age of 19.

## Commissioning places requiring top-up funding

69. Local authorities bear the ultimate responsibility for decisions on top-up funding, as they are accountable for spending from their high needs budgets. In all instances, pupils or students with an EHC plan must have their placement commissioned by a local authority and an agreement should be in place between the local authority and the institution that confirms the amount of top-up funding to be paid (as set out below). Even where provision is specified in an EHC plan, there is no statutory requirement that a local authority has to pay top-up funding at a particular rate requested by a school or institution.

70. Pupils and students should only be counted as having high needs for funding purposes (and be recorded on the school census or ILR as a pupil or student with high needs) if the local authority has agreed top-up funding for that pupil/student. This would apply even where an institution may have assessed a pupil or student as requiring additional support, or where a pupil or student has been offered a place by that institution. In such circumstances the school or college should use its best endeavours to make the special provision for the pupil or student, seeking advice from the local authority, if necessary, as to what additional support the pupil's EHC needs or other assessment may have indicated was appropriate.

71. So that a pupil's or student's placement is not disrupted, it is important that the local authority makes an assessment at the earliest opportunity, ideally before the pupil or student has been admitted to the institution. Where a pupil or student with an EHC plan is due to move between educational phases, the local authority must review and amend the EHC plan in the spring of the preceding academic year, as set out in the timetable above. In no circumstances should an admission to, or the continuation of a placement at an institution be conditional on, or delayed by receipt or agreement of top-up funding for the pupil or student.

72. Local authorities' expenditure from the DSG is subject to conditions of grant set by the department, which govern the way high needs funding is used. For example:

- local authorities must treat those placed in maintained provision, in academies and free schools, in the further education sector, and in non-maintained and independent provision on a fair and equivalent basis when making arrangements for funding young people with high needs.
- local authorities must make payments of top-up funding to institutions in a timely fashion and on a basis agreed with the institution; payments must be monthly unless otherwise agreed (such as termly in advance)
- institutions should contact ESFA where there are problems reaching agreement or receiving timely payments
- ESFA will examine cases and consider remedial action where there is clear evidence that a local authority is not meeting the required conditions of grant

73. The department's position is that the commissioning by local authorities of special educational needs and alternative provision placements, funded from the high needs block of the DSG, is not regarded as a public service contract for the purposes of the Public Contracts Regulations 2015.

74. The Public Contracts Regulations 2015 are not intended to cover all expenditure of public funding, reflecting the intention of the EU Directive on public procurement. The public procurement rules only apply to contracts for the provision of public works, services or goods made for "pecuniary interest" between an "economic operator" and a contracting authority. Other forms of public funding, such as funding provided through grants, usually fall out of scope. Case-law from the European Court of Justice has established that public education organised within a national education system does not constitute economic activity, even in cases where tuition fees may be required to support placements.

75. When a local authority fulfils its statutory duties to make provision specified in an EHC plan or to put in place alternative provision for children of compulsory school age, funded from their high needs budget, it will be delivering public education organised within a national education system. Any disbursement of high needs funding between the local authority and an institution in fulfilment of such duties will therefore not constitute "economic activity", and any agreement between local authority and institution will not be regarded as a public service contract for the purposes of the Public Contracts Regulations 2015.

76. We recognise that the wide range of different placement processes and documentation employed by local authorities, some intended to comply with the Public Contract Regulations 2015, is not helpful to institutions that attract placements from a number of local authorities. We will engage with local authorities, institutions and their representative organisations to encourage shared arrangements for commissioning and quality management of institutions which operate on a regional or national basis and to

share existing good practice. This will include considering standard approaches to calculating costs and the development of standard terms and conditions, designed to supplement EHC plans.

## **Agreeing how top-up funding should be allocated**

77. As part of their discussions on how high needs funding is used, local authorities should work with institutions that have pupils or students with high needs to ensure there are clear processes for determining and allocating top-up funding. This should include agreeing what additional needs mainstream schools and colleges should meet from their own resources (taking account of any additional support or funding provided centrally) and where top-up funding might be provided. This information should be published as part of the local offer of SEND services and provision.

78. Local authorities have statutory responsibilities to keep the special educational provision in their area under review, working with parents, young people and institutions, as set out in chapter 4 of the SEND Code of Practice. A wide range of educational institutions are required to co-operate with local authorities in such reviews, including maintained schools, academies, FE and sixth form colleges, independent and non-maintained special schools, special post-16 institutions and any other providers of special educational provision, including relevant early education providers.

79. Children and young people with high needs often receive provision outside the local authority where they are resident, for example at a special school or FE college. We therefore encourage neighbouring local authorities to work together when reviewing their provision and considering arrangements for top-up funding.

80. Many local authorities have systems which indicate the range of top-up funding which might be provided for children and young people with a particular complexity of need (sometimes referred to as 'banded' funding systems). This can be helpful in providing clear and transparent funding arrangements for many types of need that may be met in a range of different institutions. Where a local authority makes a large number of placements at an institution or range of institutions, a system for the local authority and institutions to agree levels of top-up funding in advance can be a very efficient way of allocating this funding. However, the final allocation of funding must be sufficient to secure the agreed provision specified in any EHC plan.

81. As explained earlier, place funding should not be withdrawn for a place perceived as unused. Similarly, an additional £6,000 or £10,000 per head should not automatically be charged if an institution has filled all funded places. When agreeing rates of top-up funding, a local authority and an institution may wish to reflect economies and diseconomies of scale based on occupancy of places. For example, an institution may have 30 high needs places for which it receives a total budget of £300,000 (30 x £10,000):

- in the event that the institution fills 25 places it may agree with the provider local authority to charge a lower rate of top-up funding, to reflect the 'surplus' funding arising from its five unfilled places, which the provider local authority has already funded. The nature of pre-16 AP and SEND provision in some institutions means that there may be empty places at some points in the year, such as where diagnosis after the beginning of the academic year leads to later identification and placement

82. Other factors that could impact on the way local authorities determine the top-up funding for individual pupils and students are:

- the way institutions set their budgets and break down their costs and overheads
- overheads affecting certain types of independent institution which are otherwise funded for maintained schools and academies, such as VAT costs in NMSSs and the costs of buildings for those institutions not able to access capital funding
- the extent to which local authorities and institutions agree on standardised rates, local banding arrangements and streamlined administration to reduce the need for detailed negotiation of different top-up funding amounts for each pupil or student
  - we would support approaches that both create certainty for institutions on the level of funding they can expect to receive for the provision they make, and are sufficiently responsive to changes in the number and needs of the pupils and students being placed in the provision

83. We do not expect top-up funding to contribute to or subsidise:

- overheads attributable to other budgets within the institution, or that relate to costs that the institution would have to meet even if it had no pupils or students with high needs (for example, the salary of the SENCO required by all mainstream schools)
- the costs of legal action against local authority decisions on assessment, provision and top-up funding, including support for parents seeking SEN tribunal judgements on such local authority decisions
- the cost of educational and other assessments (for example, by educational psychologists) unless the local authority agrees in advance to pay for or contribute to these costs because they are required for its own assessment or review purposes

84. Institutions should be transparent about their costs, and prepared to explain how the overall school and college finances are working to ensure their continuing financial viability and their ability to sustain appropriate levels of support for children and young people with SEN. Institutions may need to adapt their approach to making special provision, focusing on the needs of the child or young person. For example, it should not be assumed that an EHC needs assessment and plan will result in the provision of a fulltime teaching assistant – this level of help is often not needed by the child or young person and can at times be counter-productive to their development. Colleges may need

to reorganise their study programmes for young people with SEN and find different ways of supporting them over the week.

85. Further information about how top-up funding works for PRUs, AP academies and AP free schools is set out in annex 2.

## Local authority high needs services and support

86. While the majority of a local authority's high needs budget is spent on place and top-up funding for institutions, local authorities can also use high needs funding to provide additional or targeted support for children and young people with SEND, as permitted under schedule 2 to the School and Early Years Finance Regulations. This can take the form of additional funding to institutions, which may be paid on the basis of a service level agreement, or access to specialist services or expertise commissioned by the local authority.

87. As set out in below, such support can play an important role in enabling mainstream schools and colleges to meet a wider range of special educational needs, and supports the presumption in law that children and young people should be educated in mainstream provision, unless their special educational needs require more specialist provision.

88. The amounts that the local authority plans to spend on such services should be included on the authority's section 251 budget statement, as in previous years. Schools forums are expected to discuss the details and effectiveness of these services.

## Additional funding for mainstream schools

89. One of the categories of high needs spending referred to above is targeted funding to mainstream schools. Local authorities can provide additional funding outside the main funding formula for mainstream schools and academies on a consistent and fair basis where the number of their pupils with SEND and/or high needs cannot be reflected adequately in the funding they receive through the local funding formula. They should define the circumstances in which additional funding will be provided from their high needs budget.

90. Additional funding may be provided where there are a disproportionate number of pupils with a particular type of SEND. For example, a primary school may have developed a reputation for meeting the needs of high achieving pupils with autistic spectrum disorder, or pupils with physical disabilities, and it's not possible to target additional funding to the school through factors in the school funding formula.

91. Local authorities should have a formula or other method, based on their experience of distributing additional funding to their schools and academies. This should be agreed with schools and described on the authority proforma tool (APT). In all cases the distribution methodology should be simple and transparent, and devised so that additional funds are targeted only to a minority of schools which have particular difficulties because of their disproportionate number of pupils with SEND or high needs or their characteristics.

## Specialist support services

92. If mainstream provision is to meet a wide range of additional needs, it is important that schools, colleges and settings have access to high-quality specialist support (for example, to help with the needs of children and young people with autism, speech and language needs, social, emotional and mental health needs, sensory impairment or challenging behaviour). This typically involves specialist teachers with expertise in supporting pupils with complex needs who are available to advise, train and support other teachers and SEN co-ordinators in mainstream schools and colleges, and who can provide other support, for example through networking and targeted training.

93. It is important that such support is available to mainstream schools (maintained schools as well as academies and free schools), further education colleges, sixth form colleges and 16-19 academies, since they are all statutorily required to identify the special educational needs of their children and young people and to use their best endeavours to make sure that a child or young person who has SEN gets the support they need.

94. Local authorities and mainstream schools and colleges should discuss how such specialist support should be delivered when considering how to spend the high needs funding available to them. Many local authorities employ specialist teachers, funded directly from their high needs budget. Others give special schools additional funding to provide specialist support to other schools. Such arrangements are frequently accompanied by a service level agreement confirming what will be delivered in return for the additional funding.

95. Specialist support for pupils at risk of exclusion may be commissioned by the local authority or by schools (using funding devolved by the local authority). Further information on centrally commissioned AP services can be found in annex 2.

## High needs funding arrangements: institutions

### Early years providers

96. Children aged 0 to 5 with more complex needs and those in receipt of an EHC plan are eligible to receive funding via the high needs block of the DSG.

97. Local authorities can meet the costs of under 5s with high needs in different ways from their high needs budget. These may include SEN support provided directly as a central service for young children with high needs and early years providers. Place funding may also be used for early years provision, for example at special schools, supplemented by top-up funding for individual children.

98. Additionally, local authorities are required to pass funding on to all early years providers delivering the free entitlements for children aged between 2 and 4, through the early years block of the DSG. The early years operational guidance includes more information on how early years block funding is allocated and should be passed on to providers.

99. As set out in the early years operational guidance, there are additional early years funding streams to support children aged 3 and 4 with special educational needs and disabilities to access their free entitlements:

- The settings of 3 and 4 year olds eligible for the disability access fund (DAF) (those in receipt of child disability living allowance and receiving free early education) will be entitled to receive a one-off payment of £615 per year.
- All local authorities are required to establish an inclusion fund in their local funding systems for 3 and 4 year olds with SEN taking up the free entitlement, regardless of the number of hours taken
  - this fund supports local authorities to work with providers to address the needs of individual children with low level or emerging SEN
  - this structure will also support local authorities to undertake their responsibilities to strategically commission SEN services as required under the Children and Families Act 2014
  - local authorities can establish their SEN inclusion funds using funding from either one or both of their early years block and high needs block of the DSG

### Mainstream schools, academies and free schools

100. Maintained mainstream schools will receive notification of their core funding allocations of pre 16 funding by end of February, and mainstream academies and free schools by the end of March before that academic year begins. The per pupil funding for mainstream schools includes funding for pupils with SEND, whose additional support

costs are lower than £6,000. Schools and academies should have sufficient funding in their delegated budget to enable them to support pupils' SEND where required up to the mandatory cost threshold of £6,000 per pupil per annum.

101. For pupils aged 5 to 15 years in mainstream schools a notional SEN amount will be shown in the school's budget, this is an indicative amount that schools may set aside for pupils with SEND. Where there are a disproportionate number of pupils with special educational needs, additional funding maybe provided outside the main funding formula as explained in the additional funding for mainstream schools section. High needs place funding is only available to those schools with SEN units or resource provision.

102. Where individual pupils require additional support that costs more than £6,000, the excess should be met by top-up funding associated with the individual pupil. Top-up funding rates are for local authorities to determine, by agreement with schools and academies. Further information is provided in the section on top-up funding.

## **Sixth forms**

103. Mainstream sixth forms are funded for their core funding on the basis of an amount per student based on the post-16 national funding formula (element 1), and £6,000 per high needs place (element 2). Funding for pupils whose additional support costs are lower than £6,000 is provided within the disadvantage funding element of post-16 national funding formula. Local authorities should assume a national average amount of £5,200 for element 1, comprising the £4,188 base rate and additional funding allocated through the post-16 funding formula (such as for disadvantage).

104. High needs place funding (element 2) is available to schools for students with SEND requiring additional costs exceeding £6,000. Schools should have engaged with their local authority to agree place numbers. Local authorities have flexibility to agree with schools, academies and free schools alternative ways of calculating this element of high needs funding. ESFA do not require information on changes to places funded in maintained schools as local authorities fund these institutions directly and have local flexibility to change the number of places as well as the method of calculating the allocation. Local authorities should however notify ESFA of changes to place numbers for academies and free schools, to ensure that they are funded on the correct basis.

105. As for pre-16 pupils explained at above, where individual pupils require additional support that costs more than £6,000, the excess should be met by top-up funding associated with the individual pupil.

## **Special units and resourced provision**

106. Mainstream schools may be funded for pre-16 high needs places if they have special units and/or resourced provision. Depending on the range and type of services on offer, it's also possible for such provision to be a centrally funded service commissioned

by the local authority, normally under a service level agreement with the school or academy. Where there are changes to specialist provision, such as new special units or resourced provision, at academies and free schools, this must first be approved through the significant change process.

107. Resourced provision and SEN units vary widely, reflecting the local approach to inclusion. In resourced provision pupils tend to spend most of their time in mainstream classes only attending the facilities for individual support, to learn a specific skill (for example braille for visually impaired pupils), to receive medical or therapeutic support (for physically disabled pupils) or to access specialist equipment. The facilities can be in a suite or dispersed throughout the school. Pupils in an SEN unit tend to spend the majority of their time there, only attending mainstream classes for a few lessons, such as PE, assembly or for lunch

108. Pre-16 places at a special unit and resourced provision that are occupied by pupils recorded on the school census as sole or dual (main) at a special unit or resourced provision are funded at £6,000 per place. Pupils in these places will also attract funding through the mainstream school formula.

109. Other places are funded at £10,000. This may apply where:

- the place is or will be occupied by a pupil registered on the roll of another school
- a place isn't occupied at the time of the school census count, but is likely to be filled, and requires funding
- spare capacity is required for another reason

110. ESFA confirm the number of funded high needs places in mainstream academies and free schools as a result of the annual place change notification process. The total number of places to be funded in maintained schools is decided at a local level by the local authority that maintains the school, taking full account of places that may be commissioned by other local authorities.

111. Information collected via the authority proforma tool (APT) is used to determine the place funding rate for SEN units and resourced provision. For mainstream academies and free schools ESFA reconciles place occupancy data provided in the APT with the number of places confirmed as part of the place change notification process to determine the rate of place funding for mainstream academies and free schools in line with the following principles:

- outcomes from the place change notification process informed ESFA of the number of high needs places to fund
- the APT records the number of places occupied by pupils on the roll of the school or academy as at October (that is, recorded as sole or dual (main) registered when the school census is completed)

- place funding has not therefore been allocated for pre-16 place numbers recorded in the APT that exceed the number of pre-16 places confirmed as part of the place change notification process, as the latter relates to the number of places to be funded
- the number of occupied places recorded in the APT are funded at £6,000 per place
- where the number of pre-16 places confirmed in the place change notification process is greater than the number of occupied places provided via the APT, the difference is the number of places that are funded at £10,000 per place

## **Maintained special schools, special academies and special free schools**

112. Pre-16 and post-16 high needs places at maintained special schools, special academies and special free schools are funded at £10,000 per place. Following publication of the place change notification outcomes there is a two-week enquiry window for local authorities and institutions to raise significant issues. Institutions receive allocations from ESFA by the end of March in advance of the academic year; maintained special schools are notified of their allocations (that is, their budget shares) by their local authority by the end of February.

113. A special schools protection will continue to apply to maintained special schools and special academies (including special free schools) in 2020 to 2021. The level of the minimum funding guarantee is increasing from minus 1.5% to 0%. The calculation is based on the assumption that the number and type of places remains the same between 2019 to 2020 and 2020 to 2021. It also assumes that all pupils in the school are placed by the provider authority (i.e. where the school is located) and that all top-up funding rates received by the school are those set by that authority. See annex 1 for further information on the protection, including a worked example.

## **Non-maintained special schools (NMSSs)**

114. All places in NMSSs (pre- and post-16) are funded at £10,000 per year. We base non-maintained special school (NMSS) funding allocations on the pupil number data from the latest October school census, uplifted by the difference between the previous year's October and January census pupil number data. Any negative movement is capped at zero to ensure that no school is funded on numbers less than those recorded in their latest October census.

## **Independent schools**

115. Independent schools, including independent special schools and independent AP sit outside the high needs place funding system. Where a local authority has

commissioned a place in an independent school, the local authority remains responsible for all the funding for that child or young person with SEND (that is, the local authority must provide the equivalent of both place and top-up funding from their high needs budget). The total expenditure on these placements should be included in the relevant high needs top-up funding line of each local authority's section 251 returns.

116. More information about how local authorities should discharge their responsibilities for children and young people with SEND in independent schools is set out in the SEND code of practice, in particular paragraphs 9.131 to 9.136.

## **PRUs, AP academies and AP free schools**

117. We encourage schools and local authorities to explore the most effective arrangements for AP commissioning and funding in their area. For instance, there is flexibility for local authorities to devolve some decision making and funding for AP to schools, and there is evidence to show that this can be effective in promoting mainstream inclusion and accountability. Local authorities should provide information locally and consult with the schools forum about such arrangements. It should be noted that post-16 students in PRUs, AP academies and AP free schools are not funded in the same way as pre-16 students. Further information on funding arrangements for AP is available at annex 2.

## **Further education institutions**

118. Further education institutions, including colleges and independent learning providers, receive core funding on the basis of an amount per student calculated using the post-16 national funding formula (element 1) and £6,000 per high needs place (element 2). Top-up funding for students with high needs (element 3) is paid directly by the local authority commissioning the place.

119. Element 1 student numbers are allocated directly by the ESFA to colleges for students aged 16 to 19 and those aged 19 to 25 with EHC plans. The number of students and amount of funding paid has no impact on local authorities' high needs budgets. Funding is provided within the disadvantage funding element of the mainstream 16 to 19 funding allocation for students with SEND, but whose additional support costs are lower than £6,000 and who therefore do not count as students with high needs.

120. For 2020 to 2021 local authorities should assume a national average amount of £5,200 for element 1, comprising the £4,188 base rate and additional funding allocated through the post-16 funding formula (such as for disadvantage), in respect of all post-16 high needs students.

121. The number of high needs places (element 2) that determines the high needs funding of £6,000 per place is based on the numbers of places funded for the 2019 to

2020 academic year, subject to any changes to those numbers as a result of the place change notification process. As indicated above, it is essential that FE institutions discuss with their provider local authority (that is, the one in which the main college or provider HQ is located) how many places should be funded as set out in the high needs place funding section above..

122. Further information about how place funding works, including where students exceed place numbers, can be found in the high needs place funding section above. It is also open to FE institutions to agree with their provider local authority an alternative method of calculating this element of funding (that is, a calculation that is not necessarily a number of high needs places times £6,000), subject to the requirements outlined in the high needs place funding - flexibility to allocate differently section.

123. There are a number of situations where a 14 to 16 year old may be studying in a college:

- students who achieved a level 2 qualification early and are choosing to enrol on a full level 3 course, and home educated students are counted as 16-19 year olds and funded alongside 16 to 19 year olds via the 16 to 19 funding formula for element 1 and £6,000 per place for element 2
- students enrolled in a school or academy but studying part time in college do not get funded as 16 to 19 year olds, the school or academy will receive funding in respect of these students via the pre-16 process applicable to that institution
- some colleges are eligible to be directly funded by ESFA for 14 to 16 year olds
  - these students should be recorded in the ILR accordingly and will be funded for element 1 via the 16 to 19 formula using a separate process
  - for element 2 these students are counted as 16 to 19 year olds and funded at £6,000 per place using the same process as for 16 to 19 year olds
  - further details for FE institutions on funding for directly recruited 14-16 year olds in colleges can be found in the Enrolment of 14 to 16 year olds in FE guidance

## **Special post-16 institutions (SPIs)**

124. All SPIs in their second year onwards of direct ESFA funding are allocated place funding (element 1 and element 2) on the basis on their latest R06 ILR return.

125. To be eligible to receive high needs place funding from ESFA for the first time, SPIs must successfully complete the High needs funding: due diligence process for special post 16 providers. Such SPIs must also be notified to ESFA through the annual place change notification process. Their allocations are determined by the numbers returned by the local authority in which they are located.

## Hospital education

126. Hospital education is defined as education provided at a community special school or foundation special school established in a hospital, or under any arrangements made by the local authority under section 19 of the Education Act 1996 (exceptional provision of education), where the child is being provided with such education by reason of a decision made by a medical practitioner.

127. Although we allocate funding to local authorities for hospital education without reference to the age of the young people receiving the education, local authorities' duties differ for young people aged 16 and over. This may affect their decisions on funding education for young people in this age group, such as those in independent hospital schools.

128. We are continuing to consult with local authorities, hospital schools and other interested parties on options for the funding of hospital education. It remains our intention to introduce a formulaic hospital education factor in the high needs national funding formula in future years, that takes into account both local authority spending data and NHS data, and therefore better responds to the number of patients needing education.

129. As in previous years, hospital education can be funded by local authorities either on the basis of an amount per place, or as a centrally funded local authority service. An example of the latter is where the authority employs teachers directly to work in a hospital or offer home tuition to pupils who are confined to their home because a medical practitioner has decided that is where they should be. Some local authorities commission such services through hospital schools or PRUs. In all cases local authorities should ensure that there is clarity on how hospital education is provided and funded locally and, for such provision in maintained institutions or central services, should report their planned and actual expenditure in the relevant tables of the section 251 budget and outturn statements.

130. Funded hospital education places can be found in maintained special schools (usually a particular type of special school known as a hospital school), maintained PRUs (sometimes known as medical PRUs), special and AP academies and free schools. Often these institutions will have a combination of hospital education places and other high needs (AP and SEND) places.

131. The regulations require that hospital education places in maintained schools and PRUs are funded at least at the same level per place as in the previous funding year. This requirement is also reflected in the funding arrangements for hospital education places in academies. DSG conditions of grant require local authorities to treat academies the same as maintained schools in their funding arrangements. These requirements will remain in place and are incorporated in the regulations and conditions of grant for 2020 to 2021.

132. Local authorities are reminded that the high needs national funding formula provides local authorities with an 8% increase in hospital education funding, from the 2019 to 2020 allocations of hospital education funding. Local authorities and their hospital schools, and other providers of hospital education, will wish to consider how much of this increase is passed on to the relevant schools and other institutions. If a local authority intends to pass on an increase to an academy funded for hospital education places, this should have been notified to ESFA via the 2020 to 2021 place change notification process. [Hospital education funding: guidance](#) explains the process for those Local authorities wishing to apply for additional funding due to new hospital education provision.

133. Medium secure adolescent psychiatric forensic units, which cater mainly for young people aged 16 and over, are funded in 2020 to 2021 using the same hospital education funding methodology of an amount per place no less than their funding per place in 2019 to 2020. Such education provision exists in a very small number of units, some of which are in maintained schools and academies, where the funding comes from the local authority and ESFA respectively, and others are operated by the local authority in whose area the institution is situated, or by charitable organisations and mental health trusts funded directly by ESFA.

134. Local authorities' duties may require them to commission hospital education from other independent providers, not in receipt of funding directly from ESFA.

135. In these circumstances, local authorities would be expected to pay the costs of this education from their high needs budgets. The law may not require local authorities to commission a particular education provider in order to discharge their duties, though decisions about education provision should not unnecessarily disrupt a child or young person's education or treatment.

136. Independent hospital education provision may be funded either as a single service by the local authority in whose area the provision is located, or on the basis of payments for individuals from those authorities in whose area the child or young person normally resides. In both cases the provider should confirm with the relevant local authority that they are content to commission and fund the education provision.

137. If funding is provided as payments for individual children and young people, the provider should receive such confirmation from the local authority, if possible in writing, before providing education to the child or young person, and certainly before requesting any funding.

## High needs funding: post-16 special circumstances

### High needs place funding: flexibility to allocate differently

138. Local authorities are reminded that funding for post-16 places in maintained schools (including maintained special schools) and PRUs is included and will remain in the DSG paid to local authorities, rather than being deducted from local authorities' DSG allocations and paid as sixth form grant. Local authorities have flexibility to make changes to maintained school and PRU place numbers. Post-16 students in PRUs (and AP academies and AP free schools) are not funded in the same way as pre-16 students. See Annex 2: alternative provision for more information.

139. Secondary maintained school and academy sixth forms, and all FE institutions are funded at £6,000 per place for one element (sometimes referred to as element 2) of their high needs funding allocation. As indicated above, this element of funding for maintained secondary schools and PRUs remains in local authorities' DSG high needs allocations. In the case of academies and FE institutions, this funding is deducted from the initial allocations of high needs funding to authorities by ESFA, and paid directly to the institutions, on the basis of the published data on place numbers and any changes notified by local authorities.

140. We are continuing the flexibility introduced for the 2019 to 2020 academic year, whereby a local authority can reach agreement with a mainstream maintained school or academy with a sixth form, a PRU or AP academy with a sixth form, a sixth form or FE college or an independent learning provider, that this element of the institution's funding can be calculated and paid in a different way directly by the authority, subject to the following requirements:

- there must be agreement on the alternative funding approach between the local authority and post-16 institution(s) involved, and this agreement should have been reached by autumn 2019
- the alternative arrangement must ensure a continuation of the £6,000 cost threshold for top-up funding, to maintain consistency in the high needs funding system
  - in other words, the funding methodology should continue to provide institutions with funds to meet the additional costs of supporting students with special educational needs up to £6,000 per annum, with top-up funding meeting the costs in excess of that threshold
  - local authorities should be aware that the import/export adjustment will continue to operate as explained above whatever alternative methodology is used
- the institutions involved must continue to provide information about students with high needs through the school census and ILR according to the current definition, which means that such students must have been assessed by the local authority

as having high needs, and the institution must be receiving top-up funding for their support costs in excess of £6,000

- this school census and ILR information provides the data that allows the import/export adjustment to operate fairly for local authorities

141. The local authority can make such alternative funding arrangements by agreement with its maintained secondary schools and PRUs without any formal notification to the ESFA.

142. Where an alternative funding methodology is agreed with an academy or FE institution, the authority should notify ESFA through the place change notification process that the place number is to be reduced. The place number would be zero if the local authority has agreed with the institution that the alternative methodology covers the equivalent of all the institution's place funding, including those places filled by students placed by other authorities.

143. The place number would be larger than zero if the institution receives funding for places to be occupied by students from other local authorities. In all cases, the deduction from the local authority's high needs allocation would reflect the reduced place number, because the authority has agreed the change with the institutions involved and will pay the funding to the institution concerned directly.

144. As indicated above, it is important for local authorities to note that no changes will be made to the import/export adjustment in the national funding formula, because the provider local authority, in whose area the institution is based, will still be expected to meet the costs of all the places in the institution. Including those to be occupied by students for whom other local authorities are paying the top-up funding.

145. This flexibility encourages local authorities and institutions to work together in making special provision for their students. Examples of alternative approaches could be:

- an agreement to fund a college directly a lump sum per year over 3 years, to provide certainty to the local authority and college on the level of provision and funding that will be made, subject to specified tolerances relating to the actual number of students with high needs receiving support
- an agreement that a school sixth form will be funded for its students with SEND on the basis of similar proxy measures as are in the local pre-16 funding formula

146. We will consider the need to collect further information from local authorities about any alternative funding calculations they make.

## **Post-16 study programmes**

147. The majority of young people with high needs attending a school, college or SPI will be subject to an EHC plan. Local authorities must use the evidence from the EHC

plan to make consistent, effective and robust assessments of the support the young person will need to move towards a positive outcome.

148. Local authorities and institutions should work together to agree a suitable study programme for a young person, which must be tailored to their individual aspirations and support needs.

149. A full-time study programme has a minimum duration of 540 hours and there is no set maximum. Local authorities or colleges should not set an arbitrary maximum number of hours for a study programme, but instead should provide the number of hours required by the student to complete the programme. A funding requirement for all programmes is that they meet the condition of funding for maths and English.

150. A supported internship is one type of full-time study programme specifically aimed at young people aged 16 to 25 who have an EHC plan, who want to move into employment and need extra support to do so. Students on supported internships, although they have an EHC plan, are not necessarily students with high needs requiring additional support costing more than £6,000.

## **Part-time or part year students: post-16**

151. We also consider young people to be high needs students when they are part time or part year and their additional support funding would total more than £6,000 if provided over the full academic year as agreed with the local authority in which the student is resident. See guidance regarding the funding rates and formula used in the funding arrangements for 16 to 19 year olds for more information.

152. Where an institution has enrolled, or is considering enrolling, a high needs student who will attend on a part time or part year basis, they should hold discussions with the relevant local authority as commissioners of high needs provision. The normal funding approach should then apply in line with the principles outlined in this guide. In all cases the institution will need to agree with the local authority an appropriate amount of top-up funding which the local authority will fund from its high needs budget.

## **Students aged 19 to 25 with an education health and care plan (EHCP)**

153. Students aged 19 to 25 with EHCP who are continuing in education may have a range of options, including attending FE institutions, Independent Learning Providers and SPIs. The school funding regulations require that a local authority may not use its high needs budget to fund places, or pay top-up funding, for 19 to 25 year olds attending a maintained school, an academy school, an alternative provision academy, a non-maintained special school, or an independent school. There is an exception for those 19

year olds who are completing a secondary education course started before they were 18 years old.

154. Some schools may consider that they have the appropriate specialist expertise to prepare students aged 19 to 25 with an EHC plan for adult life, including independent living and employment. To receive high needs funding for such young people, a school would have to set up a legally and financially separate entity to provide the appropriate environment for young people of that age. Once established, and in order to be eligible for ESFA funding for the first time, the new entity should follow the High needs funding: due diligence process for special post-16 providers and must also be notified to ESFA through the annual place change notification process the local authority in which they are located

155. For information on learners aged 19 to 25 without an EHC plan see annex 3.

## **Students aged over 25**

156. A local authority must keep an EHC plan under review. For a student with an EHC plan when they are 24 years old, the plan normally ceases when the student turns 25, although local authorities have a power to extend an EHC plan until the end of the academic year in which the student turns 25.

157. If a local authority extends the EHC plan until the end of the academic year, the local authority must continue to provide top-up funding to the institution until that time.

158. If the local authority makes an exceptional decision not to extend the EHC plan to the end of the academic year, it must discuss the transition arrangements for the young person with the ESFA. Place funding is allocated to the institution by ESFA for the full academic year and would not normally be clawed back if the EHC plan is not extended.

159. Local authorities are not responsible for commissioning provision for students with SEND who are 19 to 25 without an EHC plan or who are over the age of 25. Links to the funding arrangements for these students are at annex 3.

## Annex 1: special schools minimum funding guarantee

160. The minimum funding guarantee (MFG) for special schools in 2020 to 2021 is set by a condition of grant that applies to local authorities' DSG, and protects schools from seeing a reduction in funding from year to year assuming that the number and type of places remains the same between 2019 to 2020 and 2020 to 2021 financial years. It also assumes that all pupils in the school are placed by the provider authority and that all top-up rates received by the school are those set by the provider authority. This 0% MFG provides a higher level of protection than the minus 1.5% applicable in 2019 to 2020.

161. Once the MFG assessment confirms 2020 to 2021 top-up funding rates received by the school are in line with the guarantee, they can then be applied to reflect the actual number and type of places at the school.

162. When calculating protection, local authorities should make sure that they are comparing like with like. Adjustments can be made for changes in the nature of the provision, for example, if previous top-up rates included an element for a commissioned service which is no longer provided by the school, the value of that element can be discounted when calculating the MFG protected level.

163. Where a local reorganisation takes place and there are changes to bandings, the 2019 to 2020 pupil numbers and types for each school should be attributed as far as possible to the new bandings in order to assess whether any special school loses more than the MFG set by the local authority in 2020 to 2021. If the MFG is breached and the local authority proposes to fund below the guaranteed level, the local authorities should apply for an exemption to the MFG using the disapplication request form. Any such request will be expected to have the agreement of the local schools forum and the schools concerned. Information provided should include the impact on the schools affected. Requests will be considered on a case-by-case basis.

164. Disapplication of the condition of grant may also be sought where it's not possible to compare the top-up funding rates between the two years, for example, where there has been a major reorganisation of local provision.

165. The worked examples provide two scenarios of how the MFG is calculated for a 100 place special school, which in 2019 to 2020 was occupied by a total of 90 pupils, 30 in each of 3 different bands.

<b>Special schools funding: 2019 to 2020</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Total</b>
<b>Number of places</b>				100

<b>Special schools funding: 2019 to 2020</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Total</b>
<b>Number of pupils</b>	30	30	30	90
<b>Top-up rate</b>	£3,000	£4,000	£5,000	
<b>Place funding</b>				£1,000,000
<b>Top-up funding</b>	£90,000	£120,000	£150,000	£360,000
<b>Total funding</b>				£1,360,000

<b>2020 to 2021: MFG scenario 1</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Total</b>
<b>Number of places</b>				100
<b>Number of pupils</b>	30	30	30	90
<b>Top-up rate</b>	£2,700	£4,100	£5,300	
<b>Place funding</b>				£1,000,000
<b>Top-up funding</b>	£81,000	£123,000	£159,000	£363,000
<b>Total funding</b>				£1,363,000
<b>MFG % difference from 2019 to 2020</b>				0.2%

<b>2020 to 2021: MFG scenario 2</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Total</b>
<b>Number of places</b>				100
<b>Number of pupils</b>	30	30	30	90
<b>Top-up rate</b>	£2,800	£3,800	£4,500	
<b>Place funding</b>				£1,000,000
<b>Top-up funding</b>	£84,000	£114,000	£135,000	£333,000

<b>2020 to 2021: MFG scenario 2</b>	<b>Band 1</b>	<b>Band 2</b>	<b>Band 3</b>	<b>Total</b>
<b>Total funding</b>				£1,333,000
<b>MFG % difference from 2019 to 2020</b>				-2.0%

166. In the first scenario, 1 of the 3 top-up funding rates has reduced. Overall, though, the funding for the school would remain above the 0% MFG level if the number and types of places remained the same. Therefore, 2020 to 2021 top-up funding rates are in line with the guarantee and funding to the special school should reflect these rates (for students placed by the provider authority); the number of students in each band; and the actual numbers of places.

167. In the second scenario, two of the three top-up funding rates have reduced. However, in this case the difference exceeds the 0% MFG level and so the rates will need further adjustment

## **Annex 2: alternative provision (AP)**

### **Alternative provision: context**

168. Alternative provision provides support to children at challenging moments in their lives and each placement has the potential to transform a child's life chances.

169. When children of compulsory school age are not receiving suitable education, the local authority has a duty, under Section 19 of the Education Act 1996, to arrange it.

170. Occasions when a child has to be placed in an alternative setting for a period of time could be as a result of a temporary or permanent exclusion or where a child has health-related needs that mean they are unable to attend a mainstream school full-time. Many schools make use of AP services before the need for exclusion arises. In the majority of cases the intention is for these children to return to their mainstream school and the length of the placement should be determined by the needs of the pupil.

171. Local authorities make arrangements for AP (including hospital education), and this is normally funded from their high needs budget. There is flexibility for local authorities to devolve some decision-making and funding for AP to schools, and there is evidence to show that this can be effective in promoting inclusion and accountability. Where a pupil remains on the role of a mainstream school, the school is effectively acting as a commissioner of AP and retains accountability for the child's education. For example, where a pupil is temporarily excluded from a mainstream school for longer than five school days, the school is responsible for commissioning and funding alternative provision from the sixth school day of the exclusion.

## Organising and funding alternative provision

172. We acknowledge there are different ways local authorities and schools/academies can discharge their responsibilities and expect them to explore the most effective arrangements for AP commissioning and funding in their area. Local authorities should always take account of the needs of local schools in determining the demand for AP and how it is delivered and encourage schools to think collectively about their use of AP, and how the full cost of provision is to be met. Many local areas have developed strong partnership arrangements which seek to share responsibilities across schools for AP commissioning, funding and accountability. Such arrangements can include the local authority devolving some decision-making and funding to groups of schools.

173. Funding devolved to schools or partnerships of schools remains as a central budget under the authority's central control and the terms of its use should be covered by a service level agreement or memorandum of understanding with the schools and academies involved. As with other elements of high needs funding held centrally, under the conditions of grant associated with the DSG, the local authority must treat maintained schools and academies on an equivalent basis and make sure that any distribution of such funds is fair and reasonable.

174. The local authority should make sure that there is consultation with the schools forum on the way AP funding is used and distributed. The schools forum regulations are intended to ensure that the arrangements for AP funding are properly discussed at local level – with engagement not only from the local authority, but also from the mainstream schools and academies, PRUs and AP academies and free schools. This is explained in the schools forums operational and good practice guide.

175. The regulations and scheme for financing schools do not permit local authorities to make a differential charge on schools' and academies' budget shares according to their use or intended use of AP. It is possible, however, to use funds relating to pupils leaving the school roll, which have been deducted from schools' budget shares under regulation 27 of the School and Early Years Finance Regulations, or under the similar arrangements with academies, to offset some of the cost of places. This is explained further in the section on funding adjustments for permanent exclusions.

## Funding for AP institutions

176. AP institutions can receive high needs funding in different ways:

- core funding: the annual allocation of funding on the basis of an amount per place ("place funding"), which an institution receives either directly from the home local authority (for PRUs, based on the financial year), or from ESFA (for AP academies and AP free schools, based on the academic year)
- top-up funding: the funding required, over and above the core or place funding, to enable a pupil to participate in education

- top-up funding is paid to AP institutions by the local authority or school that commissions each place
- locally negotiated funding for AP services, such as outreach, which are outside the place funding and top-up funding model
  - funding for independent AP is also locally negotiated between commissioner and provider as it is outside the place funding and top-up funding system

177. It should be noted that post-16 students in PRUs, AP academies and AP free schools are not funded in the same way as pre-16 students. An institution will not receive AP place funding for post-16 students because this type of institution is, by definition, a school set up to educate children of compulsory school age. In the event that an AP institution does have post-16 high needs students with special educational needs, usually with an EHC plan, these places can be funded on the same basis as post-16 students in mainstream schools as shown above.

178. Where the local authority commissions a place at a PRU, AP academy or AP free school, the top-up funding comes from the local authority's high needs budget. Where a school commissions a place at a PRU AP academy or AP free school, the top-up funding may come from centrally held high needs funding that has been devolved to that school or a local partnership of schools (e.g. via a service level agreement), or from the school's delegated budget share or (if an academy) general annual grant.

179. It is in the interests of the local authority, its schools and academies, and institutions offering AP, to agree the referral process and process for resolving concerns about admissions. If the local authority is unable to place a particular pupil because they are not suited to the type of provision offered by a PRU, AP academy or AP free school, they would need to make other arrangements.

## **Place funding for PRUs, AP academies and AP free schools**

180. Each PRU, AP academy or AP free school usually has a number of places to offer pupils permanently excluded by schools or who cannot get a school place for other reasons. In this case the commissioner would normally be the local authority. Many AP institutions will also have places for pupils who are on part-time or shorter-term placements. In many cases local schools would be the commissioner for these places.

181. We have not defined a 'place' in the regulations, but we expect that a place will generally be available for occupation by a full-time equivalent (FTE) pupil. We accept that in AP settings places may not be filled by the same individual throughout the year. Identification of places is not determined by pupils' registration status. Where pupils are dual registered with a mainstream school, the time they spend attending a PRU, AP academy or AP free school should be accounted for in the number of places identified.

182. It is important that AP settings are not overfunded where places are not required, but there will be occasions when places remain unoccupied, for example to accommodate unpredictable fluctuations in demand. There will also be places that are occupied by more than one individual attending on a part-time basis (for example a place may be filled by a child who attends for 2 days a week from one school, and another child who attends for 2 days from another school, with no child present for one day a week).

183. It may not be appropriate for place funding to be provided for some AP services where children are receiving their education off-site, e.g. a home tuition service, or an outreach service provided by teachers whose base is the PRU or AP academy/free school. These services should be funded through a service level agreement with the commissioning local authority or school.

184. As in previous years, pre-16 AP places will be funded at £10,000 per place in 2020 to 2021, regardless of whether the place will be commissioned directly by a school or by a local authority.

185. The number of AP places to be funded in PRUs and AP academies should be agreed by the local authority and the institutions, in consultation with those schools in the area which may need to commission places. This may require consultation with other local authorities and their schools if they are likely to commission places in the PRU or AP academy. As explained previously, post-16 students in AP settings are not funded in the same way as pre-16 students, but on the same basis as post-16 students in mainstream schools.

186. Local authorities have flexibility to change the number of places they fund in 2020 to 2021 at PRUs, and should only notify ESFA of changes to the place numbers in AP academies, using the 2020 to 2021 place change notification process. ESFA contacted AP free schools directly in November 2019 detailing how their 2020 to 2021 high needs place numbers would be determined. Evidence to support changes in place numbers may have been required, and we recommended that PRUs, AP academies and AP free schools engage early with local authorities and schools commissioning places.

187. As with special academies, 2020 to 2021 places funded at AP academies are deducted from the DSG of the local authority in whose area the academy is located.

188. No deduction is made for places in AP free schools opening during the 2019 to 2020 or 2020 to 2021 academic years. However, a deduction is made from the DSG for places in AP free schools open before or during the 2018 to 2019 academic year. Deductions for the 2020 to 2021 academic year are made from the DSG of the local authority where the pupil lives, based on October 2019 school census data. These deductions will be notified to local authorities in March 2020.

189. AP academies and AP free schools should receive notification of their 2020 to 2021 allocations of place funding from ESFA by the end of March 2020, and PRUs from their local authority by end of February 2020.

190. Place funding provides some certainty for institutions, but a stable income and financial viability will continue to depend on:

- developing strong relationships with local authorities and schools that commission places
- working out with commissioners top-up funding rates that reflect the costs, including (for example) the costs of under-occupancy when places are not filled (see section on top-up funding below)
- where appropriate, developing commissioned services that can provide an income from authorities and schools on a longer-term basis (for example, through a 2 or 3 year contract)

## Top-up funding

191. Top-up funding for AP institutions is not usually related to an assessment of special educational needs. A standard top-up funding rate is often set for each PRU, AP academy or AP free school, which reflects the overall budget needed to deliver the provision for pupils and students attending.

192. Cost transparency is an important feature of the high needs funding arrangements. Local authorities and schools should be aware of the full cost of AP in different institutions and be able to make placement decisions on the basis of the cost and quality of what is on offer. It is therefore important that schools forum discussions about how AP is funded should include information about top-up funding rates for institutions and where the top-up funding and place funding for AP comes from.

193. There is often a very fluid movement of pupils and students in and out of AP during the course of a year. The extent of this movement can create uncertainty and volatility in an AP institution's budget planning. Recognising this, there are ways in which administration of top-up funding may be simplified.

194. One way, for example, would be for the AP institution to agree an estimate of the take up of places at the beginning of the year with its main commissioning local authorities and schools. Top-up funding could then be paid on account every month throughout the year; and a termly or year-end reconciliation could take place to reflect actual take up of places by individual pupils during the period (the difference between estimated and actual take up). This would give the AP institution more certainty over its in-year cash flow, enabling it to employ the staff needed to provide a high quality service throughout the year, and to adjust the quality and nature of provision over time to meet local authorities' and schools' demand.

195. It is important that top-up funding relates to pupils actually occupying places. The aim of the system of place funding and top-up funding is to give a proper balance between sustainable income for the AP institution, and flexibility to commission AP that meets the needs of individual pupils. Funding based solely on places, which may or may

not be occupied, risks spending scarce resources on places that are needed neither by local authorities nor by schools and academies. It also ties up funding that would otherwise allow decisions to be taken about the most appropriate AP for an individual pupil.

196. We are not prescriptive about how the calculation of top-up funding reflects the period that a child or young person occupies a place. Some AP institutions operate on the basis of a daily rate, but in many cases, it would be more straightforward to calculate the top-up funding using longer periods, for example weekly, monthly or even termly rates.

197. Commissioning local authorities and schools will want to carefully consider the top-up funding arrangements to make sure that there are no perverse incentives and that the funding achieves the intended outcomes.

198. It would also be possible to develop a top-up funding system that more closely reflects the achievement of desired outcomes, as a way of encouraging high quality AP. The AP institution could receive an enhanced rate of top-up funding after the end of the placement if the intended outcome for the pupil or student had been achieved.

199. For example, a mainstream school could be seeking a particular intervention for a year 11 student which would enable him or her to successfully complete their GCSE exams; it could agree a short term placement for the student at a local PRU and an additional amount of top-up funding that would be paid after the student's exam results are known, and if the expected grades had been achieved. Similarly, a local authority may wish to agree that an additional amount of top-up funding is payable if a Year 11 pupil is in education, employment or training in the year after leaving AP.

200. Such arrangements are not mandatory, but could be used to secure better outcomes and improve the quality of AP.

## **Commissioned AP services**

201. In many cases the services offered by a PRU or AP academy or free school will not be appropriately funded through the combination of place and top-up funding. Teachers at the AP setting may be involved in outreach work with local schools and academies or may be employed by them on a consultancy basis to advise on behaviour management. The local authority may use a PRU's staff to provide home tuition to children with medical needs or to provide a service to pregnant teenagers or young mothers who cannot easily attend school. These are examples of services that would normally be funded by the commissioning local authority or school, or group of schools, under a service level agreement that specifies what is required and the funding to be paid.

202. Where the local authority commissions the service, the funding would come from its high needs budget.

203. Where a school or group of schools commissions the service, the funding would come either from those schools' delegated budget share, or from centrally held high needs funding that has been devolved to schools. Any distribution of devolved AP funding should be fair and treat maintained schools and academies in the same way.

204. As with other centrally held AP budgets, the local authority should make sure that there is consultation with the schools forum on the amount retained and how it is used and distributed. For certain centrally held budgets, including for services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools, the regulations require schools forum agreement to the amount retained.

### **Permanent exclusions: funding adjustments**

205. As noted above, we encourage schools and local authorities to explore the most effective arrangements for AP commissioning and funding in their area, including for children who have been permanently excluded.

206. Where pupils are excluded, under the School and Early Years Finance Regulations funding should flow in-year from the school that has excluded the pupil to the provision that takes responsibility for the pupil.

207. If a school subsequently admits a pupil who has been permanently excluded during that financial year, it should then receive additional funding.

208. The provisions also apply to pupils who leave a mainstream school for reasons other than permanent exclusion and are receiving education funded by the local authority other than at a school.

209. The provisions also act independently of whether a particular pupil has been on the school census in the first place, and whether the school has therefore received funding for them.

210. Local authorities are responsible for adjusting the budget shares of mainstream maintained schools if a pupil is permanently excluded so that funding follows the pupil. Further information on this, including calculating the amount to be deducted from the excluding school's budget and admitting school's budget (if appropriate), is available in the redetermination of budgets where pupils have been excluded section of the schools funding operational guide.

211. Different funding arrangements apply in relation to pupils excluded from PRUs, AP academies, maintained special schools, special academies and children in designated special units or resourced places at mainstream schools. These schools receive base funding for each place, which is not linked to individual pupils and so is not withdrawn following a permanent exclusion. Similarly, the calculation for an admitting school would not be used for a PRU, AP academy or AP free school. They also receive top-up funding

that is linked to individual pupils. When commissioning places at one of these types of school, local authorities and schools should formally agree with the providing school what proportion of this top-up funding will be returned if a pupil leaves the school (for any reason). See paragraphs above for further information on how top-up funding works for PRUs, AP academies and AP free schools.

212. The only exception to this is where pupil premium is payable in respect of a pupil attending a PRU or special school maintained by the local authority. In this situation local authorities must adjust the school's budget in accordance with the same formula that applies to mainstream schools. In the case of AP and special academies, local authorities should claim from the academy an amount equivalent to the pupil premium (as calculated according to the formula in the regulations), or pay the academy the relevant amount when a previously excluded pupil joins the academy.

## **Annex 3: other information**

213. This section provides information that may be useful but is not covered in this guidance.

### **Support funding through the ESFA adult education budget**

214. Support funding is available through the ESFA adult funding methodology for learners aged 19 and above without an EHC plan. Support funding (learning and learner support) enables providers to meet the additional needs of learners who may have certain barriers to start or complete their learning goal.

### **Learning support**

215. Learning support is available to meet the cost of putting in place a reasonable adjustment, as set out in the Equality Act 2010, for learners and apprentices who have an identified learning difficulty or disability, to achieve their learning goal.

216. Learning support must not be used to deal with everyday difficulties that are not directly associated with a learner's or apprentice's learning on their programme.

217. Learning support will be earned at a fixed monthly rate if it has been reported in the individualised learning record (ILR) or claimed on the earnings adjustment statement.

### **Exceptional learning support claims above £19,000**

218. Learners who need significant levels of support to start or continue learning can get access to exceptional learning support if their support costs more than £19,000 in a funding year.

219. Learners aged 19 to 24 requiring significant levels of support would normally be expected to have an EHC plan provided by their local authority and, therefore, would access funding from their local authority.

220. If a learner has support costs of more than £19,000 in a funding year, providers can claim exceptional learning support (ELS).

221. Providers must submit ELS claims at the beginning of the learner's programme, or when you identify the learner requires support costs more than £19,000 in a funding year, by completing and sending the ELS claims document.

222. To claim exceptional learning support for a learner aged 19 to 24 you must confirm why the individual does not have an EHC plan. This should be a letter or email from the

learner's local authority stating the reasons why the individual does not need an EHC plan.

## Learner support

223. Learner support is available to provide financial support for learners with a specific financial hardship preventing them from taking part or continuing in learning. Before providers award support to a learner or apprentice, you must identify their needs within:

- hardship funding: general financial support for vulnerable and disadvantaged learners
- 20+ childcare funding: for learners aged 20 or older on the first day of learning who are at risk of not starting or continuing learning because of childcare
- residential access funding: to support learners where they need to live away from home

224. Full details of support funding are contained within the ESFA adult education budget guidance.

225. Information on ESFA adult education budget funding and performance rules is available within the adult education budget guidance.

226. ESFA adult education budget will only apply to:

- individual's resident in areas of England outside of the devolved authority areas undertaking ESFA funded AEB provision
- continuing AEB funded learners in England, including those resident in a devolved authority area, who have not completed their learning by 31 July 2019
- learners resident in England attending providers who meet the specified criteria above and will be funded nationally in 2019 to 2020 and 2020 to 2021
- learners resident in England, including those resident in a devolved authority area, undertaking a 19-24 traineeship programme

## Support funding through the apprenticeships funding methodology

227. Funding support for apprentices (all ages) is met by ESFA through the apprenticeship funding methodology. ESFA will provide learning support for apprentices to help with learning that affects their ability to continue and complete their apprenticeship. Learning support and Learner support for all age apprentices follow the apprenticeship funding rules.

228. Apprentices (aged 16 to 24) with an EHC plan are able to access learning support and exceptional learning support as detailed in the apprenticeship funding rules.

Additionally, apprentices aged 16 to 18, and apprentices with an EHC plan, or care leavers aged 19 to 24, will qualify for an additional payment of £1000 towards additional costs of training for both the provider and the employer. Full details are available in the 'additional payments' section of the apprenticeship funding rules.

229. More information on apprenticeships is available.

## **Free meals for FE institutions**

230. Further information on free meals for FE institutions can be found in 16 to 19 education: financial support for students guidance. This includes information for institutions where the cost of meals is sometimes included as part of the package of support that is agreed with local authorities.

## **SEND code of practice**

231. Local authorities, maintained schools and academies, general FE colleges, non-maintained schools and all independent special schools and special post-16 institutions on the section 41 approved list must have regard to the Department's statutory guidance on the special educational needs and disability (SEND) system for children and young people aged 0 to 25.

## **Welsh students studying in English FE colleges**

232. The Welsh government may consider paying top-up funding for high needs students from Wales studying in English FE colleges. The institution should assess the needs of the student and then contact the Welsh government to discuss payment of top-up funding. Place funding (elements 1 and 2) will be funded in the usual way direct by ESFA to colleges.

233. Institutions are not expected to recruit students from outside their normal recruitment area and should note that the Welsh government may decide not to make top-up payments for students at an English institution where suitable alternative provision is available nearer to their home.

## **Welsh pupils with high needs studying in English schools**

234. English and Welsh local authorities continue to have a statutory basis for the recoupment of the costs of certain pupils with high needs who are attending schools across the border from where they live. The inter-authority recoupment regulations enable local authorities to recover the costs of pupils with EHC plans, pupils in special schools, and pupils in hospital education.

235. There are no equivalent statutory arrangements for pupils or students from other countries in the UK or elsewhere, and local authorities and institutions are able to negotiate the recovery of costs as they consider appropriate, taking account of other relevant legislation (such as the Equalities Act).

## Annex 4: Glossary of abbreviations

236. To help you understand the abbreviations used in this guide, we've put together a glossary of terms:

<b>Abbreviation</b>	<b>Definition</b>
AP	alternative provision
APT	authority proforma tool
DAF	disability access fund
DSG	dedicated schools grant
EHCP	education, health and care plan
FE	further education
FSM	free school meals
IDACI	income deprivation affecting children index
ILP	independent learning provider
ILR	individualised learner record
ISB	individual schools budget
NFF	national funding formula
NMSS	non-maintained special school
PRU	pupil referral unit
SEN	special educational needs
SEND	special educational needs and disabilities

## Annex 5: Useful links

237. The below are links to resources for further information on related guidance and legislation:

- [School and Early Years Finance \(England\) Regulations 2020](#)
- [Children and Families Act 2014](#)
- [Dedicated schools grant \(DSG\): 2020 to 2021](#)
- [National funding formula tables for schools and high needs: 2020 to 2021 - GOV.UK](#)
- [Special free schools adjustments: a guide for local authorities 2020 to 2021A](#)
- [review of school exclusion: terms of reference](#)
- [Public Contracts Regulations 2015](#)
- [School census: guide to submitting data](#)
- [Individual learner record: guide to submitting data](#)
- [Schools revenue funding 2020 to 2021: Operational guide](#)
- [Section 251: 2019 to 2020](#)
- [Schools forum operational and good practice guide](#)
- [High needs benchmarking tool](#)
- [Disapplication proforma 2020 to 2021](#)
- [Early years national funding formula: funding rates and guidance](#)
- [SEND code of practice: 0 to 25 years](#)
- [Get childcare: step by step guidance](#)
- [Academies: making significant changes or closure by agreement](#)
- [Education Act 1996](#)
- [Hospital education funding: guidance](#)
- [Full-time enrolment of 14 to 16-year olds in further education and sixth-form colleges guidance](#)
- [High needs funding: due diligence process for special post-16 providers](#)
- [Guide for independent special institutions on applying for inclusion on the Secretary of State approved list](#)
- [16 to 19 funding: maths and English condition of funding guide](#)
- [Providing supported internships for young people with an EHC plan](#)
- [Funding rates and formula guidance](#)
- [Schemes for financing local authority maintained schools](#)
- [Education \(Amount to Follow Permanently Excluded Pupil\) Regulations 1999](#)
- [Equality Act 2010](#)
- [ESFA funding claims and reconciliation](#)
- [Adult education budget guidance](#)
- [Apprenticeship funding rules guidance](#)
- [Further education and skills apprenticeships](#)
- [16 to 19 education: financial support for students guidance](#)

This document has been withdrawn.

- [Inter-authority Recoupment \(England\) Regulations 2013](#)



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