STATUTORY INSTRUMENTS

# 2017 No. 44

# EDUCATION, ENGLAND

## The School and Early Years Finance (England) Regulations 2017

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| *Made - - - -* | *23rd January 2017* |
| *Laid before Parliament* | *25th January 2017* |
| *Coming into force - -* | *16th February 2017* |

The Secretary of State for Education makes the following Regulations in exercise of powers conferred by 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(**10**).

## PART 1

### Introduction

**Citation, commencement, application and interpretation**

**1.**—(1) These Regulations may be cited as the School and Early Years Finance (England) Regulations 2017 and come into force on 16th February 2017.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2017.

(**1**) Section 45A was inserted by section 41(1) of the 2002 Act. It was amended by section 101 of, and paragraph 3 of Schedule 16 to, the 2005 Act, and by section 3(2)(a) of the Childcare Act 2016 (c. 5).
(**2**) Section 45AA was inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.
(**3**) Section 47 was amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.
(**4**) Section 47ZA was inserted by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) ("the 2009 Act") and amended by section 3(2)(b) of the Childcare Act 2016.
(**5**) Section 47A was inserted by section 43 of the 2002 Act and amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2002 Act; section 57 of, and paragraph 2 of Schedule 5 to, the 2006 Act; section 165 of the Education and Skills Act 2008 (c.25); and section 194 of the 2009 Act.
(**6**) Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act; section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act; and section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.
(**7**) Subsections (2) and (2A) were substituted for subsections (2) and (3), as originally enacted, by section 57 of, and paragraph 4 of Schedule 5 to, the 2006 Act.
(**8**) Paragraph 2B of Schedule 14 was substituted for paragraph 2, as originally enacted, by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.
(**9**) 1998 c.31. For the meaning of "prescribed" and "regulations", see section 142(1) of the 1998 Act.
(**10**) 2002 c.32. For the meaning of "prescribed" and "regulations", see section 212(1) of the 2002 Act.

(3) These Regulations apply in relation to England.

(4) In these Regulations—

"1989 Act" means the Children Act 1989(**11**);

"1996 Act" means the Education Act 1996(**12**);

"1998 Act" means the School Standards and Framework Act 1998;

"2002 Act" means the Education Act 2002;

"2003 Act" means the Local Government Act 2003(**13**);

"2005 Act" means the Education Act 2005(**14**);

"2006 Act" means the Education and Inspections Act 2006(**15**);

"2009 Act" means the Apprenticeships, Skills, Children and Learning Act 2009(**16**);

"2010 Act" means the Academies Act 2010(**17**);

"2014 Act" means the Children and Families Act 2014(**18**);

"the Early Years Provision Regulations 2014" means the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014(**19**);

"2015 Regulations" means the School and Early Years Finance (England) Regulations 2015(**20**);

"2008 Document" means the document entitled "Statutory Framework for the Early Years Foundation Stage" published by the Secretary of State on 19th May 2008(**21**);

"2012 Document" means the document entitled "Statutory Framework for the Early Years Foundation Stage" published by the Secretary of State on 27th March 2012(**22**);

"2014 Document" means the document entitled "Statutory Framework for the Early Years Foundation Stage" published by the Secretary of State on 31st March 2014(**23**);

"2016 ARA" means the document entitled "2016 Key Stage 2 Assessment and Reporting Arrangements"(**24**) containing provisions made under Article 11 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003(**25**), made under section 87(3) of the 2002 Act;

"academic year" means any period commencing with 1st August and ending with the next 31st July;

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(**11**) 1989 c.41.
(**12**) 1996 c.56.
(**13**) 2003 c.26.
(**14**) 2005 c.18.
(**15**) 2006 c.40.
(**16**) 2009 c.22.
(**17**) 2010 c.32 as amended by section 53(7) of the Education Act 2011 (c.21).
(**18**) 2014 c.6.
(**19**) S.I. 2014/2147, as amended by S.I. 2016/887.
(**20**) S.I. 2015/2033.
(**21**) Available at: http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00261-2008. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
(**22**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271631/eyfs_statutory_framework_march_2012.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
(**23**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335504/EYFS_framework_from_1_September_2014__with_clarification_note.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
(**24**) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278150/2014_KS2_assessmentandreportingarrangementsARA_DIGITAL_HO.pdf. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.
(**25**) S.I. 2003/1038, amended by S.I. 2009/1585, 2010/290, 2011/2392, 2013/1513; there are other amending instruments but none is relevant.

"administrative costs and overheads" includes—

(i) expenditure on legal services;

(ii) expenditure in relation to the investigation and resolution of complaints;

(iii) expenditure related to functions imposed by or under Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools), the administration of grants to the authority (including preparation of applications) and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions; and

(iv) expenditure on recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares and who are paid for services.

"all-through schools" means those primary or secondary schools known by this title where pupils may join the school at an age of between three and five years and remain at the school until the age of between 16 and 19 years;

"capital expenditure" means expenditure of a local authority which falls to be capitalised in accordance with proper accounting practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the 2003 Act(**26**);

"central expenditure" means, in respect of the funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 or, in respect of the previous funding period, the total amount deducted by a local authority from its schools budget in accordance with regulation 8 of the 2015 Regulations;

"CERA" means capital expenditure which a local authority expects to charge to its revenue account within the meaning of section 22 of the 2003 Act;

"community early years provision" means funded early years provision provided by the governing body of a maintained school under section 27(1) of the 2002 Act to children other than pupils at the school, where the local authority has chosen to fund such provision;

"Dedicated Schools Grant" means the grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act;

"early years block" means the amount of funding allocated to a local authority in relation to early years provision in the Dedicated Schools Grant during the funding period;

"the Early Years Foundation Stage Profile" has the meaning given in section 2 of the 2008 Document, the 2012 Document or the 2014 Document, as the context specifies more particularly;

"early years provision" has the meaning given in section 20 of the Childcare Act 2006(**27**);

"early years pupil premium" means funding supplied by the Department for Education for the purpose of early years provision to children who meet the criteria in regulation 17(2);

"EHC plan" has the meaning given in section 37(2) of the 2014 Act;

"eligibility for free school meals" means eligibility for free lunches under section 512ZB of the 1996 Act(**28**);

"excluded early years provision" means early years provision provided by a provider—

(**26**) Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146). Relevant amendments to those regulations are made by S.I. 2004/534, 2004/3055 and 2007/573.

(**27**) 2006 c.21.

(**28**) Section 512ZB was inserted by section 201(1) of the 2002 Act and amended by section 28 of, and paragraph 16(3) of Schedule 3 to, the Welfare Reform Act 2007 (c.5), section 26(1)(a) to (e) of the Child Poverty Act 2010 (c. 9) and section 31, and paragraph 39(a) and (b) of Schedule 2 to, the Welfare Reform Act 2012 (c.5).

(i) which is an independent school (other than an academy) which does not meet the standards prescribed under section 94 of the Education and Skills Act 2008(**29**) in relation to the spiritual, moral, social and cultural development of pupils at the school; or

(ii) which the local authority has reasonable grounds to believe—

(aa) does not actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

(bb) promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations;

"expenditure on the schools specific contingency" is central expenditure deducted for the purpose of ensuring that monies are available to enable an increase in a school's budget share after it has been allocated and where it subsequently becomes apparent that a governing body has incurred expenditure which it would be unreasonable to expect it to meet from the school's budget share, which may include expenditure in relation to—

(i) schools in financial difficulty;

(ii) the writing off of deficits of schools which are discontinued, excluding any associated costs and overheads;

(iii) new, amalgamating or closing schools; or

(iv) circumstances which were unforeseen when the school's budget share was initially determined;

"funded early years provision" means—

(i) early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006; and

(ii) early years provision specified for the purposes of section 2(1) of the Childcare Act 2016(**30**);

"funding period" means the financial year beginning on 1st April 2017;

"home school" means, in respect of a pupil, a school which is the shortest distance in a straight line from the pupil's home and which admits pupils of the pupil's age and sex, other than—

(i) a selective school;

(ii) a special school(**31**); or

(iii) an independent school which is not an academy;

"hospital education" means 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 1996 Act (exceptional provision of education), where the child is being provided with such education by reason of a decision made by a medical practitioner, and "hospital education places" shall be read accordingly;

"IDACI" means the Income Deprivation Affecting Children Index referred to in the document named "The English Indices of Deprivation 2015" published by the Department for Communities and Local Government(**32**);

"IDACI score" means the score allocated to a child under IDACI;

(**29**) 2008 c.25.
(**30**) 2016 c.
(**31**) For the meaning of special school, see section 337 of the 1996 Act.
(**32**) Available at: www.gov.uk/government/statistics/english-indices-of-deprivation-2015. A printed copy may also be inspected at the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, on request.

"key stage" means the key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 84, 85 and 85A of the 2002 Act(**33**) and "key stage 1", "key stage 2", "key stage 3" and "key stage 4" mean, respectively, the first, second, third and fourth key stages referred to in those sections;

"looked after child" has the meaning given by—

(i) section 22(1) of the 1989 Act; or

(ii) section 74(1) of the Social Services and Well-being (Wales) Act 2014(**34**);

"middle school single sum formula" is

$$A\times(B/C)+D\times(E/C)$$

where—

(i) *A* is the amount allocated per school by the authority under paragraph 1(a) of Schedule 3 (primary single sum);

(ii) *B* is the number of primary-age year groups in the school;

(iii) *C* is the number of year groups in the school;

(iv) *D* is the amount allocated per school by the authority under paragraph 2(a) of Schedule 3 (secondary single sum); and

(v) *E* is the number of secondary-age year groups in the school;

"the maintained nursery school supplement" is any amount allocated to the authority in respect of nursery schools maintained by it, notified to the authority in the early years block;

"non-domestic rate" has the meaning given in section 54 of the Local Government Finance Act 1988(**35**);

"previous funding period" means the financial year beginning on 1st April 2016 and "previous funding periods" means such funding periods as the context specifies more particularly;

"proper accounting practices" means those accounting practices which a local authority is required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment, are generally regarded (whether by reference to any generally recognised published code or otherwise) as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned(**36**);

"provider", in relation to funded early years provision, includes a governing body of a maintained school or a relevant early years provider;

"prudential borrowing" means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings expected to be achieved as a result are equal to or more than the expenditure expected to be incurred in borrowing the money;

"pupil premium" means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

"pupil premium grant" is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

"relevant early learning goals" means the early learning goals in the prime areas in section 1 of the 2014 Document (or, as the case may be, the 2012 Document) and also the early

(**33**) Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.
(**34**) 2014 anaw. 4.
(**35**) 1988 c.41.
(**36**) This definition is taken from section 21 of the 2003 Act and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).