

## **SCHOOL FINANCE (ENGLAND) REGULATIONS 2006 – AMENDMENT REGULATIONS.**

### **Introduction**

1. This short explanatory note sets out the amendments the Department plans to make to the current School Finance (England) Regulations 2006/468.
2. Regulations were made in February 2006 covering the two years of the multi-year funding period covering 2006-07 and 2007-08. The draft amendment regulations attached to this note set out a number of amendments and additions to the main regulations: specifically they cover:
  - a. a new provision related to delegated budgets for new schools;
  - b. a minor amendment to the wording of regulation 14(4)(h) – differentiated AWPU for pupils following vocational education in key stage 4;
  - c. a change to the excluded pupils regulation (regulation 23) in the light of the introduction of ‘day 6’ provision;
  - d. the addition of provision to allow a schools forum to approve proposed scheme changes; and
  - e. two minor amendments to schedule 5 to the 2006 regulations (Minimum Funding Guarantee).
3. All of these amendments are consequential on policy developments already consulted on and/or represent very minor changes to some technical aspects of the regulations that, while not changing policy, further clarify its intention. As such we wish to consult on the extent to which the amendment regulations achieve their stated purpose. The consultation period ends on **31 January 2007**. Consultation responses should be sent to:

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### **Delegated budget for new schools**

4. Regulation 20(2) of the School Finance (England) Regulations 2006 made provision to ensure a new school received a budget share during the funding period before it first admitted pupils that was sufficient to cover the start-up costs of the school. As drafted in the 2006 regulations this provision was slightly unsatisfactory in that primary legislation did not enable us to set the provision out in regulations in a way that gave enough clarity to the policy intention. We have therefore taken powers in The Education and Inspection Act 2006 to allow us to do this – specifically paragraph 4 of schedule 5 to the 2006 Act has amended section 49 of the School Standards and Framework Act 1998 to enable regulations to be made that:

- a. specify the date at which a new school should receive a delegated budget share; and
- b. make provision for amending the date set out in regulations where appropriate.

5. These regulations are made under regulation 2(3) of the amendment regulations by inserting a new section (10A – Delegated budgets for new schools) to the 2006 regulations, the effect of which is to require local authorities to determine and delegate to a new school a budget share which is sufficient to meet their start-up costs from “the appropriate date”. The appropriate date is defined as either 15 months prior to the opening date of a new school (i.e. the date at which the school first admits pupils according to section 34(9) of the Education Act 2002) or the date at which a temporary governing body for the new school is constituted, if that is later than 15 months before the opening date.

6. Provision is also made under this new regulation to allow for a local authority to vary the appropriate date with the approval of the schools forum or, where agreement cannot be reached locally, the Secretary of State if local circumstances are such that the provisions set out in regulations are inappropriate or otherwise unworkable (10A(3)-(6)). In considering a proposed change to the relevant date a schools forum may approve or refuse to approve the proposed change to the appropriate date or determine an alternative date to the one proposed. Where local consensus cannot be reached a local authority may come to the Secretary of State for a decision.

7. In line with the current provision under regulation 20 of the 2006 Regulations, the amount that the budget share of a new school should be prior to its opening date is not specified in regulations: local authorities should make appropriate professional judgements in this regard.

8. Finally, regulation 2(5) of the amendment regulations deletes regulation 20(2) of the 2006 Regulations as it is no longer necessary in the light of the new provision outlined above.

### **Key stage 4 AWPU Weightings**

9. The 2006 Regulations enabled local authorities to weight pupil numbers in a way that differentiated between pupils in key stage 4 who were following a curriculum that included an element of vocational learning and those whose curriculum didn't. This was expressed in terms of a pupil who "spends more than half his time in full time education accessing vocational education" (14(4)(h)).

10. A number of local authorities have made the point that the requirement that half of a pupil's education should be of a vocational nature was actually preventing them taking advantage of the flexibility to differentiate key stage 4 AWPU's given that it was very unlikely, if not impossible, that a pupil would be able to access that amount of vocational provision. In response to these concerns the regulation 2(4) of the amendment regulations removes the 'half-time' condition. A local authority may, therefore, set a different weighting for key stage 4 pupil numbers from the basic key stage 4 weighting for those pupils whose curriculum contains some element of vocational education if they think it is appropriate.

### **Excluded Pupils**

11. Local authorities will already be aware of the requirement, from September 2007, to provide education for excluded pupils from the 6<sup>th</sup> day they are excluded.

12. In support of this requirement regulation 2(6) of the amendment regulations changes the "relevant date" in regulation 23 of the 2006 Regulations (pupils permanently excluded from, or leaving, maintained schools) to the 6<sup>th</sup> school day following the date upon which the pupil is permanently excluded. This change to the relevant date, however, only takes effect from 1<sup>st</sup> September 2007: up to that point, the existing provisions under regulation 23 of the 2006 regulations remain in force.

13. Given that the 6<sup>th</sup> day after an exclusion will be before the outcome of any appeal against it that may occur, provision is made under regulation 2(7) of the amendment regulations to return to the school's budget share a relevant amount of funding if a pupil is reinstated to the school on appeal. Any funding returned to the school under these circumstances will take account of the period the pupil has been educated by the local authority: i.e. the amount returned to the school will not include the funding covering the period the local authority has been responsible for providing the pupil's education.

### **Approval of local schemes**

14. At present, local authorities are required to seek approval from the Secretary of State for any changes they plan to make to their local schemes for financing schools. Local authorities will already be aware of the policy intention to allow such changes to be determined locally where consensus

can be reached between a local authority and its schools forum. Provision was made in the Education and Inspection Act 2006 to enable regulations to be made to enable this: regulation 2(9) of the amendment regulations adds a new regulation to the 2006 regulations which enables a schools forum to approve a local authority proposal to change their scheme as it stands or with modifications as determined by the schools forum. As with all other approval powers of schools forums, where local consensus cannot be reached a local authority may come to the Secretary of State for a decision.

### **Minimum Funding Guarantee: schedule 5**

15. Two minor amendments are made to schedule 5 to the 2006 Regulations.

16. First, in order to ensure a like-for-like position was used, the baseline used in the calculation of a school's GFL for funding period 1 included any threshold and performance grant paid to a school in 2005-06 where in 2006-07 a local authority was delegating the costs for threshold and performance pay into the school's budget share. Provision was not made for a similar adjustment to be made to the baseline of the 2007-08 GFL where a local authority had chosen to hold funding for threshold and performance pay centrally in funding period 1 but plans to delegate funding to school budgets in funding period 2 (i.e. 2007-08).

17. Regulation 2(11) of the amendment regulations inserts a provision after paragraph 1(e)(i) of schedule 5 to the 2006 Regulations to enable an adjustment of this kind to be made to the baseline of the 2007-08 GFL: i.e. where threshold and performance pay costs are being delegated to school budget shares for the first time in 2007-08 the baseline should include an appropriate amount of centrally held threshold and performance pay funding allocated to that school in funding period 1.

18. Second, the amendment regulations corrects a minor mistake in the schedule: at paragraph 1(e)(iii) reference to paragraph 36(ICS) should read paragraph 35(ICS). This in no way alters the intention of the policy it was merely a drafting error in the original. Funding in relation to ks1 class sizes held under paragraph 35 of schedule 4 to the 2006 Regulations should be excluded from a school's budget share for the purposes of establishing the baseline for the calculation of the GFL in 2007-08.

### **Consultation**

19. The consultation period will last until 31 January 2007. Comments are invited on the extent to which the amendment regulations meet policy intention as outlined in this note.

School Funding Division  
DfES  
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