



Department  
for Education

# **School and Early Years Finance (England) Regulations 2014**

**Government consultation response**

**December 2014**

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## Introduction

Consultation on the School and Early Years Finance (England) Regulations 2014 lasted from 8 August to 17 October 2014. The School and Early Years Finance (England) Regulations 2014 (the 2014 Regulations) define the local authority education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and set out how local authorities are to allocate funding from the individual schools budget to maintained schools and private, voluntary and independent providers of free early years provision (relevant early years providers) through a locally determined formula.

To a large degree, the 2014 Regulations re-enact provisions in the School and Early Years Finance (England) Regulations 2013 but we consulted on some changes. These were in relation to schools forum composition; preventing the use of the dedicated schools grant for 19 to 25 year olds in special schools and special academies; the value of alternative provision places; the early years pupil premium; the determination of budgets for new maintained schools and those recently opened who are still adding year groups; and excluded early years providers.

There were 865 responses, including 32 from local authorities, 10 from schools forums, 17 from governors, 30 from individual schools, 4 from membership organisations and 3 from trade unions. The remaining responses came from members of the public, parents and churches.

The Department conducted this consultation online and made available all the appropriate documents at: [School and Early Years Finance \(England\) Regulations 2014](#)

## Summary of responses received and the government's response

The consultation received 865 responses, of which the vast majority were submitted through the online response system.

Type of Respondent	Responses	
Member of the public	463	54%
Parent	203	24%
Church	50	6%
Local authority	32	4%
Anonymous	29	3%
Christian group	18	2%
Governor	17	2%
Headteacher	10	1%
Schools forum	10	1%
Nursery school	9	1%
School	8	1%
Other	6	1%
Membership organisation	4	0%
Primary school	3	0%
Trade union	3	0%
Childminder	2	0%
Carer	1	0%
Charity	1	0%
Special education needs	1	0%

## Excluded early years providers

The vast majority of the 865 responses (755) were concerned with the amendment to **Schedule 2, paragraph 14**, which was extended so that early years expenditure held centrally cannot be paid to an excluded provider.

The draft regulations defined “excluded early years provision” as early years provision provided by a provider:

- (i) *Which is an independent school (other than an Academy school) which does not meet the standards prescribed under section 157(1) of the 2002 Act 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*

The responses raised two concerns:

- The source of the definition of British values
- The extent to which (ii) (bb) prevents the teaching of religion generally, and creationism in particular, in early years settings

## Government response

We have carefully considered the responses for this issue, and have decided that it is best that the definition of excluded early years providers remains in the regulations as described above.

The definition of ‘British values’ listed under (ii) (aa) comes from the government’s [Prevent Strategy](#) (2011), and so is consistent with other legislation across government. It is right that children in early years settings should be taught about these values in an age-appropriate way. For children in the early years, this will be about learning right from wrong; learning to take turns and share; and in practitioners challenging negative attitudes and stereotypes. As a result, we will make no amendments to the the definition of British values in the draft regulations, and so it will remain identical in the regulations laid before Parliament.

Independent schools, which are not funded by the government, are free to teach creationism as science if they wish, and parents are free to send their children there. A small number of these schools, however, operate early years provision which can currently attract government funding. The government has a responsibility to spend public money appropriately, and does not believe that it is appropriate to fund early years settings that teach creationism as evidence-based scientific fact. (ii) (bb) was added to the regulations to ensure this is the case.

The removal of funding from providers found to be teaching creationism as science has no bearing on teaching children about religious beliefs, traditions and festivals. Nurseries and pre-schools continue to be free to tell creation stories, provided that they do not assert that these are scientifically based.

## Question breakdown

The majority of the remaining responses supported the proposals for the changes we consulted on. As a result, the Department will be proceeding with all of the changes described in the consultation document. A breakdown of responses for each question can be seen below.

### Question 1 a) Do you agree that special academies should be represented on schools forums?

This question asked about a change to **Regulation 3**, which made an amendment to the **School Forum (England) Regulations 2012** to require that, if there are any special academies in the local authority's area, there must be at least one member representing them on the forum.

There were 344 responses to this question, of which 234 (68%) were in agreement, 27 (8%) disagreed and 83 (24%) stated they were 'not sure'.

Some responses were concerned that this policy could lead to disproportionate representation for a small sub-set of institutions. Others were concerned that this would make the forums too large.

We are conscious of the need to balance the size of the forum while ensuring all interests are adequately represented. It is important that those groups who represent distinct interests, and are of a significant size, are separately represented. We believe that special academies meet these requirements, and so warrant their own representation. Given this, and that the majority of respondents agreed with this proposal, we will make this amendment to the regulations.

## Question 1 b) Do you agree that alternative provision academies should be represented on schools forums?

This question asked about a change to **Regulation 3**, which made an amendment to the **School Forum (England) Regulations 2012** to require that, if there are any alternative provision academies in the local authority's area, there must be at least one member representing them on the forum.

There were 331 responses to this question, of which 215 (65%) were in agreement, 28 (8%) disagreed and 92 (27%) stated they were 'not sure'.

The responses to this question were very similar to those for question 1 a); a small number of concerns were raised about whether this would lead to disproportionate representation for some members, or whether the schools forum would become too large.

The principles behind this change are the same as for the change consulted on in question 1a) – we believe that alternative provision academies have distinct interests, and are a group of sufficient size, and so warrant their own representation on the forum. As a result, and given that the majority of responses were in agreement with this proposal, we will make this amendment to the regulations.

## Question 1 c) Do you agree that schools forums should be consulted about the commissioning of high needs places and the authority's arrangements for top-up funding?

This question asked about a change to **Regulation 3**, which made an amendment to the **School Forum (England) Regulations 2012** which adds more specificity to the provisions for the forum to discuss SEN and AP matters. In both cases, the forum must discuss places to be commissioned by the local authority – and in the case of AP also by schools – and the arrangements for paying top-up funding.

There were 323 responses to this question, of which 224 (70%) agreed, 23 (7%) disagreed and 76 (24%) stated they were 'not sure'.

A small number of responses were concerned as to how this would work in practice, in particular the level of detail a schools forum was required to go in to. We will revise the good practice guidance for schools forums to provide more information about this process.

Given the positive response this question received, we will proceed with making this change to the regulations.

## **Question 2 Do you agree with these changes? What impact would they have on the availability of existing local provision for 19-25 year olds with Education, Health and Care (EHC) plans?**

This was a question about a change to **Regulation 14(1)** and **paragraph 18 of Schedule 2**. These changes would mean the dedicated schools grant must not be used to fund places or top-up for 19 to 25 year olds in special schools and special academies.

There were 50 responses to this question. This question did not give respondents the ability to select 'agree', 'disagree' or 'not sure', and instead invited comments. We have identified that 24 comments expressed clear agreement with the proposal and 17 expressed clear disagreement, although 3 misunderstood the impact of the proposal.

Nine local authorities stated that this change would have no impact on their local provision, and a number of other respondents strongly supported this measure as other settings would allow 19 to 25 year olds to prepare better for adulthood.

Some respondents were concerned that this would prevent those 18 or 19 year olds continuing for an extra year at their current school where they need to do so to complete their studies. This is a misunderstanding. The regulations do allow the funding of a 19 year old who is attending a secondary course which began before they turned 18. The regulations do not, however, allow for special schools and academies to be funded for students after they cease to be 19, or for new students aged 19 or above.

We believe that there is a negative impact in allowing children and young people to remain in the same institution for, in some cases, more than twenty years, and that the needs of 19 to 25 year olds with education, health and care plans can be better met outside special schools and academies. As a result, this amendment will be made in the final regulations.

## **Question 3 Do you agree with the changes as a result of Regulation 14(3)?**

This question consults on **Regulation 14(3)**, which implements the change in value for an alternative provision place from £8,000 to £10,000 a year with transitional protection. It also clarifies that places in pupil referral units include those to be commissioned by schools. Local authorities will be responsible for funding these places.

There were 248 responses to this question, of which 105 (43%) agreed, 25 (10%) disagreed and 118 (48%) stated they were 'not sure'

The vast majority of those who said they were 'not sure' stated they were unsure as to the justification behind the increase. When we introduced the new high needs funding arrangements in 2013, we said that we would keep the level of funding for alternative provision places under review. We have reflected on whether the current level of place

funding provides the right balance between stability for providers of alternative provision places and flexibility for those commissioning places for individual pupils and paying the top-up funding to identify the right provision for them. We have concluded that changing the balance of place and top-up funding in favour of the former will give pupil referral units, and academies and free schools offering alternative provision places, more stability by increasing their guaranteed budget for the year.

We believe it is therefore right to make this amendment. Given that, when we remove those who were not sure as to the justification of the increase, the majority agreed with this change, the amendment has remained in the final regulations.

#### **Question 4 Do you agree with the changes as a result of Regulation 21(2)?**

This question consulted on **Regulation 21(2)**, which amends the provision for the determination of budgets for new maintained schools and for schools that have opened in recent years and are still adding year groups. Local authorities must now fund these schools on estimated pupil numbers. Local authorities may reconcile any differences between estimated and actual pupil numbers in the following financial year.

There were 283 responses to this question, of which 180 (64%) agreed, 37 (13%) disagreed and 66 (23%) stated they were 'not sure'.

Of those that were 'not sure', many were unsure as to the impact this would have on individual schools. The purpose of this change was to alleviate some of the difficulties local authorities have in funding new or recently-opened schools. It provides a way for local authorities to fund such schools, without having to apply to the Secretary of State for a variation in every case. Local authorities will be expected to follow the same principles in setting budget shares for new and recently opened academies and free schools.

This question attracted significant agreement from local authorities, with 20 of the 29 responses agreeing, and a further 4 disagreeing with the proposal. Similarly, 6 of the 8 schools forums that responded agreed with the proposal.

As a result, we will make this amendment to the regulations.

**Question 5 The other changes to the regulations reflect policies that we have already announced. For these changes we are therefore only consulting on the drafting of the regulations rather than the substance of the policy. Do you have any comments on the drafting?**

It was under this question that the 755 responses about excluded early years providers definition were received. The government response to this can be found towards the start of this section, on page 5.

We received very few other responses to this question.

Four responses requested clarification on how the early years pupil premium would be administered for looked after children. In parallel, some responses to the consultation on the early years pupil premium highlighted the role that virtual school heads play in managing the school age pupil premium. We want them to have the same role in managing the early years pupil premium and therefore we have amended **Regulation 16(11)(b)** to remove looked after children from the main early years pupil premium eligibility list, and to the same regulation added the requirement that local authorities must allocate 53p x 570 hours for the early education of looked after three or four year olds receiving the early education entitlement. The virtual school head will be able to identify which children are eligible through this route.

A small number of other respondents raised a number of questions relating to the delivery of the early years pupil premium, including eligibility checking, the level of funding compared with the school-age pupil premium, and the timescales for making funding available to providers. These issues were captured and addressed in the [government response](#) to the consultation on the early years pupil premium, published on 23<sup>rd</sup> October.

## **Next steps**

The Department will lay the School and Early Years Finance (England) Regulations 2014 in the Houses of Parliament for a period of 21 days. These regulations will then come into force on 12 January 2015.

## **Annex A: List of organisations that responded to the consultation**

Affinity

Basingstoke Community Churches

Bethel Mission Church, Swansea

Bible Theology Ministries

Blue Coat Secondary School

Bram Longstaffe Nursery School

Cambridgeshire County Council

Christ Church, Haywards Heath

Christ the Rock Ministries

Christian Party “Proclaiming Christ’s Lordship”

Christians in Science

Comberton Baptist Church

Cornwall Council

Creation Resources Trust

Crich Baptist Church

Doncaster MB Council

Dorset County Council

East Sussex County Council

Elim – Wigan

Elim – Selly Oak

Elim Pentecostal Church

Explorers Pre-School

Family Life International

Freedom and Autonomy for Schools National Association (FASNA)

Fingerprints Pre-School

Foundations Day Nursery

Gateshead Council

Gateshead Schools Forum

Glasgow Street Outreach

Governors of Churchill Community College

Granary Childcare Limited

Great Open Door

Greyfriars Church

Hereward College

Hertfordshire County Council

Hertfordshire Schools Forum

Hull City Council

International Ministerial Council of Great Britain

King's Church, Southampton

Lancashire County Council

Lancashire Schools Forum

Leeds City Council

Leeds Reformed Baptist Church Pre-school

Life Church

London Borough of Hackney

London Borough of Hammersmith and Fulham

London Borough of Waltham Forest

Luton Pentecostal Church Christian Academy

Merseyside Christian Fellowship

Milton Keynes Council

Montessori Schools Association

National Association of Schoolmasters Union of Women Teachers (NASUWT)

National Association of Head Teachers

National Deaf Children's Society

National Sensory Impaired Partnership

The Association of National Specialist Colleges (Natspec)

North East Lincolnshire Council

North Tyneside Schools Forum

North Yorkshire County Council

Nottinghamshire County Council

Oxfordshire County Council

Pre School Learning Alliance

Rochdale Borough Council

Royal Borough of Kensington and Chelsea

Salford City Council

Sandwell Schools Forum

Sefton Schools Forum

Skinner's Kent Academy

Slough Schools Forum

Slough Borough Council

Solihull MBC

St Elizabeth's, Becontree

St James Pre-School, Tunbridge Wells

Staffordshire County Council

Surrey County Council

Teach Both Explanations for Origins

Trustees of The River School, Worcester

The Vine Church

Voice The Union

Wall Heath Evangelical Free Church

Wandsworth Council

Warwickshire County Council

West Sussex County Council

Westminster City Council

Wolverhampton City Council

Worcestershire County Council

## Annex B: Response statistics for each question

<b>1a) Do you agree that special academies should be represented on schools forums?</b>			
<u>Number of responses</u> = 344			
<u>Category</u>	<u>Agree</u>	<u>Disagree</u>	<u>Not sure</u>
<b>Anonymous</b>	7	1	3
<b>Childminder</b>	0	0	1
<b>Church</b>	14	0	2
<b>Governor</b>	4	0	2
<b>Headteacher</b>	5	0	1
<b>Local authority</b>	11	8	7
<b>Nursery School</b>	3	0	0
<b>Parent</b>	60	6	29
<b>Primary School</b>	1	0	0
<b>School</b>	5	0	1
<b>Schools Forum</b>	5	1	4
<b>Special Education Needs</b>	1	0	0
<b>Trade Union</b>	0	2	1
<b>Member of the Public</b>	108	8	30
<b>Christian Group</b>	6	0	1
<b>Membership Organisation</b>	1	1	1
<b>Other</b>	3	0	0
<b>Total</b>	<b>234</b>	<b>27</b>	<b>83</b>
	<b>68%</b>	<b>8%</b>	<b>24%</b>

**1b) Do you agree that alternative provision academies should be represented on schools forums?**

Number of responses = 335

<u>Category</u>	<u>Agree</u>	<u>Disagree</u>	<u>Not sure</u>
Anonymous	6	0	2
Childminder	1	0	0
Church	14	1	2
Governor	4	0	2
Headteacher	4	0	2
Local authority	9	8	8
Nursery School	3	0	0
Parent	56	6	30
Primary School	1	0	0
School	4	1	5
Schools Forum	4	1	5
Special Education Needs	1	0	0
Trade Union	0	2	1
Member of the Public	99	8	33
Christian Group	6	0	1
Membership Organisation	0	1	1
Other	3	0	0
<b>Total</b>	<b>215</b>	<b>28</b>	<b>92</b>
	<b>65%</b>	<b>8%</b>	<b>27%</b>

**1c) Do you agree that schools forums should be consulted about the commissioning of high needs places and the authority's arrangements for top-up funding?**

Number of responses = 323

<u>Category</u>	<u>Agree</u>	<u>Disagree</u>	<u>Not sure</u>
Anonymous	6	0	1
Childminder	1	0	0
Church	13	1	2
Governor	3	0	2
Headteacher	5	1	0
Local authority	18	5	3
Nursery School	3	0	0
Parent	54	5	29
Primary School	1	0	0
School	5	1	0
Schools Forum	9	0	1
Special Education Needs	1	0	0
Trade Union	2	0	1
Member of the Public	92	9	35
Christian Group	4	1	1
Membership Organisation	3	0	1
Charity	1	0	0
Other	3	0	0
<b>Total</b>	<b>224</b>	<b>23</b>	<b>76</b>
	<b>70%</b>	<b>7%</b>	<b>24%</b>

### 3 Do you agree with the changes as a result of Regulation 14 (3)?

Number of responses = 248

<u>Category</u>	<u>Agree</u>	<u>Disagree</u>	<u>Not sure</u>
Anonymous	0	2	2
Childminder	0	0	1
Church	3	0	5
Governor	2	1	2
Headteacher	3	0	3
Local authority	18	3	4
Nursery School	2	0	1
Parent	21	7	44
Primary School	0	0	1
School	4	1	1
Schools Forum	6	0	3
Special Education Needs	0	0	1
Trade Union	1	1	1
Member of the Public	40	9	44
Christian Group	1	0	3
Membership Organisation	1	0	1
Charity	0	0	1
Other	3	1	0
<b>Total</b>	<b>105</b>	<b>25</b>	<b>118</b>
	<b>43%</b>	<b>10%</b>	<b>48%</b>

**4 Do you agree with the changes resulting from Regulation 21 (2)?**

Number of responses = 283

<b><u>Category</u></b>	<b><u>Agree</u></b>	<b><u>Disagree</u></b>	<b><u>Not sure</u></b>
<b>Anonymous</b>	4	1	1
<b>Childminder</b>	0	0	1
<b>Church</b>	8	0	1
<b>Governor</b>	6	0	1
<b>Headteacher</b>	3	1	1
<b>Local authority</b>	20	4	5
<b>Nursery School</b>	2	0	1
<b>Parent</b>	42	12	25
<b>Primary School</b>	1	0	0
<b>School</b>	3	3	0
<b>Schools Forum</b>	6	1	1
<b>Special Education Needs</b>	0	0	1
<b>Trade Union</b>	2	0	1
<b>Member of the Public</b>	76	15	24
<b>Christian Group</b>	3	0	2
<b>Membership Organisation</b>	1	0	0
<b>Other</b>	3	0	1
<b>Total</b>	<b>180</b>	<b>37</b>	<b>66</b>
	<b>64%</b>	<b>13%</b>	<b>23%</b>



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