



Department  
for Education

# **Implementing mandatory minimum per pupil funding levels**

**Government consultation response**

**December 2019**

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# Introduction

## Background

In August 2019, the government announced the largest boost to schools and high needs funding in a decade. Compared to 2019-20, this investment will allow for cash increases of £2.6 billion next year, £4.8 billion in 2021-22 and £7.1 billion in 2022-23. On top of this, £1.5 billion will be provided each year to fund additional pensions costs for teachers, bringing the total schools budget to £52.2 billion in 2022-23.

We will continue to allocate school funding through the National Funding Formula (NFF), which ensures a fair distribution based on all schools' and pupils' needs and characteristics. Under the NFF in 2020-21, every school is benefitting from the additional funding, with per pupil funding rising at least in line with inflation and faster than inflation for most. The greatest increases will continue to go to areas which have been historically underfunded, and we have removed the previous cap on gains so that those funding gains can flow through in full. Based on the NFF, local authority allocations for 2020-21 have now been allocated through the Dedicated Schools Grant, and show an average increase of 4.2% per pupil compared to 2019-20.

In 2020-21 we are also delivering on the government's commitment to ensure that every secondary school receives at least £5,000 per pupil, and every primary school at least £3,750 per pupil. This means that the NFF, as well as continuing to direct significant extra funding for pupils with additional educational needs, will 'level up' the lowest funded schools in the country so that they have the right investment to deliver an outstanding education.

To ensure that these schools see the benefit of the additional funding, we announced that it would be mandatory for local authorities to use the minimum per pupil levels in their local funding formulae, which distribute the NFF funding that they receive for schools in their local area. This consultation response finalises the arrangements which local authorities must follow in doing so.

As well as supporting the lowest funded schools, this change represents an important first step in the government's plans to implement a 'hard' NFF, whereby all schools will receive a budget based on what they attract through the national formula, rather than through different local authority funding formulae. We will work closely with local authorities and other stakeholders in making this transition, mindful of the scale of the change and with careful consideration of the issues. We will consult on the further steps needed to deliver these plans in due course.

## About this consultation

On 10 September 2019, the Department for Education launched this consultation on how to implement the minimum per pupil funding levels in the NFF on a mandatory basis in 5 to 16 school funding.

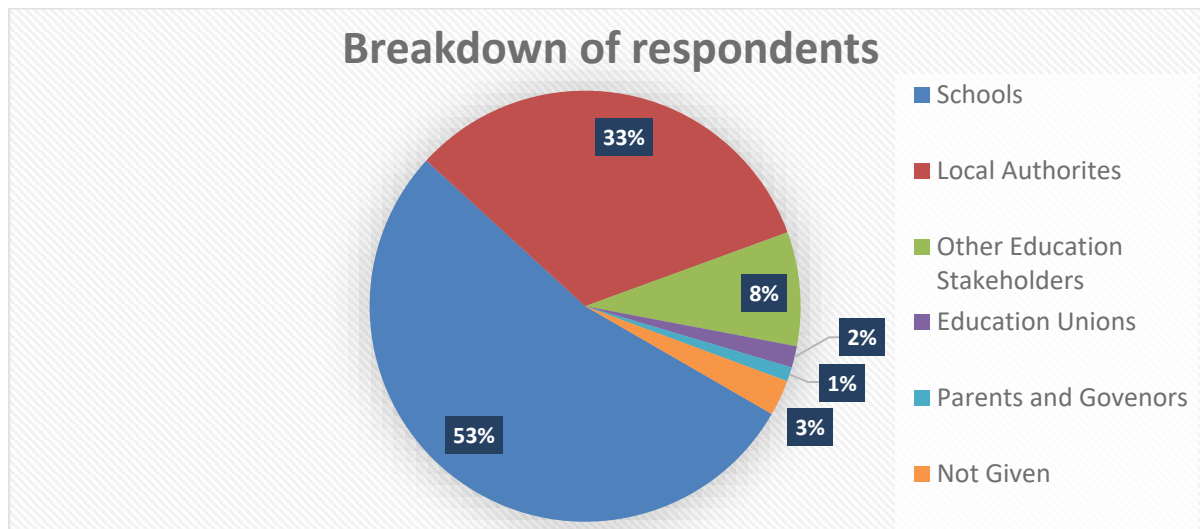
We sought views on how local authorities should implement the change in their local funding formulae, covering:

- the methodology used to calculate the minimum per pupil levels in local funding formulae;
- the circumstances in which local authorities can request to disapply the use of the minimum per pupil levels;
- further comments for any other considerations for delivering this change at local level;
- with regard to the public sector equality duty, the impact of the proposals on different groups of pupils, particularly those that share relevant protected characteristics.

This document sets out the government's response to the consultation and confirms arrangements for the mandatory minimum per pupil levels in 2020-21. It includes an executive summary on page 6 confirming final arrangements, as well as more detailed question-level analysis from page 8 onwards.

## Engagement in the consultation

In total there were 187 responses to the consultation. The majority of responses were from schools (100) and local authorities (61). Three education unions responded, along with other education stakeholders (e.g. diocese, school forums, local associations of head teachers), and a small number of parents and governors.



Although the greatest number of responses came from schools, the most represented group as a proportion of its category was local authorities, with over a third of all authorities in England taking part. It is also worth noting that the minimum per pupil funding levels are only relevant to some areas of the country, which have schools attracting the lowest funding – in many parts of the country, all schools are already attracting funding above these levels.

We know that representative organisations such as teaching unions and local authorities will have canvassed their members or local schools before responding, which we have taken into account when considering their responses.

In addition, we have discussed the proposals with a range of stakeholders, including school leaders; head teacher and teacher unions; local government and other interested parties. We have also heard views on this matter during local authority events across the country.

Some respondents to the consultation answered just a subset of questions. Throughout this document the proportion of responses to a proposal are given as a proportion of all 187 respondents, rather than of those who answered the individual question.

A full list of the representative organisations who provided responses to the consultation can be found in Annex 1 of this document.

## Executive summary

The minimum per pupil funding levels will be implemented in every local authority funding formula by following the same methodology used in the NFF, which received strong support in the consultation as the simplest and most consistent approach. The NFF methodology was included in the consultation and is set out on page 21 of the [Schools NFF technical note](#).

This calculates the minimum per pupil amount that a school must receive, based on the number of year groups it has in each phase. For primary schools and secondary schools with standard structures of 7 and 5 year groups respectively, this will always come to £3,750 per pupil and £5,000 per pupil respectively. For the purpose of then calculating whether and how much a school should be 'topped up' to that minimum level, its per pupil funding includes all funding it receives through the local schools formula, excluding premises and growth funding.

Any capping and scaling cannot take a school's per pupil funding, defined above, below the minimum values. The only further calculation that local authorities are able to make once their formula has provided the minimum levels is, for maintained schools only, to deduct funding for de-delegated central services if the schools forum has agreed this can be taken from their budget shares in 2020-21.

Local authorities have the option, as with other aspects of the school funding regulations, to request to disapply the use of the full NFF minimum per pupil values. Such requests should be exceptional and only made on the grounds of affordability. As reinforced by responses to the consultation, situations where this might arise, particularly if a local authority has a large number of schools on the minimum levels, include a combination of:

- the more recent pupil characteristics data used in the local authority's local formula has changed significantly enough from the data used in the NFF that the use of national factor values becomes unaffordable;
- the local authority does not use all the funding they receive through the NFF in their local schools funding formula, having transferred funding from the schools block to another DSG block or held back more funding for their growth fund than the NFF has provided.

While we will consider any individual request on its merits, we expect the commitment to minimum per pupil levels to be implemented in full locally, and both local authorities and schools should work on that basis. We will scrutinise any requests to disapply the minimum per pupil levels in this context.

In response to an issue raised by a small number of respondents, we will also consider disapplication requests to alter the NFF methodology, for specific schools only, where the local authority can show that the relevant minimum per pupil value for that school is skewed significantly by unusual year group sizes. For example, a local authority may want to provide a higher minimum per pupil level for an all-through school with significantly larger secondary than primary year group sizes. We expect such cases to be rare.

For 2020-21, local authorities and schools should follow the arrangements outlined above. We are updating the [2020-21 Operational Guide](#) and amending the School and Early Years Finance (England) Regulations to reflect these changes.

With regard to future years, we heard a number of wider points through the consultation, which are explored in further detail below. One prominent concern was about small, and particularly small rural, schools. The government recognises the essential role that small schools play in their communities, especially in remote areas. While the NFF does account for the particular challenges faced by small schools, through the lump sum and sparsity factor, we acknowledge that there is a case for further support. We will therefore consider ways to ensure that the NFF better supports small schools, including those in remote areas, from 2021-22.

These were some further strategic issues for the government to consider carefully for future years, to which the responses to this consultation provide a valuable contribution. Of these, the main concern was the impact that the minimum per pupil levels could have on local authorities' ability to target funding for additional needs and the related disincentives this may create for mainstream schools to take on pupils with Special Educational Needs and Disabilities (SEND), which was also raised in the context of equalities considerations. Other issues included: striking the right balance between funding for additional educational needs and basic per pupil entitlement; exploring the potential of 'bottom up' costing in the NFF; and fundamental questions of local flexibility over school funding.

# Question level analysis

## 1. Calculating the minimum per pupil funding levels

***Question: do you agree that, in order to calculate the mandatory minimum per pupil funding levels, all local authorities should follow the NFF methodology?***

### Consultation proposal

The consultation proposed to implement mandatory minimum per pupil funding levels by requiring local authorities to follow the same methodology used in the NFF, described below, in their local funding formula.

The minimum levels for all schools would be calculated using the NFF weighted average of the rates for primary, KS3 and KS4, which reflects the number of year groups a school has in each key stage. This ensures consistency for all schools, including those with non-standard year group structures. The calculation is:

$$\text{(No. of primary year groups} \times \text{£3,750)} + \text{(No. of KS3 year groups} \times \text{£4,800)} \\ + \text{(No. of KS4 year groups} \times \text{£5,300)}$$

Divided by

**Total number of year groups**

The calculation provides per pupil funding of at least £3,750 for each primary school, and £5,000 for each secondary school, with standard structures of 7/5 year groups respectively. For middle schools, all-through schools and other schools with a non-standard year group structure this will produce a specific minimum per pupil value that relates to the number of year groups in each phase. For new and growing schools, the minimum would be calculated based on the number of year groups they will have in 2020-21, as recorded in the Authority Proforma Tool (APT).

The APT, which we ask local authorities to use in order to specify and model their funding formulae, will allow authorities to check that each school's funding per pupil is above the relevant minimum per pupil funding level. Any capping and scaling would not be able to take the school below the minimum values.

The only further calculation that authorities would be able to make once their formula had provided the minimum per pupil level for a school is, for maintained schools only, to deduct funding for de-delegated central services if the schools forum has agreed this can be taken from their budget shares in 2020-21. Further detail on de-delegation is available in the [2020-21 Operational Guide](#).



## Summary of Responses

*Table 1a: Responses at a glance*

Response	Number	Percentage
Yes	120	64%
No – lump sum should be excluded from calculation	13	7%
No – does not benefit small and/or rural schools	6	3%
No – MPP levels set too low which does not help with existing pressures (e.g. high needs)	3	2%
No – targets schools with low levels of additional needs	4	2%
Neither/Not Answered	41	22%

*Table 1b: Breakdown of respondents*

Respondents	Number	Percentage
<b>Answered this question</b>	<b>173</b>	<b>92%</b>
Schools	92	49%
Local authorities	58	31%
Unions	3	1%
Other (inc. diocese, schools Forum, parents, governors)	20	11%
<b>Did not answer this question</b>	<b>14</b>	<b>8%</b>
Schools	6	4%
Local authorities	4	2%
Other (inc. diocese, schools forum, parents, governors)	4	2%

The vast majority of respondents provided a response and supporting comments for this question.

There was broad support for the proposed calculation of mandatory minimum per pupil levels. Some comments reflected that the methodology itself was “a much fairer system for schools with a non-standard year group structure”; with one high school, for example, describing the change as “very welcome”. Most respondents, however, supported the proposal because, as described by an education union, “the simplest and most effective way to implement the mandatory minimum per pupil funding levels is for every local authority to follow the same methodology used in the NFF”. Some

respondents also commented that following the methodology was a logical step in moving towards a 'hard' NFF in future.

The main argument, from those who did not support using the NFF methodology, was that the inclusion of the lump sum would put small schools at a disadvantage. This is because while every school receives the same lump sum, for small schools this is divided by fewer pupils, which inflates their per pupil funding. It means that very small schools will often have very high per pupil funding, and will therefore not receive the minimum per pupil 'top up'.

A few local authorities felt that the NFF methodology would not be suitable in some specific cases because, while it generally supports schools with non-standard year group structures, it may disadvantage a school with very unequal class sizes within those year groups. One local authority used an example of an all-through school that "currently has 55 primary pupils over 7 year groups and over 1000 secondary pupils over 5 year groups", meaning it would attract an artificially low minimum per pupil level which does not recognise that the school has significantly more older pupils.

Another technical issue raised by one local authority was that the minimum per pupil calculation does not adjust for area costs. They argued it affects the funding that local authorities receive for schools in their area and may also affect local distribution, if a local authority has schools both within and outside the London fringe area.

## **Government response**

In light of the strong support for the proposal, we will implement mandatory minimum per pupil levels by requiring local authorities to use the NFF methodology set out above and on page 21 of the [Schools NFF technical note](#). All local authorities must use this NFF methodology in their local formulae in 2020-21.

We recognise the concerns raised regarding the inclusion of the lump sum in the calculation, which makes the minimum per pupil levels less relevant to small schools. The minimum per pupil levels were designed as a simple 'top up' based on a school's total funding, per pupil, which is the main basis on which the funding system operates. While the inclusion of the lump sum results in small schools having high per pupil funding, this does also reflect that the lump sum particularly benefits these schools. As well as recognising a school's fixed costs, the lump sum is also intended to mitigate against pressures caused by low or fluctuating pupil numbers. As many consultation respondents recognised, this is particularly important for small schools.

Nonetheless, we acknowledge the broader issue raised about small schools and will consider ways to ensure that the NFF can better support them from 2021-22, as

discussed in response to question 3 below. In 2020-21, however, local authorities must follow the minimum per pupil methodology currently used in the NFF.

With regard to varying school structures, while responses agreed that the methodology works in the vast majority of cases, there are some rare situations in which an individual school's circumstances should be accounted for. Overall, we believe there is value in the factor's simplicity and consistency – every school, no matter their cohort, is 'topped up' to these levels if they do not otherwise receive them in local funding formulae.

However, where it is clear that very unequal year group sizes would significantly skew a school's minimum per pupil level levels, we believe it is reasonable to take a different approach for that school. We will therefore consider disapplication requests from local authorities wishing to exempt a specific school from the NFF methodology, and apply a different calculation to determine its minimum per pupil funding level. This might, for example, allow a local authority to give an all-through school with a very high number of secondary pupils, compared to primary, a higher minimum per pupil amount than the NFF. For future years, we will also consider if any further technical adjustments are needed in the NFF methodology.

## 2. Disapplying the mandatory minimum per pupil funding levels

***Question: Do you agree that any requests from local authorities to disapply the use of the mandatory minimum per pupil levels should only be considered on an exceptional basis and in the context of the grounds described?***

### Proposal

The consultation proposed that, while local authorities would be legally required to use the minimum per pupil levels, they will have the option, as with other aspects of the school funding regulations, to request to disapply the use of the full NFF values.

There may be exceptional circumstances in which a local authority finds it difficult to deliver the minimum per pupil levels at the value provided in the NFF. We proposed to limit any disapplication requests local authorities wish to make to affordability pressures, suggesting such circumstances would be:

- if the more recent pupil characteristics data used in their local formula has changed significantly enough from the data used in the NFF that the use of national factor values becomes unaffordable;
- if they do not use all the funding they receive through the NFF in their local schools funding formula, having transferred funding from the schools block to

another DSG block or held back more funding for their growth fund than the NFF has provided.

## Summary of responses

*Table 2a: Responses at a glance*

Response	Number	Percentage
Yes	123	66%
No – local authorities should never deviate from the MPP levels	12	6%
No – local authorities should have more discretion to deviate from the MPP levels	9	5%
No – more funding is required to implement the MPP	2	1%
No – small schools need additional help	4	2%
No – reason not given	5	3%
Neither/Not Answered	32	17%

*Table 2b: Breakdown of respondents*

Respondents	Number	Percentage
<b>Answered this question</b>	<b>166</b>	<b>89%</b>
Schools	88	47%
Local authorities	56	30%
Unions	3	2%
Other (inc. diocese, schools forum, parents, governors)	19	10%
<b>Did not answer this question</b>	<b>21</b>	<b>11%</b>
Schools	8	4%
Academies	2	1%
Local authorities	5	3%
Other (inc. diocese, schools forum, parents, governors)	6	3%

The vast majority of respondents to this consultation provided a response and supporting comments to this question.

As indicated in *Table 2a* above, 66% agreed that any requests from local authorities to disapply the use of the mandatory minimum per pupil levels should be limited to

exceptional circumstances, only on the grounds of affordability, as described in the consultation proposal.

Local authorities responding to the consultation reported that the main affordability pressure would be potential transfers of some funding from the local schools formula to the high needs budget. Other local circumstances were discussed, including funding new and growing schools locally, and the minimum funding guarantee (a minimum increase for all schools compared to the previous year). It was suggested that what could affect the affordability of the minimum levels would be the combination of these pressures in one local authority, particularly one with a large number of schools attracting minimum per pupil funding. A few local authorities also felt that, in such circumstances, consideration should be given to the wider impact on the local schools formula (such as having to substantially reducing other factor values), affecting other schools which are not on the minimum per pupil funding levels.

There was some discussion about the level of local discretion that should be permitted. A few schools felt that no exceptions should be made, arguing it to be “absolutely crucial these are implemented fully and consistently”, stating their importance in “ensuring all schools remain viable”. Conversely, some local authorities argued for discretion to amend the minimum per pupil values without the need for a disapplication request, arguing that consultation with their local schools forum should be sufficient. On both sides, there was acknowledgement of the importance of consultation with local schools and agreement from the schools forum.

Some respondents commented that the disapplication process should be as transparent as possible and that the department should share details of the requests publicly.

## **Government response**

As set out in the consultation proposal, local authorities will have the option, as with other aspects of school funding regulations, to request to disapply the use of the full minimum per pupil values in the NFF. Responses to the consultation supported the proposal that any requests should be exceptional and only considered on the grounds of affordability described above. We heard useful insight into the local circumstances which may need to be accounted for when considering requests.

While there were some commonly identified causes for affordability pressures in local formulae, there will be a range of local circumstances in which these can have a greater impact with regard to implementing the minimum per pupil levels. Therefore, while we can be clear that consideration of any exceptions would be limited to

affordability arguments from local authorities, this reinforces the importance of looking at requests on a case-by-case basis.

When considering any requests, we will also account for the robust views from a number of respondents on the importance of delivering the minimum per pupil levels to the relevant schools. The government is committed to ensuring that the minimum per pupil levels support the lowest funded schools across the country, so that all schools are able to deliver an outstanding education. We want this commitment to be implemented in full locally, and both local authorities and schools should work on that basis. We will scrutinise any requests to disapply the minimum per pupil levels in this context.

For 2020-21, the School and Early Years Finance (England) Regulations will introduce the mandatory minimum per pupil levels, but allow for disapplication requests to alter the primary, Key Stage 3 and Key Stage 4 values. As stated in response to question 1, we will also consider requests to exempt specific schools from the methodology.

### 3. Additional Comments

***Question: Provide any additional comments you wish to make on the implementation of mandatory minimum per pupil levels.***

#### Summary of responses

*Table 3a: Breakdown of respondents*

<b>Respondents</b>	<b>Number</b>	<b>Percentage</b>
<b>Answered this question</b>	<b>97</b>	<b>52%</b>
Schools	53	28%
Local authorities	31	17%
Unions	2	1%
Other (inc. diocese, schools forum, parents, governors)	11	6%
<b>Did not answer this question</b>	<b>90</b>	<b>48%</b>
Schools	47	25%
Local authorities	30	16%
Unions	1	1%
Other (inc. diocese, schools forum, parents, governors)	12	6%

*Table 3b: Key Issues raised*

<b>Issue</b>	<b>Number</b>	<b>Percentage</b>
Impact on small and/or rural schools	30	16%
Methodology	28	15%
Impact on distribution of funding	26	14%
Wider cost pressures	16	9%
Affordability for local implementation	13	7%
Policy rationale	9	5%
Impact on inclusion and high needs	7	4%
Hard NFF in the long term	10	5%

This question was answered by around half of respondents who took part in the consultation. As it invited any additional comments, a wide range of issues were covered, summarised in *Table 3b*. Where there was overlap with other areas of this consultation – re-emphasising points about methodology, disapplications, or equalities issues – we have considered these responses in relation to the relevant question.

The most prominent issue was small, and particularly small rural, schools. Most of these responses were raising a wider concern about the financial viability of small schools. Some respondents, though, were specifically concerned that the minimum per pupil levels do not target small schools, arguing that these also attract low funding relative to their costs, despite high per pupil funding. Most of these respondents advocated removing or reducing the lump sum within the minimum per pupil calculation to address this, as noted in question 1.

There were a number of comments relating to the distributional impact of the minimum per pupil levels, both at a national and local level. The concern was that the factor will benefit areas and individual schools with low levels of disadvantage, because it funds schools with cohorts that have low levels of additional needs according to the NFF’s proxy measures. Moreover, as the minimum per pupil levels ‘top up’ schools after the other formula factors have been applied, two schools with different levels of need might ultimately attract the same funding.

Conversely, others argued against a system which creates too great a difference in per-pupil funding between schools and areas, and in favour of one that also recognises that all pupils have needs. One response typified this view:

"I appreciate...it does mean that two schools with differing levels of additional needs might receive the same amount of funding. However, it ought to be of fundamental importance that we recognise that there is a minimum amount of funding needed to run any school, regardless of its pupil characteristics. The minimum per pupil levels provide an absolutely critical guarantee in this respect."

Some respondents argued for basic per-pupil entitlement (or age-weighted pupil unit), which all schools attract for each of their pupils before accounting for any additional needs, to be prioritised over the minimum per pupil levels. Furthermore, while some respondents generally accepted the principle of the minimum per pupil levels, they wanted to see a clear link between the values and the evidence for minimum operating costs for a school, such as through 'bottom up' costing.

In the context of discussing wider pressures on high needs funding, some respondents were specifically concerned about the interaction of this with mandatory minimum per pupil levels. This is because, as one local authority put it, "an unintended consequence is...schools who attract [the minimum per pupil levels]...have less of an incentive ...to take pupils with low prior attainment or from a deprived area, as their funding level per pupil will not change". This was also raised as an equalities issue in response to question 4 below.

Some respondents discussed longer term considerations about moving to a hard NFF. There was a wide range of views, from those saying that "funding within a local authority area should be left to those who have a better local understanding than an England wide central organisation", to those arguing that "all schools should receive the full allocation directly from Whitehall".

In the context of moving to a 'hard' NFF, a few respondents also made the point that the ability of multi-academy trusts to 'pool' academies' General Annual Grant funding means that the guarantee of the minimum per pupil levels may not always be delivered to individual academies. This is the case even if the minimum levels are mandatory for local authorities to provide through the local funding formula.

Finally, some respondents took the opportunity to raise wider cost pressures, although many recognised the difference that the recently announced increases in funding will make. The most common issue raised was high needs funding, although other issues raised related to teachers' pay, teachers' pensions, growth and falling rolls. Many respondents who raised cost pressures argued for a faster implementation of the NFF to deliver gains for historically underfunded areas.



## Government response

The government's rationale for the minimum per pupil funding levels is clear: they support the lowest funded schools that do not otherwise attract these levels through the NFF. By definition, these schools will have lower levels of additional needs. The minimum levels recognise that there are pupils requiring additional support in every school in the country, including in the lowest funded schools. This is a message we heard in consultation ahead of the introduction of the NFF, and have heard from schools and educational professionals since.

We rightly continue to provide significant extra funding for schools that have more pupils with additional needs, using measures of deprivation and low prior attainment. Areas with high proportions of pupils from a disadvantaged background will continue to receive the highest levels of funding. The gap between disadvantaged pupils and their peers has narrowed considerably in both primary and secondary schools since 2011, and this year alone £2.4 billion is being allocated through the Pupil Premium to help the most disadvantaged children.

The impact of a school's funding on the financial incentives to admit pupils with SEND is an important ongoing consideration. The considerable amount of funding for pupils with additional needs, over £6.3bn within the schools NFF in 2020-21 (or 18% of the formula), will continue to ensure that schools have the resources to support these pupils, including those with SEND. We are currently looking at the responses to the department's call for evidence on the financial arrangements for children and young people with SEND, and will consider changes to those arrangements in the context of the department's SEND review.

As part of our ongoing development of the NFF, we will continue to consider how the minimum per pupil levels interacts with AWPU, and we remain open to exploring the role that 'bottom up' costing could play in future.

We acknowledge the issues raised about small and rural schools, which the government agrees play an essential role in their communities. It is worth noting that the NFF, through the lump sum and sparsity factors, recognises that schools that have both low pupil numbers, and are based in remote areas, need extra support. In 2020-21 a small, rural primary school eligible for sparsity funding will attract up to £140,400, in total, through the lump sum and sparsity factors, and a small secondary school will attract up to £182,000. Schools will also benefit from the significant increases in 2020-21 to all the NFF's core factors, with the biggest gains for underfunded schools, which includes a substantial number in rural areas. In fact,

small schools are gaining 4.6% on average in 2020-21, compared to 4% for other schools.

The government does, however, acknowledge that there is a case for providing further support for small schools, including those in remote areas. We will therefore consider ways to ensure that the NFF better supports these schools from 2021-22. We will start by seeking to ensure that the support offered by the wider NFF and funding system fully reflects the additional costs that they face. We will ensure that we review the available evidence carefully, for which this consultation provides a useful contribution, and will engage stakeholders further in the new year.

This consultation has also provided evidence to help inform our ongoing thinking about how we move to a 'hard' NFF. We will work closely with local authorities and other stakeholders in making this transition, including carefully considering the issues that we would need to resolve under a hard formula, such as where funding relies on local intelligence or is tied to local duties. We will consult on the further steps needed to deliver those plans in due course.

While we heard some important issues raised in response to this question, none of these should prevent local authorities passing on the additional funding they are receiving for the schools on the minimum per pupil levels under the NFF in 2020-21.

# Equalities Impact Assessment

## Equalities context

This section assesses the equalities impact of making the NFF minimum per pupil levels mandatory. It considers how the changes may impact different groups of pupils, with protected characteristics defined in the Equality Act 2010.

The Equality Act 2010 identifies the following as protected characteristics for the public sector equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (including ethnicity)
- Religion or belief
- Sex
- Sexual orientation

Under Section 149 of the Equality Act 2010, the Secretary of State is under a duty to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
  - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
  - tackle prejudice, and
  - promote understanding.

The relevant protected characteristics under consideration are disability, race, and religion or belief. Other characteristics such as age, sexual orientation, gender reassignment, marital status, pregnancy and maternity are not considered relevant to this policy.

The analysis includes consideration of pupil characteristics where some of these groups of children are over-represented in certain groups: pupils with special educational needs and disabilities (SEND), pupils with low prior attainment, and pupils with English as an additional language (EAL).

## Policy context

The minimum per pupil levels are designed to benefit schools with low levels of additional needs, because they therefore attract low funding under the NFF. The wider policy intent of the schools NFF is to allocate money to areas on a fair and transparent basis, according to pupils’ needs, and to address historic disparities in funding. A range of pupil characteristics are used in the schools NFF as proxies for the level of additional educational need in a school. These proxies disproportionately correlate with some protected characteristics (race, disability). Because of this, more funding is directed to schools more likely to have a high proportion of pupils with these protected characteristics.

We have already published earlier assessments of the NFF’s impact on characteristics protected under the Equality Act 2010. The first followed the first stage of consultations on the NFF in March 2016; the next followed the second stage of consultation on the NFF in December 2016; and the last was published in September 2017. The last assessment can be found [here](#).

## Equalities analysis

This consultation included two questions which specifically asked about the equalities impact of making the minimum per pupil levels mandatory. The questions asked, and the profile of respondents answering each question, can be seen below.

**Question 4a: Do you think that any of our proposals could have a disproportionate impact, positive or negative, on specific pupils, in particular those who share a protected characteristic?**

Table 1: Breakdown of respondents

Respondents	Number	Percentage
<b>Answered this question</b>	<b>137</b>	<b>73%</b>
Schools	73	39%
Local authorities	48	26%
Unions	2	1%

Other (inc. Diocese, Schools Forum, Parents, Governors)	14	7%
<b>Did not answer this question</b>	<b>50</b>	<b>27%</b>
Schools	28	15%
Local authorities	13	7%
Unions	1	1%
Other (inc. Diocese, Schools Forum, Parents, Governors)	8	4%

**Question 4b: How could any adverse consequences be reduced and are there any ways we could better advance equality of opportunity between those pupils who share a relevant protected characteristic and those who do not?**

*Table 1: Breakdown of respondents*

Respondents	Number	Percentage
<b>Answered this question</b>	<b>111</b>	<b>59%</b>
Schools	65	35%
Local authorities	31	16%
Unions	2	1%
Other (inc. Diocese, Schools Forum, Parents, Governors)	13	7%
<b>Did not answer this question</b>	<b>76</b>	<b>41%</b>
Schools	36	19%
Local authorities	28	15%
Unions	1	1%
Other (inc. Diocese, Schools Forum, Parents, Governors)	11	6%

These two questions were answered by 73% and 59% of all those who responded to the consultation, respectively. A wide range of issues were raised, and the key points are discussed further below as they relate to protected characteristics under the Equality Act 2010. Where there is overlap with other areas of this consultation, – we have considered these responses in relation to the relevant question.

## **Disability**

In line with their policy intent, the minimum per pupil levels benefit schools with a lower proportion of pupils with additional needs, using measures of deprivation and low prior attainment. As additional needs funding also consists of proxies to direct funding towards pupils with SEND, the minimum levels benefit schools with higher numbers of pupils with disabilities less, relative to other schools and to previous years.

It is this effect that underpinned concerns raised by some consultation respondents, who felt mandatory minimum per pupil levels would have a detrimental impact on pupils with SEND as a result. In addition, respondents warned that a mandatory minimum per pupil factor would disincentivise inclusion in schools because there would be less financial reward for taking on additional pupils with SEND for schools in receipt of the minimum per pupil funding. Some also felt this disincentive would apply to keeping pupils in schools, and expressed concerns that this could lead to off-rolling or permanent exclusion of pupils with SEND.

Overall, however, the distribution of funding still significantly favours schools with more pupils with disabilities – schools in the highest quartile for SEND pupils attract £345 more per pupil than schools in the lowest quartile. Moreover, with the introduction of the NFF we have put a higher emphasis on the low prior attainment factor, which is the strongest proxy indicator for SEND. We have allocated 7.5% of the total national funding formula to low prior attainment in 2020-21, compared to the 4.3% allocated to low prior attainment by local authorities in 2017-18, in order to better match school funding to need.

We will also be providing a significant increase of 12% to high needs funding in 2020-21, which specifically directs funding towards pupils with complex SEND and will go to mainstream as well as special schools.

It is also important to note that there are pupils with disabilities in all schools, including the lowest funded, who will also face challenges in meeting the costs of SEND provision. Individual children with these characteristics who attend the lowest funded schools will therefore benefit from the increased capability to meet such costs.

## **Race**

Mandatory minimum per pupil levels will also benefit schools that are less likely to have children from ethnic minorities or low performing ethnicities because these characteristics in general correlate with higher overall funding at school level. Low funded schools are generally located in areas with lower proportions of these children, who more typically live in urban areas with historically high levels of funding. Moreover, there is a correlation between ethnic minority pupils and from low-performing ethnicities with some of the proxies used for additional needs funding, such as pupils with low prior attainment.

The consultation responses stressed that this change could negatively affect pupils from ethnic minority backgrounds. Again, however, the distribution of funding still significantly favours schools with high levels of additional needs, and therefore with higher incidence of this protected characteristic.

Furthermore, the separate funding floor within the NFF protects all schools in 2020-21, which particularly benefits schools with a higher proportion of children from ethnic minorities and low performing ethnicities as it disproportionately benefits schools that have been more highly funded historically. These tend to be in urban areas, and have a higher proportion of children from ethnic minorities.

### **Religion or belief**

There is less obvious impact on pupils based on religion or belief, and no respondents to the consultation raised an issue related to this protected characteristic.

However, as with ethnic minority pupils, schools that are more highly funded historically, which tend to be in urban areas, have a higher occurrence of non-Christian pupils. Overall, therefore, non-Christians may be less likely to benefit from the minimum per pupil funding levels. These schools are, again, in areas that are by definition already highly funded, and the NFF in 2020-21 protects their funding through the funding floor.

## **Conclusion**

As echoed by responses to the consultation, disability and race are the two main protected characteristics potentially affected by the minimum per pupil levels, and therefore also by the decision to make them mandatory.

As the minimum per pupil levels are designed to support schools with low levels of additional needs, a clear consequence is that they will benefit less those schools with higher levels of these needs, which correlate with pupils with disability and from ethnic minority backgrounds. While this is a negative impact, in relative terms, it reflects the rationale of the policy to ensure that all schools receive a minimum operating amount regardless of their pupil cohort, in recognition that all schools can have pupils with additional needs and with protected characteristics.

Crucially, the minimum levels must also be considered in the context of a national formula that provides local authorities with a considerable amount of funding specifically for additional needs, which have a disproportionately positive impact on these protected characteristics. In 2020-21, the schools NFF is providing £6.3 billion towards additional needs (or 18% of the formula), while we have provided a significant increase of 12% to high needs funding in 2020-21. The minimum per pupil levels, costing £266m in the NFF, are designed to bring the low funded schools closer to others, while the NFF still protects funding for schools with high disadvantage; in 2020-21 all additional needs factor values (deprivation, low prior attainment, EAL and mobility) have been increased by 4%. The overall policy

framework therefore continues to allocate the greatest share of resources to pupils with additional needs, and therefore those most likely to have protected characteristics.

We conclude that the equalities impact, identified in this analysis and through the consultation, is justified by the policy rationale and mitigated by the positive impact for these groups already built into the wider distribution of funding. We will, however, continue to monitor the equalities impact of the minimum per pupil levels as part of the wider distribution of funding, as well as incentives they create locally around inclusion. This consultation contributed important evidence as part of that process, which we will consider on an ongoing basis and when developing policy in future years.



# Annex 1: list of organisations that responded to the consultation

This list of stakeholder organisations was drawn from the online form submitted. The list may not be exhaustive as other organisations may have engaged and contributed to the consultation response through other channels such as meetings and other forms of correspondence. Some correspondents also chose to keep their responses confidential and thus are not listed here.

## Local Authorities

Barnsley Metropolitan Borough Council

Bournemouth, Christchurch and Poole Council

Bedford Borough Council

Bexley, London Borough of

Birmingham City Council

Bracknell Forest Council

Brighton & Hove City Council

Buckinghamshire County Council

Bury Council

Cambridgeshire County Council

Central Bedfordshire Council

Cheshire East Council

City of Wolverhampton Council

City of York Council

Cornwall Council

Cumbria County Council

Devon County Council

Doncaster Metropolitan Borough Council

Dudley Metropolitan Borough Council

Durham County Council  
East Riding of Yorkshire Council  
East Sussex County Council  
Essex County Council  
Greenwich, Royal Borough of  
Hampshire County Council  
Herefordshire Council  
Hertfordshire County Council  
Isle of Wight Council  
Kensington & Chelsea, Royal Borough of  
Kent County Council  
Lambeth, London Borough of  
Leeds City Council  
Lincolnshire County Council  
Milton Keynes Council  
Newcastle City Council  
North East Lincolnshire Council  
North Yorkshire County Council  
Northumberland County Council  
Nottingham City Council  
Nottingham City Council  
Nottinghamshire County Council  
Oxfordshire County Council  
Portsmouth City Council  
Richmond-upon-Thames, London Borough of  
Sheffield City Council  
Shropshire Council

Southend-on-Sea Borough Council  
Southwark, London borough of  
Suffolk County Council  
Surrey County Council  
Thurrock Council  
Trafford Council  
Warrington Borough Council  
West Sussex County Council  
Westminster City Council  
Wiltshire Council  
Worcestershire County Council

## **Schools**

Albury Primary School  
Alderman Jacobs School Academy Trust  
Ardeley St Lawrence Primary School and Nursery  
Bayford CofE Primary School  
Beaminster School  
Bishop Wordsworth's School  
Bournemouth School for Girls  
Bury CE Primary  
Bury CE Primary School  
Calday Grange Grammar School  
Christ Church CE Primary Cressage  
Corbridge Middle School  
Culcheth High School  
Denefield School

Embleton Vincent Edwards C of E Aided Primary School  
Emmanuel Schools Foundation  
Ferndown Upper School  
First Federation Trust  
Forest CE Federation  
Furneux Pelham CE Primary School  
Gorse Covert Primary  
Gothic Mede Academy  
Hadrian Learning Trust  
Harting Primary  
Hatton Academies Trust  
Heygreen Primary School  
Highcliffe School  
Hollycombe Primary School  
Holy Trinity C of E VC Primary School & Community Nursery - Weymouth  
Horsington Church School  
Hoylandswaine Primary School  
Huish Episcopi Academy  
Hunsdon JMI School  
Kennet School Academies Trust  
Landau Forte Charitable Trust  
Little Heath Secondary School  
Little Munden Primary School  
Lymm High School  
Lythe CEVC primary school  
Northchapel Primary School  
Oak Multi Academy Trust

Plympton Academy  
Poole Grammar School  
Poole High School  
Royal Wootton Bassett Academy  
Ryhope Infant School Academy  
Sandy Secondary School  
Seaton Valley Federation  
Skipton Girls' High School  
South Bromsgrove High Academy Trust  
Southern Road Primary School  
St Bede C of E Primary MAT  
St Giles' C of E Primary School  
St Paul's Walden primary  
St Thomas Aquinas Catholic Multi-Academy Trust  
Studham CofE Village School  
Summit Learning Trust  
Tacolneston and Morley CE VA Primary Schools Federation  
Tewin Cowper CE Primary School  
The Blandford School  
The Judd School  
The King's School  
The Minerva Learning Trust (Dorset)  
The Priors School  
The Priory Learning Trust  
The Rydal Academy (Swift Academies)  
The Stonehenge School  
The Three Rivers Learning Trust

Thomas Alleyne's High School, Uttoxeter

Tunbridge Wells Girls' Grammar School

Welland Park Academy

Whickham School & Sports College

Wimborne Academy Trust

## **Education unions**

Association of School and College Leaders

National Association of Head Teachers

National Education Union

## **Other educational stakeholders**

Association of Secondary Headteachers in Essex

Diocese of Salisbury Multi Academy Trust

National Network of Parent Carer Forums

Oxfordshire Schools Forum

Rural Services Network

Salisbury Diocesan Board of Education

School Financial Success Publications

Sunderland together for children



Department  
for Education

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