
STATUTORY INSTRUMENTS

1999 No. 101

EDUCATION, ENGLAND AND WALES

The Financing of Maintained Schools Regulations 1999

Made - - - - - *17th January 1999*

Coming into force - - - - - *24th January 1999*

In exercise of the powers conferred on the Secretary of State by sections 46, 47, 48(1) and (2), 138(7) and (8) and 144(1) and (2)(g) of, and paragraph 1(7) of Schedule 14 to, the School Standards and Framework Act 1998(1) the Secretary of State for Education and Employment, as regards England, and the Secretary of State for Wales, as regards Wales, hereby make the following Regulations, a draft of which has been laid before, and approved by, each House of Parliament:

PART I

INTRODUCTION

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Financing of Maintained Schools Regulations 1999 and shall come into force on the seventh day after the day on which they are made.

(2) These Regulations shall apply for the purposes of the financing of maintained schools in any financial year beginning on or after 1st April 1999.

(3) In these Regulations—

“the 1996 Act” means the Education Act 1996(2);

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 1998 Regulations” mean the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1998(3).

(4) In these Regulations “maintained school” means—

(1) 1998 c. 31; for the meaning of “prescribed” and “regulations” see section 142(1). Sections 46, 47 and 48 apply in relation to county, voluntary, maintained special, grant-maintained and grant-maintained special schools within the meaning of the Education Act 1996 (c. 56) by virtue of S.I.1998/2670.

(2) 1996 c. 56.

(3) S.I. 1998/799.

- (a) in relation to the period ending immediately before 1st September 1999, a county, voluntary, maintained special, grant-maintained or grant-maintained special school within the meaning of the 1996 Act; and
- (b) in relation to the period beginning on 1st September 1999, a community, foundation or voluntary school or a community or foundation special school.

(5) In these Regulations a reference (however framed) to a county, voluntary or maintained special school within the meaning of the 1996 Act includes a proposed school proposals for the establishment of which have been published under section 35, 41 or 339(1) of the 1996 Act but not yet implemented and which has a temporary governing body.

(6) In these Regulations a reference (however framed) to a community, foundation or voluntary school or a community or foundation special school includes a proposed school which on implementation of proposals under section 35, 41 or 339(1) of the 1996 Act or section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act will be such a school and which has a temporary governing body.

(7) In these Regulations a reference to a governing body includes the temporary governing body of a proposed school falling within paragraph (5) or (6).

(8) In these Regulations a reference to a primary or secondary school—

- (a) in relation to the period ending immediately before 1st September 1999, means a primary or secondary school which is a county, voluntary or grant-maintained school within the meaning of the 1996 Act; and
- (b) in relation to the period beginning on 1st September 1999, means a primary or secondary school which is a community, foundation or voluntary school.

(9) In these Regulations a reference (however framed) to schools maintained by a local education authority does not include schools which are not maintained schools as defined in paragraph (4).

(10) In these Regulations a reference to the permanent exclusion of a pupil is a reference to his permanent exclusion as defined from time to time for the purposes of section 494 of the 1996 Act(4).

(11) Unless the context otherwise requires, words or expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

budget share	section 47(1) of the 1998 Act
delegated budget	section 49(7) of the 1998 Act
expenditure	regulation 2(2) of these Regulations (for the purposes of Part II of these Regulations)
financial year	section 579(1) of the 1996 Act
formula	regulation 10 of these Regulations
individual schools budget	section 46(2) of the 1998 Act
key stage	section 355 of the 1996 Act
local schools budget	section 46(1) of the 1998 Act
maintained school	regulation 1(4) of these Regulations
maintenance grant	sections 244(1) and 250(1) of the 1996 Act
nursery school	section 6(1) of the 1996 Act

(4) Section 494 is substituted by paragraph 128 of Schedule 30 to the 1998 Act as from 1st April 1999, see S.I. 1998/2212.

permanent exclusion	regulation 1(10) of these Regulations
scheme	section 48(5) of the 1998 Act (in relation to the period on and after 1st April 1999) or section 101(1) of the 1996 Act (in relation to the period before 1st April 1999)
school maintained by a local education authority	regulation 1(9) of these Regulations
school year	section 579(1) of the 1996 Act ⁽⁵⁾
special educational needs	section 312(1) of the 1996 Act.

(12) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation of, or Schedule to, these Regulations so numbered and a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

PART II

LOCAL AND INDIVIDUAL SCHOOLS BUDGET

Local schools budget

2.—(1) The classes or descriptions of local education authority expenditure specified in subparagraphs (a) and (b) below are hereby prescribed for the purposes of section 46(1) of the 1998 Act and the determination of a local education authority's local schools budget subject to the exceptions in regulation 3—

- (a) expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education; and
- (b) expenditure on items listed in paragraph 25(a) to (d) and (r) to (t) of Schedule 1 or, as the case may be, paragraph 28(a) to (d) and (r) to (t) of Schedule 2, in so far as such expenditure does not fall within sub-paragraph (a) above.

(2) For the purposes of this Part expenditure does not include expenditure defrayed by fees and charges collected by the governing body of a maintained school which are—

- (a) specifically required or permitted to be collected by any provision of the Education Acts; or
- (b) in respect of the use of school premises or equipment.

Exceptions

3. A local education authority's local schools budget shall not include the following classes or descriptions of expenditure—

- (a) expenditure in connection with nursery schools;
- (b) expenditure in connection with any provision made for children who have not attained the age of five except where such provision is made at a maintained school or the expenditure is by way of fees paid under section 320 or 348 of the 1996 Act (special provision for children with special educational needs);

(5) Inserted by the Education Act 1997 (c. 44), Schedule 7, paragraph 43.

- (c) expenditure in making payments to another local education authority pursuant to section 492, 493 or 494(6) of the 1996 Act (recoupment between authorities);
- (d) expenditure which the authority capitalise in their accounts in accordance with proper practices being those accounting practices—
 - (i) which the authority are required to follow by virtue of any enactment, or
 - (ii) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned, but in the event of any conflict in any respect between the practices falling within sub-paragraph (i) above and those falling within sub-paragraph (ii) above, only those falling within sub-paragraph (i) above are to be regarded as proper practices(7);
- (e) expenditure offset by income received from Her Majesty’s Chief Inspector of Schools in England or Her Majesty’s Chief Inspector of Schools in Wales; and
- (f) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(8) (arrangements for patrolling school crossings).

Individual schools budget for local education authorities in England

4. A local education authority in England may deduct from their local schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 1, in whole or in part, in order to arrive at their individual schools budget for a financial year.

Individual schools budget for local education authorities in Wales

5.—(1) Subject to paragraphs (2) to (4), a local education authority in Wales may deduct from their local schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 2, in whole or in part, in order to arrive at their individual schools budget for a financial year.

(2) Paragraphs 23, 25, 29, 39 and 42 of Schedule 2 do not apply in relation to planned expenditure in respect of schools which are, or were immediately before 1st April 1999, grant-maintained schools.

(3) In the case of planned expenditure in respect of other maintained schools, planned expenditure of a kind referred to in paragraphs 23, 29, 39 and 42 of Schedule 2—

- (a) may not be deducted by an authority from their local schools budget for the financial year beginning on 1st April 1999 unless expenditure of the same class or description in the financial year beginning on 1st April 1998 did not form part of, or was deducted pursuant to the terms of the authority’s scheme (within the meaning of the 1996 Act) as then in force from, the authority’s general schools budget (within the meaning of the 1996 Act) for that financial year; and
- (b) may not be deducted by an authority from their local schools budget for any financial year beginning after 1st April 1999.

(4) Planned expenditure of the kind referred to in paragraph 25(a) of Schedule 2 in relation to secondary schools may not be deducted by an authority from their local schools budget for any financial year beginning after 1st April 1999.

(6) Section 494 is substituted by paragraph 128 of Schedule 30 to the 1998 Act as from 1st April 1999, *see* S.I. 1998/2212.

(7) These are the proper practices as referred to in section 66(4) of the Local Government and Housing Act 1989 (c. 42) and, at the date that these Regulations are made, they include the Code of Practice on Local Authority Accounting in Great Britain 1998 (ISBN 0 85299 853 8).

(8) 1984 c. 27, amended by the Local Government Act 1985 (c. 51), Schedule 5, paragraph 4(10).

PART III

SCHOOLS' BUDGET SHARES

Determination of budget shares

6. This Part applies for the purpose of determining the amount which a local education authority may determine as a maintained school's budget share for a financial year.

Allocation of individual schools budget

7. A local education authority shall allocate in each financial year in accordance with this Part all of their individual schools budget for that financial year as the budget shares of schools which they maintain.

Timing of initial determination of budget shares

8. The amount of a school's budget share for a financial year shall be initially determined by the local education authority before the beginning of that year.

Consultation

9.—(1) A local education authority shall consult the governing body and head teacher of every county, voluntary, maintained special, grant-maintained or grant-maintained special school within the meaning of the 1996 Act which they will maintain on 1st April 1999 in relation to the factors and criteria which the authority propose to take into account, in the formula referred to in regulation 10, in determining budget shares for the financial year beginning on 1st April 1999 and in relation to any methods, principles and rules which they propose to adopt in that formula in relation to such determinations.

(2) In relation to subsequent financial years a local education authority shall consult the governing body and head teacher of every school which they maintain about proposed changes in relation to the factors and criteria that were taken into account, or the methods, principles and rules that were adopted, in their formula in the preceding financial year (including any new factors, criteria, methods, principles or rules).

(3) Consultation under this regulation shall take place in sufficient time to allow the outcome to be taken into account in the determination of the authority's formula and in the initial determination of schools' budget shares before the beginning of a financial year.

(4) The requirement to consult in paragraph (1) can be satisfied by consultation which takes place on and after 20th October 1998 in the case of a local education authority in England, or on and after 23rd October 1998 in the case of a local education authority in Wales, and (in either case) before the coming into force of these Regulations.

(5) A local education authority shall inform all those who were consulted of the outcome of the consultation.

Formula for determination of budget shares

10.—(1) A local education authority shall determine before the beginning of a financial year, and after the consultation referred to in regulation 9, the formula which they will use to determine schools' budget shares in that financial year having regard to the factors, criteria and requirements set out in this Part.

(2) A local education authority shall have regard to the desirability of such a formula being simple, objective, measurable and predictable in effect, and clearly expressed.

(3) Subject to regulation 23 a local education authority shall use the formula determined under paragraph (1) in all determinations and redeterminations of budget shares in respect of that financial year.

Pupil numbers

11.—(1) In determining budget shares for primary and secondary schools, a local education authority shall take into account in their formula the number of registered pupils (other than pupils in places which the authority recognise as reserved for children with special educational needs or for children in nursery classes) at those schools on such date or dates as may be determined by the authority, weighted if the authority consider it appropriate in accordance with paragraph (7).

(2) Paragraphs (3) and (4) shall not apply in relation to pupils in nursery or reception classes whom the authority take into account under paragraph (1) (pupils in nursery classes not occupying places which the authority recognise as reserved for such pupils or pupils in reception classes).

(3) Where the authority determine only one date for the purposes of paragraph (1) that must be a date which falls—

- (a) before 1st April in the financial year in question; and
- (b) in the school year in which 1st April in the financial year in question falls.

(4) Where the authority determine more than one date for the purposes of paragraph (1) then—

- (a) one of those dates must satisfy paragraph (3);
- (b) of the other date or dates—
 - (i) no date may be earlier than the beginning of the school year in which 1st April in the financial year in question falls;
 - (ii) the authority may determine a date or dates which are in the future and estimate the number of registered pupils at the school on that date.

(5) An authority may in determining budget shares for special schools, or for primary or secondary schools with places which the authority recognise as reserved for children with special educational needs or for children in nursery classes, take into account in their formula the number of registered pupils at those special schools or the number of pupils in those reserved places at primary or secondary schools on such date or dates as may be determined by the authority, weighted if the authority consider it appropriate in accordance with paragraph (7).

(6) If the authority estimate the number of registered pupils at a school they must consult the head teacher of the school.

(7) A local education authority may weight pupil numbers according to any or all of the following factors—

- (a) age, including weighting according to key stage or year group;
- (b) whether a pupil is provided with nursery education by a school;
- (c) the subject or course of study in the case of pupils in a sixth form;
- (d) special educational needs; and
- (e) whether a pupil is being educated through the medium of Welsh.

(8) A local education authority may adjust the number of registered pupils used to determine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly, the permanent exclusion of a pupil from the school or the admission of a pupil following his permanent exclusion from another school maintained by a local education authority.

Places

12. In determining budget shares for special schools, or for primary or secondary schools with places which the authority recognise as reserved for children with special educational needs or for children in nursery classes, the local education authority may take into account in their formula the number of places which they wish to fund at those special schools or the number of places of the kind described above at those primary or secondary schools and in both cases may take account of the special educational needs in question.

Schools of a particular description

13. Where a local education authority deduct from their local schools budget planned expenditure which relates to maintained schools of a particular description, they shall include factors or criteria in their formula in respect of that planned expenditure in relation to maintained schools which do not fall within that description.

Discrimination by reference to category

14. A local education authority shall not use in their formula any factors or criteria which discriminate between schools by reference to their category under the 1998 Act or their category under the 1996 Act except where—

- (a) in relation to the period before 1st September 1999, differences in the functions of the governing bodies of schools in their categories under the 1996 Act; or
- (b) in relation to the period on and after 1st September 1999, differences in the functions of the governing bodies of schools in their categories under the 1998 Act,

justify such discrimination.

Additional factors or criteria

15. A local education authority may, in determining budget shares for schools which they maintain, take into account in their formula, as they consider appropriate, any or all of the factors or criteria set out in Schedule 3.

Budget share adjustments

16.—(1) Subject to paragraph (3), where a school's budget share (within the meaning of the 1996 or 1998 Act) or maintenance grant for the preceding financial year was—

- (a) determined by reference to an estimate of the number of registered pupils at the school; and
- (b) differences between the estimated number of pupils on those dates and the actual number of pupils at the school on those dates were not taken into account in a redetermination of the school's budget share or maintenance grant for that preceding financial year,

the local education authority shall determine that school's budget share so as to take into account those differences.

(2) Subject to paragraph (3) and regulation 21, a local education authority may determine a school's budget share so as to take into account any other change during the course of the preceding financial year in the data by reference to which the school's budget share (within the meaning of the 1996 or 1998 Act) or maintenance grant for that year was determined, if those changes were not taken into account in a redetermination of the school's budget share or maintenance grant for that preceding financial year.

(3) Paragraphs (1) and (2) shall not apply to a school which received transitional funding under regulation 9 of the 1998 Regulations in that preceding financial year.

(4) A local education authority may adjust the number of registered pupils used to determine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly—

- (a) any reduction or increase in the school's budget share (within the meaning of the 1996 or 1998 Act) or maintenance grant for the preceding financial year, or any additional allocation in that year for the purposes of the school in accordance with the authority's scheme within the meaning of the 1996 Act, arising from the permanent exclusion of a pupil from the school or the admission to the school of a pupil permanently excluded from another maintained school; or
- (b) any increase in the school's budget share (within the meaning of the 1996 or 1998 Act) or maintenance grant for the preceding financial year, or any additional allocation in that year for the purposes of the school in accordance with the authority's scheme within the meaning of the 1996 Act, arising from significant increases in pupil numbers during the course of the preceding financial year.

(5) A local education authority shall include factors or criteria in their formula which satisfy the requirements of this regulation.

New schools

17.—(1) In the case of—

- (a) a proposed school referred to in regulation 1(5) or (6);
- (b) a school proposals for the establishment of which have not been fully implemented;
- (c) a school which is the subject of a significant change of character, a significant enlargement of its premises or a transfer to a new site under the 1996 Act; or
- (d) a school which is the subject of a prescribed alteration within the meaning of the 1998 Act,

the local education authority shall include factors or criteria in their formula which enable them to determine the school's budget share so as to take into account the particular needs of the school or proposed school; and in particular may, in any financial year preceding the financial year in which a school first admits pupils, determine the amount of the budget share as zero.

(2) For the purposes of these Regulations, proposals for the establishment of a school have been fully implemented when the number of pupils admitted to the school in each age group has, in the opinion of the local education authority, reached—

- (a) that number of pupils indicated, when proposals for the establishment of the school were published, as the number of pupils to be admitted to each age group when the proposals were fully implemented; or
- (b) if no such number was indicated, such number as the authority may determine.

Transitional funding for schools in England

18.—(1) In relation to the financial year beginning on 1st April 1999, a local education authority in England shall determine the budget share of a school which had received maintenance grant in the preceding financial year calculated in accordance with the 1998 Regulations, so as to include an amount for transitional funding.

(2) The amount referred to in paragraph (1) is the amount if any by which the school's protected level of funding in respect of the financial year beginning on 1st April 1998, determined by the Secretary of State in accordance with Schedule 4 and notified in writing to the authority, is greater than the school's adjusted budget share for the financial year beginning on 1st April 1999.

(3) For the purposes of this regulation a school's adjusted budget share is its budget share determined in accordance with this Part but not taking into account the effect of this regulation

and regulation 16(4) (budget share adjustments) or regulation 21 (additional provisions for determinations and redeterminations).

(4) A local education authority shall include factors or criteria in their formula which satisfy the requirements of this regulation.

Redetermination of budget shares

19.—(1) A local education authority shall include factors or criteria in their formula which enable them to redetermine a school’s budget share during the course of a financial year to take account of—

- (a) changes during the financial year in the number or estimates of the number of registered pupils at the school by reference to which the budget share was determined;
- (b) other changes during the financial year in the data by reference to which the budget share was determined; and
- (c) changes during the financial year in the amount of the authority’s individual schools budget.

(2) A local education authority may not redetermine in accordance with paragraph (1) the budget share of a school in receipt of transitional funding under regulation 18 so as to reduce the amount of that school’s budget share.

(3) A local education authority shall set out in their formula the factors or criteria that they will use, in redetermining schools' budget shares in accordance with paragraph (1), to allocate the planned expenditure referred to in paragraph 31 of Schedule 1 or paragraph 34 of Schedule 2.

(4) A local education authority shall include factors or criteria in their formula which enable them to adjust the number of registered pupils used to determine a school’s budget share where it is appropriate to do so in order to take into account, wholly or partly—

- (a) any reduction or increase in the school’s budget share under regulation 20 (pupils permanently excluded or admitted following a permanent exclusion); or
- (b) any increase in the school’s budget share under this regulation in respect of significant increases in pupil numbers funded by the planned expenditure referred to in paragraph 31 of Schedule 1 or paragraph 34 of Schedule 2.

Pupils permanently excluded or admitted following a permanent exclusion

20.—(1) Where a pupil is permanently excluded from a school maintained by a local education authority, the authority shall redetermine the school’s budget share for that financial year in accordance with paragraph (2).

(2) The school’s budget share shall be reduced by the amount

$$A \times \frac{B}{52}$$

where—

A is the amount, in the financial year in which the permanent exclusion takes effect (as defined from time to time for the purposes of section 494 of the 1996 Act⁽⁹⁾ (“the relevant date”)), determined by the authority, in accordance with this Part, to be attributable to a registered pupil of the same age and characteristics as the pupil in question at primary or secondary schools maintained by the authority:

For the purposes of this definition the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority’s formula or regulation 23

(9) Section 494 is substituted by paragraph 128 of Schedule 30 to the 1998 Act as from 1st April 1999, see S.I. 1998/2212.

by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criteria not dependent on pupil numbers; and

B is the number of complete weeks remaining in the financial year calculated from the relevant date:

EXCEPT that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age or age group as the pupil in question normally leave that school prior to being admitted to a middle or secondary school (including a special school which would apart from regulation 1(8) be a secondary school), B is the number of complete weeks remaining in that school year calculated from the relevant date.

(3) Where a pupil is admitted to a school maintained by a local education authority (“the admitting school”) who has been permanently excluded from another maintained school in that financial year the authority shall redetermine the admitting school’s budget share in accordance with paragraph (4).

(4) The school’s budget share shall be increased by an amount which may not be less than the amount

$$D \times \frac{E}{F}$$

where—

D is the amount by which the authority reduce the budget share of the school from which the pupil was permanently excluded or would have reduced it had that school been maintained by the authority;

E is the number of complete weeks remaining in the financial year during which the pupil is a registered pupil at the admitting school;

F is the number of complete weeks remaining in the financial year calculated from the relevant date.

(5) A local education authority shall include factors or criteria in their formula which satisfy the requirements of this regulation.

Additional provisions for determinations and redeterminations for the financial year beginning on 1st April 1999

21.—(1) A local education authority may, in the case of a school which is, or was immediately before 1st April 1999, a county, voluntary or maintained special school within the meaning of the 1996 Act, determine or redetermine that school’s budget share for the financial year beginning on 1st April 1999 to take into account changes, during the course of any preceding financial year, in data, other than pupil numbers, by reference to which the school’s budget share within the meaning of the 1996 Act for that year was determined if—

(a) such changes have not already been taken into account in any determination or redetermination of that school’s budget share within the meaning of the 1996 Act for a preceding financial year; and

(b) such determination or redetermination as is proposed in the financial year commencing on 1st April 1999 could also have been made in the financial year beginning on 1st April 1998, as a determination or redetermination under the terms of the authority’s scheme in force in that year or, as a consequence of a revision to that scheme, could have been made as part of the initial determination of a school’s budget share for the financial year beginning on 1st April 1999.

(2) A local education authority shall, in the case of a school which is, or was immediately before 1st April 1999, a grant-maintained or grant-maintained special school, determine or redetermine that

school's budget share for the financial year beginning on 1st April 1999 to take into account changes, during the course of any preceding financial year, in data, other than pupil numbers, by reference to which the school's maintenance grant for that year was determined if—

- (a) such changes have not already been taken into account in any determination or redetermination of that school's maintenance grant for a preceding financial year; and
- (b) such determination or redetermination as is proposed in the financial year commencing on 1st April 1999 could also have been made on 1st April 1998 as a determination or redetermination of the school's maintenance grant for the preceding financial year in question.

(3) A local education authority shall determine or redetermine a school's budget share in accordance with paragraph (2) by adding or subtracting an amount determined by the Secretary of State, in accordance with the provisions of the regulations made under section 244(2) of the 1996 Act (for England or Wales as the case may be) in force on 1st April 1998 and as if any reference in the regulations for England to the Funding Agency for Schools was a reference to the Secretary of State.

(4) A local education authority shall include factors or criteria in their formula which satisfy the requirements of this regulation.

Percentage of “pupil-led” funding

22. In determining and redetermining budget shares for primary and secondary schools a local education authority shall ensure that their formula provides that at least 80 per cent. of the amount which is their individual schools budget, less the aggregate of the sum of the budget shares of special schools and any transitional funding determined under regulation 18, is allocated in one or more of the following manners—

- (a) in accordance with regulation 11(1) or (5);
- (b) in accordance with any other factors or criteria using pupil numbers which provide for the same funding for pupils of the same age irrespective of the nature of the school which they attend;
- (c) to places in primary schools which the authority recognise as reserved for children in nursery classes;
- (d) for children with special educational needs who do not have statements of special educational needs but only up to 5 per cent. of the total amount allocated by the authority to primary and secondary schools from their individual schools budget;
- (e) to places in primary or secondary schools which the authority recognise as reserved for children with special educational needs;
- (f) for pupils with statements of special educational needs where funding in respect of such pupils forms part of schools' delegated budgets;
- (g) by reference to any or all of the following: the recruitment of, the length, type and subject matter of courses taken by, and the achievements of, pupils in a sixth form at a school; and
- (h) in the case of a local education authority in Wales, by reference to the record of a school in recruiting and retaining pupils in the sixth form by comparison with other schools in Wales.

Additional arrangements approved by the Secretary of State

23. The Secretary of State may, where it appears to him to be expedient to do so, authorise a local education authority to determine or redetermine budget shares, to such extent as he may specify, in accordance with arrangements approved by him in place of the arrangements provided for by this Part.

Schools' budget shares not to be the provision of a benefit or service

24. For the purposes of section 295 of the 1996 Act (provision of benefits and services by local education authorities) the determination or redetermination of a school's budget share in accordance with this Part shall not constitute the provision of a benefit or service for pupils or other persons at schools.

PART IV SCHEMES

Required content of schemes

25. A scheme prepared by a local education authority under section 48(1) of the 1998 Act shall deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

Consultation

26. The requirement to consult the persons referred to in paragraph 1(3)(a) of Schedule 14 to the 1998 Act can be satisfied by consultation which takes place on and after 8th October 1998 in the case of a local education authority in England, or on and after 20th October 1998 in the case of a local education authority in Wales, and (in either case) before the coming into force of these Regulations.

Manner of publication

27. For the purposes of paragraph 1(7) of Schedule 14 to the 1998 Act (prescribed manner of publication of schemes) a scheme shall be published by the local education authority concerned on its coming into force and in the circumstances prescribed in regulation 28 by—

- (a) furnishing a copy to the governing body and a copy to the head teacher of each school maintained by the authority; and
- (b) making a copy available for reference at all reasonable times and without charge at each school maintained by the authority and at the principal education office of the authority.

Additional occasions when schemes require publication

28. For the purposes of paragraph 1(7)(b) of Schedule 14 to the 1998 Act (prescribed occasions on which publication of schemes is required) a scheme shall be published by the local education authority concerned on the coming into force of any revision of it.

17th January 1999

Estelle Morris
Minister of State,
Department for Education and Employment

17th January 1999

Peter Hain
Parliamentary Under Secretary of State, Welsh
Office

SCHEDULE 1

Regulation 4

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE WHICH MAY BE DEDUCTED FROM THE LOCAL SCHOOLS BUDGET OF A LOCAL EDUCATION AUTHORITY IN ENGLAND

Expenditure of a class or description referred to in this Schedule includes expenditure on associated administrative costs and overheads.

Expenditure supported by specific grants

1. Expenditure offset by a grant made to the authority under conditions which impose restrictions on the particular purposes of the authority for which the grant may be used.
2. Expenditure, not falling within paragraph 1, but taken into account in determining the amount of that grant.

Special educational provision

3. Expenditure on services provided by educational psychologists.
4. Expenditure, not falling within paragraph 3, in connection with the authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children).
5. Subject to paragraphs 6 and 7, expenditure in making the provision specified in a pupil's statement of special educational needs except where the pupil is—
 - (a) a registered pupil at a special school maintained by the authority; or
 - (b) a registered pupil at a primary or secondary school maintained by the authority who occupies one of a number of places at that school which are recognised by the authority as being reserved for children with special educational needs.
6. Where a pupil falls within paragraph 5(a) or (b) and the cost of the provision specified in the pupil's statement of special educational needs is significantly greater than that for the generality of pupils at the special school, or occupying the places at the primary or secondary school, in question, the amount by which the expenditure incurred in making the provision specified in his statement of special educational needs is greater than that incurred in making provision for a pupil who falls within such generality of pupils.
7. Expenditure in making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 5(b) but the places which are recognised by the authority as being reserved for children with special educational needs are for such pupils with visual, hearing, speech or language impairments or other communication disorder.
8. Expenditure in respect of specialist support provided to assist the governing bodies of schools in meeting the particular needs of pupils with statements of special educational needs or who are at Stage 3 or 4 as described in the Code of Practice⁽¹⁰⁾ on the Identification and Assessment of Special Educational Needs issued, and from time to time revised, under section 313 of the 1996 Act (being expenditure that it would be inappropriate to expect to be met from the school's budget share).
9. Expenditure on monitoring the provision for pupils in schools (whether or not maintained by the authority) for the purposes of disseminating good practice in relation to, and improving the quality of educational provision for, children with special educational needs.

⁽¹⁰⁾ ISBN 0 85522 444 4. The Code of Practice originally issued under section 157 of the Education Act 1993 (c. 35) continues to have effect by virtue of the 1996 Act, Schedule 39, paragraph 1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- 10.** Expenditure for purposes connected with the encouragement of—
- (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
 - (b) the education of children with special educational needs at primary and secondary schools; and
 - (c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs (being expenditure that it would be inappropriate to expect to be met from the school's budget share).
- 11.** Expenditure on the provision of guidance and information to the parents of pupils with special educational needs which, in relation to pupils at a school maintained by the authority, is in addition to the information usually provided by the governing bodies of such schools.
- 12.** Expenditure in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit as defined in that section.
- 13.** Expenditure, not falling within any other paragraph of this Schedule, incurred in preparing and reviewing a plan which sets out the arrangements made, or proposed to be made, by the authority in connection with the education of children with behavioural difficulties under section 527A of the 1996 Act⁽¹¹⁾ and such expenditure incurred on services required to implement the plan.
- 14.** Expenditure on carrying out the authority's functions under the Children Act 1989⁽¹²⁾;
- 15.** Expenditure on the payment of fees in respect of pupils with special educational needs—
- (a) at independent schools or at special schools which are not maintained by a local educational authority, under section 348 of the 1996 Act; or
 - (b) at an institution outside England and Wales, under section 320 of the 1996 Act.

School improvement

16. Expenditure, not falling within any other paragraph of this Schedule, incurred in preparing, reviewing and implementing the authority's education development plan under section 6 of the 1998 Act.

Access to education

- 17.** Expenditure in relation to the following matters—
- (a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997⁽¹³⁾;
 - (b) planning the supply of school places, including the preparation, approval and adoption of the school organisation plan pursuant to section 26 of the 1998 Act;
 - (c) administration of the system of admissions of pupils to schools including expenditure incurred in carrying out consultations under section 89(2) of the 1998 Act and in relation to appeals;
 - (d) the authority's functions in relation to the exclusion of pupils from schools including advice to parents of an excluded pupil;

⁽¹¹⁾ Section 527A was inserted by section 9 of the Education Act 1997 (c. 44).

⁽¹²⁾ 1989 c. 41.

⁽¹³⁾ S.I. 1997/319; amended by S.I. 1998/371.

- (e) school organisation committees;
- (f) the authority's functions under section 509 of the 1996 Act (home-to-school transport);
- (g) the authority's functions under sections 510, 514 and 518(14) of the 1996 Act (provision and administration of clothing grants, boarding grants and educational maintenance allowances); and
- (h) the Education Welfare Service and other expenditure arising from the authority's functions under Chapter II of Part VI of the 1996 Act and section 10 of the Children and Young Persons Act 1933(15) (school attendance);

18.—(1) Expenditure on milk, meals and other refreshment pursuant to section 512 or 513 of the 1996 Act subject to sub-paragraphs (2) and (3) below.

(2) A local education authority may not deduct expenditure referred to in sub-paragraph (1) above in relation to schools which are, or were immediately before 1st April 1999, grant-maintained or grant-maintained special schools.

(3) A local education authority may only deduct expenditure in the financial year beginning on 1st April 1999 on meals and other refreshment referred to in sub-paragraph (1) above in relation to any other secondary school maintained by the authority where it relates to a service provided to the school under—

- (a) a contract between the authority and a third party for the carrying out of the service in question; or
- (b) an arrangement whereby the authority's direct labour organisation or a similar organisation carries out that service,

in force in the financial year beginning on 1st April 1999.

19. Expenditure in the financial year commencing on 1st April 1999 on the repair and maintenance of a school kitchen where expenditure on meals in relation to the school concerned is deducted from the authority's local schools budget pursuant to paragraph 18.

20. Expenditure on determining the eligibility of a pupil for free school meals.

21. Expenditure pursuant to section 18 of the 1996 Act in making any grant or other payment in respect of fees or expenses (of whatever nature) which are payable in connection with the attendance of pupils at a school which is not maintained by any local education authority.

22. Expenditure on the provision of tuition in music or on other activities which provide opportunities for pupils to enhance their experience of music.

23. Expenditure which enables pupils to enhance their experience of the visual and performing arts other than music.

24. Expenditure on outdoor education centres but not including centres wholly or mainly for the provision of organised games, swimming or athletics.

Strategic management

25. Expenditure in their capacity as a local education authority in relation to—

- (a) the Chief Education Officer and his personal staff;
- (b) planning for the education service as a whole;
- (c) the administration of committees dealing with education;

(14) Section 518 is substituted by section 129 of the 1998 Act which section is not in force at the date that these Regulations are made.

(15) 1933 c. 12.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (d) revenue budget preparation, the production and publication of accounts and external audit;
- (e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter IV of Part II of the 1998 Act and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;
- (f) authorisation and monitoring of expenditure which does not form part of schools' delegated budgets (including expenditure in respect of schools which do not have delegated budgets) and all financial administration relating thereto;
- (g) internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972⁽¹⁶⁾;
- (h) recruitment, training and personnel management of staff funded by expenditure not forming part of schools' budget shares (including staff employed in schools which do not have delegated budgets);
- (i) investigations which the authority carry out of employees or potential employees of the authority or of governing bodies of schools;
- (j) functions of the authority in relation to superannuation which it is not reasonably practicable for another person to carry out;
- (k) retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body to meet the cost from the school's budget share;
- (l) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff employed, or to be employed, at a school;
- (m) determination of conditions of service for non-teaching staff and advice to schools on the grading of such staff;
- (n) the authority's functions regarding the appointment or dismissal of employees;
- (o) consultation with governing bodies and persons employed at schools or their representatives;
- (p) compliance with the authority's duties under the Health and Safety at Work etc. Act 1974⁽¹⁷⁾ and the relevant statutory provisions as defined in section 53(1) of that Act in so far as compliance cannot reasonably be achieved through functions delegated to the governing bodies of schools;
- (q) the investigation and resolution of complaints;
- (r) legal services relating to the statutory functions of the authority;
- (s) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
- (t) the preparation, modification and revision of an early years development plan for their area under sections 120 and 121 of the 1998 Act; and
- (u) provision of information to or at the request of the Crown and the provision of other information which the authority are under a duty to make available.

26. Expenditure in the financial year beginning on 1st April 1999, except in relation to schools which are, or were immediately before 1st April 1999, grant-maintained or grant-maintained special schools, on—

- (a) advice to schools which have delegated budgets on financial, legal, personnel, estates, health and safety and related matters;

⁽¹⁶⁾ 1972 c. 70.

⁽¹⁷⁾ 1974 c. 37.

- (b) support for schools which have delegated budgets in respect of financial and personnel administration (including payroll administration, cash management, arrangements for the processing of payments authorised by or on behalf of the schools' governing bodies, and routine administration relating to contracts and staff recruitment); and
- (c) premises services other than repair and maintenance of buildings:

Provided that no such expenditure may be deducted by an authority in respect of any of the above items unless expenditure for that item in the financial year beginning on 1st April 1998 did not form part of, or was, pursuant to the terms of the authority's scheme (within the meaning of the 1996 Act) as then in force, deducted from, the authority's general schools budget (within the meaning of the 1996 Act).

27. Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act or in the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act.

28. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person which falls to be met by the authority except such expenditure which falls to be met from a school's budget share, by virtue of section 139 of the 1996 Act, section 57 of the 1998 Act or the authority's scheme (within the meaning of the 1996 or the 1998 Act).

29. Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998(**18**) except such expenditure which falls to be met from a school's budget share.

30. Expenditure without which the education of pupils at a school would be seriously impaired and which because of both its size and unexpectedness it would not be reasonable to expect the governing body to meet from the school's budget share.

31. Expenditure on increases to, or on the correction of errors in, the school's budget share to which the school is entitled by virtue of the authority's formula under regulation 10 or arrangements under regulation 23.

32. Expenditure on establishing and maintaining electronic computer systems, including data storage, in so far as they link, or facilitate the linkage of, the authority to schools which they maintain, such schools to each other or such schools to other persons or institutions.

33. Expenditure on insurance except to the extent that governing bodies have elected in accordance with the authority's scheme to receive funding for insurance as part of their school's budget shares.

34. Expenditure in making payments to, or in providing a temporary replacement for, a woman on maternity leave.

- 35.** Expenditure in making payments to, or in providing a temporary replacement for, persons—
- (a) carrying out trade union duties or undergoing training under section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992(**19**);
 - (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;
 - (c) performing public duties under section 50 of the Employment Rights Act 1996(**20**);
 - (d) undertaking jury service;

(18) 1998 c. 30. This provision is not in force as at the date that these Regulations are made.

(19) 1992 c. 52.

(20) 1996 c. 18.

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- (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977⁽²¹⁾;
- (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996⁽²²⁾;
- (g) who are employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 as defined in section 196 of that Act or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as defined in regulation 11A of those Regulations⁽²³⁾;
- (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996.
- (i) undertaking duties as members of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996⁽²⁴⁾;
- (j) suspended from working at a school.

36. Expenditure in making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local education authority or the governing body of a school.

37. Expenditure on the appointment of governors, the making of instruments of government, the payment of expenses to which governors are entitled and which are not payable from a school's budget share and the provision of information to governors.

38. Expenditure, in relation to the financial year beginning on 1st April 1999, on library services and museum services except in relation to schools which are, or were immediately before 1st April 1999, grant-maintained or grant-maintained special schools.

39. Expenditure on licence fees or subscriptions in the financial year beginning on 1st April 1999 paid on behalf of schools if—

- (a) the authority also made such payments in the preceding financial year other than from schools' budget shares (within the meaning of the 1996 Act); and
- (b) it is not expenditure in respect of schools which are, or were immediately before 1st April 1999, grant-maintained or grant-maintained special schools.

40. Expenditure in the financial year beginning on 1st April 1999 in pursuance of a binding agreement, where the other party is a local authority, or the other parties include one or more local authorities, in relation to the operation of a facility provided not solely for the use of schools.

41. Expenditure for purposes not falling within any other paragraph of this Schedule amounting in total to no more than 0.1 per cent. of the authority's local schools budget.

SCHEDULE 2

Regulation 5

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE WHICH MAY BE DEDUCTED FROM THE LOCAL SCHOOLS BUDGET OF A LOCAL EDUCATION AUTHORITY IN WALES

Expenditure of a class or description referred to in this Schedule includes expenditure on associated administrative costs and overheads.

⁽²¹⁾ S.I. 1977/500, amended by S.I. 1992/2051.

⁽²²⁾ S.I. 1996/1513.

⁽²³⁾ S.I. 1981/1794; regulation 11A was inserted by S.I. 1995/2587.

⁽²⁴⁾ 1996 c. 14.

Expenditure supported by specific grants

1. Expenditure offset by a grant made to the authority under conditions which impose restrictions on the particular purposes of the authority for which the grant may be used.
2. Expenditure, not falling within paragraph 1, but taken into account in determining the amount of that grant.

Provision of a specialised nature

3. Expenditure on services provided by educational psychologists.
4. Expenditure, not falling within paragraph 3, in connection with the authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children).
5. Subject to paragraphs 6 and 7, expenditure in making the provision specified in a pupil's statement of special educational needs except where the pupil is—
 - (a) a registered pupil at a special school maintained by the authority; or
 - (b) a registered pupil at a primary or secondary school maintained by the authority who occupies one of a number of places at that school which are recognised by the authority as being reserved for children with special educational needs.
6. Where a pupil falls within paragraph 5(a) or (b) and the cost of the provision specified in the pupil's statement of special educational needs is significantly greater than that for the generality of pupils at the special school, or occupying the places at the primary or secondary school, in question, the amount by which the expenditure incurred in making the provision specified in his statement of special educational needs is greater than that incurred in making provision for a pupil who falls within such generality of pupils.
7. Expenditure in making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 5(b) but the places which are recognised by the authority as being reserved for children with special educational needs are for such pupils with visual, hearing, speech or language impairments or other communication disorder.
8. Expenditure in respect of specialist support provided to assist the governing bodies of schools in meeting the particular needs of pupils with statements of special educational needs or who are at Stage 3 or 4 as described in the Code of Practice⁽²⁵⁾ on the Identification and Assessment of Special Educational Needs issued, and from time to time revised, under section 313 of the 1996 Act (being expenditure that it would be inappropriate to expect to be met from the school's budget share).
9. Expenditure on monitoring the provision for pupils in schools (whether or not maintained by the authority) for the purposes of disseminating good practice in relation to, and improving the quality of educational provision for, children with special educational needs.
10. Expenditure for purposes connected with the encouragement of—
 - (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
 - (b) the education of children with special educational needs at primary and secondary schools; and

(25) ISBN 0 85522 444 4. The Code of Practice originally issued under section 157 of the Education Act 1993 (c. 35) continues to have effect by virtue of the 1996 Act, Schedule 39, paragraph 1.

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- (c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs (being expenditure that it would be inappropriate to expect to be met from the school's budget share).

11. Expenditure on the provision of guidance and information to the parents of pupils with special educational needs which, in relation to pupils at a school maintained by the authority, is in addition to the information usually provided by the governing bodies of such schools.

12. Expenditure in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit as defined in that section.

13. Expenditure, not falling within any other paragraph of this Schedule, incurred in preparing and reviewing a plan which sets out the arrangements made, or proposed to be made, by the authority in connection with the education of children with behavioural difficulties under section 527A of the 1996 Act⁽²⁶⁾ and such expenditure incurred on services required to implement the plan.

14. Expenditure on carrying out the authority's functions under the Children Act 1989⁽²⁷⁾.

15. Expenditure on the payment of fees in respect of pupils with special educational needs—

- (a) at independent schools or at special schools which are not maintained by a local education authority, under section 348 of the 1996 Act; or
- (b) at an institution outside England and Wales, under section 320 of the 1996 Act.

16. Expenditure on the provision of tuition in musical instruments or choral instruction (either to individuals or groups).

17. Expenditure on supporting travelling theatres so far as such expenditure does not fall within paragraph 1 or 2.

18. Expenditure in connection with the provision of Welsh language teaching by teachers who are employed to work otherwise than at a single school so far as such expenditure does not fall within paragraph 1 or 2.

19. Expenditure on outdoor education centres but not including centres wholly or mainly for the provision of organised games, swimming or athletics.

School improvement

20. Expenditure, not falling within any other paragraph of this Schedule, incurred in preparing, reviewing and implementing the authority's education development plan under section 6 of the 1998 Act.

21. Expenditure in connection with the exercise or contemplated exercise of the authority's powers under sections 14 to 17 of the 1998 Act.

22. Expenditure in responding to a report of an inspection under section 10 of the School Inspections Act 1996⁽²⁸⁾.

23. Expenditure, not falling within any other paragraph of this Schedule, incurred in connection with the provision of advisory and training services in relation to the curriculum for maintained schools.

⁽²⁶⁾ Section 527A was inserted by section 9 of the Education Act 1997 (c. 44).

⁽²⁷⁾ 1989 c. 41.

⁽²⁸⁾ 1996 c. 57.

Access to education

24. Expenditure in relation to the following matters—

- (a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997⁽²⁹⁾;
- (b) planning the supply of school places, including the preparation and adoption of the school organisation plan pursuant to section 26 of the 1998 Act;
- (c) administration of the system of admissions of pupils to schools including expenditure incurred in carrying out consultations under section 89(2) of the 1998 Act and in relation to appeals;
- (d) the authority's functions in relation to the exclusion of pupils from schools including advice to parents of an excluded pupil;
- (e) the authority's functions under section 509 of the 1996 Act (home-to-school transport);
- (f) the authority's functions under sections 510, 514 and 518⁽³⁰⁾ of the 1996 Act (provision and administration of clothing grants, boarding grants and educational maintenance allowances); and
- (g) the Education Welfare Service and other expenditure arising from the authority's functions under Chapter II of Part VI of the 1996 Act and section 10 of the Children and Young Persons Act 1933⁽³¹⁾ (school attendance).

25. Expenditure on—

- (a) meals and other refreshment (excluding milk); and
- (b) milk,

pursuant to section 512 or 513 of the 1996 Act.

26. Expenditure on determining the eligibility of a pupil for free school meals.

27. Expenditure pursuant to section 18 of the 1996 Act in making any grant or other payment in respect of fees or expenses (of whatever nature) which are payable in connection with the attendance of pupils at a school which is not maintained by any local education authority.

Strategic management

28. Expenditure in their capacity as a local education authority in relation to—

- (a) the Chief Education Officer and his personal staff;
- (b) planning for the education service as a whole;
- (c) the administration of committees dealing with education;
- (d) revenue budget preparation, the production and publication of accounts and external audit;
- (e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter IV of Part II of the 1998 Act and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;

⁽²⁹⁾ S.I. 1997/319; amended by S.I. 1998/371.

⁽³⁰⁾ Section 518 is substituted by section 129 of the 1998 Act which section is not in force at the date that these Regulations are made.

⁽³¹⁾ 1933 c. 12.

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- (f) authorisation and monitoring of expenditure which does not form part of schools' delegated budgets (including expenditure in respect of schools which do not have delegated budgets) and all financial administration relating thereto;
 - (g) internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972⁽³²⁾;
 - (h) recruitment, training and personnel management of staff funded by expenditure not forming part of schools' budget shares (including staff employed in schools which do not have delegated budgets);
 - (i) investigations which the authority carry out of employees or potential employees of the authority or of governing bodies of schools;
 - (j) functions of the authority in relation to superannuation which it is not reasonably practicable for another person to carry out;
 - (k) retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body to meet the cost from the school's budget share;
 - (l) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff employed, or to be employed, at a school;
 - (m) determination of conditions of service for non-teaching staff and advice to schools on the grading of such staff;
 - (n) the authority's functions regarding the appointment or dismissal of employees;
 - (o) consultation with governing bodies and persons employed at schools or their representatives;
 - (p) compliance with the authority's duties under the Health and Safety at Work etc. Act 1974⁽³³⁾ and the relevant statutory provisions as defined in section 53(1) of that Act in so far as compliance cannot reasonably be achieved through functions delegated to the governing bodies of schools;
 - (q) the investigation and resolution of complaints;
 - (r) legal services relating to the statutory functions of the authority;
 - (s) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
 - (t) the preparation, modification and revision of an early years development plan for their area under sections 120 and 121 of the 1998 Act; and
 - (u) provision of information to or at the request of the Crown and the provision of other information which the authority are under a duty to make available.
- 29.** Expenditure incurred in the provision of—
- (a) advice to schools which have delegated budgets on financial, legal, personnel, estates, health and safety and related matters; and
 - (b) support for such schools in respect of financial and personnel administration (including payroll administration, cash management, arrangements for the processing of payments authorised by or on behalf of the schools' governing bodies, and routine administration relating to contracts and staff recruitment).
- 30.** Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act or in

⁽³²⁾ 1972 c. 70.

⁽³³⁾ 1974 c. 37.

the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act.

31. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person which falls to be met by the authority except such expenditure which falls to be met from a school's budget share, by virtue of section 139 of the 1996 Act, section 57 of the 1998 Act or the authority's scheme (within the meaning of the 1996 or the 1998 Act).

32. Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998(**34**) except such expenditure which falls to be met from a school's budget share.

33. Expenditure without which the education of pupils at a school would be seriously impaired and which because of both its size and unexpectedness it would not be reasonable to expect the governing body to meet from the school's budget share.

34. Expenditure on increases to, or on the correction of errors in, the school's budget share to which the school is entitled by virtue of the authority's formula under regulation 10 or arrangements under regulation 23.

35. Expenditure on establishing and maintaining electronic computer systems, including data storage, in so far as they link, or facilitate the linkage of, the authority to schools which they maintain, such schools to each other or such schools to other persons or institutions.

36. Expenditure on insurance.

37. Expenditure in making payments to, or in providing a temporary replacement for, a woman on maternity leave.

38. Expenditure in making payments to, or in providing a temporary replacement for, persons—

- (a) carrying out trade union duties or undergoing training under section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992(**35**);
- (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c) performing public duties under section 50 of the Employment Rights Act 1996(**36**);
- (d) undertaking jury service;
- (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977(**37**);
- (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996(**38**);
- (g) who are employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 as defined in section 196 of that Act or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as defined in regulation 11A of those Regulations(**39**);
- (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996.

(34) 1998 c. 30. This provision is not in force as at the date that these Regulations are made.

(35) 1992 c. 52.

(36) 1996 c. 18.

(37) S.I. 1977/500, amended by S.I. 1992/2051.

(38) S.I. 1996/1513.

(39) S.I. 1981/1794; regulation 11A was inserted by S.I. 1995/2587.

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- (i) undertaking duties as members of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996⁽⁴⁰⁾;
 - (j) suspended from working at a school.
- 39.** Expenditure, not falling within any other paragraph of this Schedule, on—
- (a) providing cover for staff absences; and
 - (b) safeguarding of salaries in accordance with an order made under section 2 of the School Teachers' Pay and Conditions Act 1991⁽⁴¹⁾.
- 40.** Expenditure in making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local education authority or the governing body of a school.
- 41.** Expenditure on the appointment of governors, the making of instruments of government, the payment of expenses to which governors are entitled and which are not payable from a school's budget share and the provision of information to governors.
- 42.** Expenditure on the repair, maintenance and cleaning of school premises.
- 43.** Expenditure on library services and museum services for schools.
- 44.** Expenditure on licence fees or subscriptions paid on behalf of schools if the authority also made such payments in the preceding financial year other than from schools' budget shares (within the meaning of the 1996 Act).
- 45.** Expenditure for purposes not falling within any other paragraph of this Schedule amounting in total to no more than 0.1 per cent. of the authority's local schools budget.

SCHEDULE 3

Regulation 15

ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT IN A LOCAL EDUCATION AUTHORITY'S FORMULA UNDER REGULATION 10

Except where otherwise stated the factors or criteria set out below in this Schedule may not be taken into account by a local education authority in their formula on the basis of actual or estimated cost.

1. Special educational needs of pupils determined in a manner that the authority consider appropriate as a means of assessing such needs.
2. Pupils for whom English or Welsh is not their first language.
3. Recruitment of, the length, type or subject matter of courses taken by, or the achievements of, pupils in a sixth form at a school.
4. Turnover of pupils other than as part of the general admissions process at a school.
5. The extent to which the authority meet the cost of admission arrangements at a school other than from the school's delegated budget.
6. The size and condition of a school's buildings and grounds relative to those of other schools maintained by the authority: The funding must be in accordance with scales published by the authority which reflect so far as appropriate the statutory duties of governing bodies in relation to school premises and their eligibility for grant from any government department.
7. A school which has a split site in accordance with criteria published by the authority.

⁽⁴⁰⁾ 1996 c. 14.

⁽⁴¹⁾ 1991 c. 49.

8. Facilities found at some schools only.
9. Rates payable in respect of the premises of each school (including actual or estimated cost).
10. Charges for water and sewage (including actual or estimated cost).
11. Heating and lighting of school premises.
12. Rent payable in respect of school premises (including actual or estimated cost).
13. Cleaning of school premises.
14. Transport to and from activities outside the school premises which form part of the school's curriculum.
15. Hire of facilities outside school premises (including actual or estimated cost).
16. In cases where the governing body are entitled, in accordance with the authority's scheme, to have an amount in respect of insurance included in the school's budget share, the appropriate proportion of the authority's planned expenditure on insurance or, if the authority do not insure, the appropriate proportion of the amount that the authority would have spent had they insured, to be determined on a basis decided by the authority which must have regard to the number of registered pupils at the school.
17. Payments in relation to a private finance transaction as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(42) (including actual or estimated cost).
18. Amounts payable to a new school established as the result of the discontinuance of one or more maintained schools to reflect the extent to which a school which has been discontinued has spent more than or has not spent all its budget share (within the meaning of the 1996 or the 1998 Act) in any financial year.
19. Whether the school is to be discontinued in the financial year in question.
20. School milk, meals and other refreshment: The authority may not treat any element of this expenditure as having a negative value.
21. Teachers' salaries at a school (including actual or estimated cost): The funding must be in accordance with a scale published by the authority.
22. Safeguarding of salaries in accordance with orders made from time to time under section 2 of the School Teachers' Pay and Conditions Act 1991(43) (including actual or estimated cost).
23. Social priority allowances in accordance with orders made from time to time under section 2 of the School Teachers' Pay and Conditions Act 1991 (including actual or estimated cost).
24. Differential costs of London weighting of salaries.
25. Social deprivation in the area from which a school derives its pupils.
26. The need for single payments to be allocated to primary, secondary or special schools, or any combination of such schools, regardless of size.
27. The need for payments to be allocated to schools, of a size and satisfying other conditions, specified by the authority.
28. Schools whose budget shares would otherwise be reduced year-on-year by more than 5 per cent: The funding must be in accordance with a scale published by the authority.
29. Contracts to which the governing body of a school are bound by virtue of a provision in the authority's scheme (including actual or estimated cost).

(42) S.I. 1997/319; amended by S.I. 1998/371.

(43) 1991 c. 49. As at the date these Regulations are made the relevant order is S.I. 1998/1884.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

30. Any other factors or criteria not otherwise falling within this Schedule contained in the authority's scheme (within the meaning of the 1996 Act) as it applied in relation to the financial year beginning on 1st April 1998 (including actual or estimated cost): Provided that the total amount allocated in accordance with the authority's formula having regard to such factors or criteria shall not exceed 1 per cent. of the authority's individual schools budget.

SCHEDULE 4

Regulation 18

PROTECTED LEVEL OF FUNDING

1.—(1) This Schedule applies for the purpose of determining the protected level of funding for a school, to which regulation 18 (transitional funding for schools in England) applies, in respect of the financial year beginning on 1st April 1998.

(2) References in paragraph 2 to a numbered regulation or Schedule are references to the regulation or Schedule in the 1998 Regulations bearing that number.

(3) References in this Schedule to a scheme are to a scheme within the meaning of the 1996 Act.

2.—(1) Subject to paragraphs 6, 7 and 8, the Secretary of State shall calculate the protected level of funding for the financial year beginning on 1st April 1998 for each school to which regulation 18 applies according to the formula

$$\frac{a-b}{c} \times d,$$

where

“a”, “b”, “c” and “d” have the meanings ascribed to them by this paragraph and paragraphs 3, 4 and 5 respectively.

(2) For the purposes of the formula in sub-paragraph (1) above and subject to sub-paragraph (4) below, “a”, in the case of a school whose maintenance grant was determined in the financial year beginning on 1st April 1998 in accordance with the 1998 Regulations, other than in accordance with regulation 15, is the aggregate of the following amounts, in each case as last determined or redetermined by the Funding Agency for Schools in respect of the school before 15th December 1998—

- (a) the amount (Direct AMG) determined in accordance with regulation 6, 7, or 19;
- (b) in the case of a school whose Direct AMG was determined in accordance with regulation 12, the amount which appeared to the Funding Agency for Schools to be equal or approximate to the amount of the school's budget share for that financial year;
- (c) the amount (Central AMG) determined in accordance with regulation 8;
- (d) the amount of transitional funding determined in accordance with regulation 9;
- (e) the amount determined in accordance with regulation 11 (or that regulation as it has effect in accordance with regulation 20(1)) or regulation 20(2) (school meals);
- (f) the amount determined in accordance with regulation 22 (contingencies) in respect of contingencies arising other than from increases in pupil numbers at the school during the course of that financial year;
- (g) the amount determined in accordance with regulation 23 (nursery education);
- (h) the amount added or deducted under regulation 32 (schools situated in the area of the authority which is not the area of the former maintaining authority);

- (i) the amount added under regulation 33 (capital expenditure from the revenue account).
- (3) For the purposes of the formula in sub-paragraph (1) above and subject to sub-paragraph (4) below, “a” in the case of a school whose maintenance grant was determined in the financial year beginning on 1st April 1998 in accordance with regulation 15, is the aggregate of the following amounts, in each case as last determined or redetermined by the Funding Agency for Schools in respect of the school before 15th December 1998—
- (a) the amount determined under regulation 15;
 - (b) the amount added under regulation 33 (capital expenditure from the revenue account).
- (4) For the purpose of determining the amounts referred to in sub-paragraphs (2) and (3) above no account shall be taken of—
- (a) funding for pupils with statements of special educational needs of a kind which the local education authority could have determined, by the application of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as part of such a school’s budget share for all or part of the financial year beginning on 1st April 1998, in so far as such funding or a corresponding percentage of such funding could not also have been determined in accordance with the authority’s formula for the equivalent period in the financial year beginning on 1st April 1999;
 - (b) regulation 10 and 17(b) (Section 11 funding);
 - (c) regulation 13 (apportionment of Central AMG);
 - (d) regulation 14 (apportionment of school meals funding);
 - (e) regulations 18 and 21 (apportionment of maintenance grant);
 - (f) regulation 22 (contingencies) in respect of contingencies arising from increases in pupil numbers at the school during the course of the financial year;
 - (g) regulations 17(a), 24, 25 and 26 (additions or deductions representing unspent sums from previous budget shares, budget deficits from previous years and deductions from current year’s budget share);
 - (h) regulations 27 and 28 (deductions representing excessive surpluses in previous years and excessive severance payments);
 - (i) regulation 31 (schools with wide age ranges).
- (5) In the case of a school to which regulation 4(2) of the 1998 Regulations applied (precise calculation of maintenance grant impracticable etc.) the Secretary of State shall determine as the amount of “a” such amount as appears to him to be fair and reasonable having regard to the amount of maintenance grant which the Funding Agency for Schools determined in respect of the school in accordance with the 1998 Regulations and the provisions of sub-paragraphs (2) and (4) above.

3.—(1) For the purposes of the formula in paragraph 2(1), “b”—

- (a) in the case of a school which is, or was immediately before 1st April 1999, a grant-maintained or grant-maintained special school which was not a charity before acquiring grant-maintained status or being established as a grant-maintained school under Part III of the 1996 Act or becoming a grant-maintained special school in pursuance of Part 2 of the Education (Grant-maintained Special Schools) Regulations 1994⁽⁴⁴⁾, has the value ascribed to it by sub-paragraph (2) below; and
- (b) in all other cases is zero.

⁽⁴⁴⁾ S.I. 1994/653; amended by S.I. 1994/1231 and read with paragraph 1(4) of Schedule 39 to the 1996 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) In the case of a school described in sub-paragraph (1)(a) above, “b” is $x-y$ where x has the meaning ascribed to it by sub-paragraph (3) below and y has the meaning ascribed to it by sub-paragraph (4) below.

(3) x is—

(a) in the case of a school in respect of which the governing body have made a preliminary decision in accordance with the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998⁽⁴⁵⁾ that the school should be allocated to the category of community, voluntary controlled or community special school on the appointed day⁽⁴⁶⁾, one third; or

(b) in any other case, four fifths,

of the amount appearing to the Secretary of State to be payable in respect of non domestic rates by the governing body in respect of the school premises in the financial year beginning on 1st April 1998 as if sections 43(6) and 47 of the Local Government Finance Act 1988⁽⁴⁷⁾ (mandatory and discretionary rate relief) did not apply.

(4) y is the greater of zero and an amount which is the amount referred to at sub-paragraph (3) (b) above (whether or not sub-paragraph (3)(b) applied in that case) less 2.1 per cent. of

$(a + z)$

where

“a” is the amount determined under paragraph 2(2), (3) or (5) as the case may be; and

“z” is—

in the case of a school referred to in paragraph 2(2) or (3), the aggregate of the following amounts, in each case as last determined or redetermined by the Funding Agency for Schools in respect of the school before 15th December 1998 in accordance with the following provisions of the 1998 Regulations—

- (i) regulations 10 and 17(b) (Section 11 funding);
- (ii) regulation 22 (contingencies) in respect of contingencies arising from increases in pupil numbers at the school during the course of the financial year;
- (iii) regulations 17(a), 24, 25 and 26 (additions or deductions representing unspent sums from previous budget shares, budget deficits from previous years and deductions from current year’s budget share); and

in the case of a school referred to in paragraph 2(5), such amount as the Secretary of State determines is fair and reasonable having regard to the amount of maintenance grant which the Funding Agency for Schools determined in respect of the school in accordance with the 1998 Regulations and the provisions of sub-sub-paragraphs (i) to (iii) above.

4. For the purpose of the formula in paragraph 2(1), “c” is

- (a) the number appearing to the Secretary of State to be the number of registered pupils at the school on 15th January 1998; or
- (b) in the case of a special school, the number of places for which the school is funded under the authority’s scheme for the financial year beginning on 1st April 1998, or
- (c) where proposals published under section 259 or 260 of the 1996 Act to make a significant change in the character of the school were—
 - (i) implemented wholly or partly in that financial year, and

⁽⁴⁵⁾ S.I. 1998/1969.

⁽⁴⁶⁾ 1st September 1999.

⁽⁴⁷⁾ 1988 c. 41.

(ii) not funded under regulation 22 of the 1998 Regulations,

such number of pupils determined by the Secretary of State, having consulted the local education authority, being a composite number based on a proportion of the number of registered pupils at the school on 15th January 1998 and a proportion of the number which the Secretary of State estimates will be at the school at a later date in the financial year beginning on 1st April 1998 determined by him.

5. For the purpose of the formula in paragraph 2(1), “d” is the number appearing to the Secretary of State to be—

- (a) the number of registered pupils at the school on 21st January 1999; or
- (b) in the case of a special school, the appropriate number of places for which the school could be funded in accordance with these Regulations for the financial year beginning on 1st April 1999.

6.—(1) In the case of a special school which has places for both day and boarding pupils, the Secretary of State shall calculate the protected level of funding for the financial year beginning on 1st April 1998 for the school according to the formula $((e \times f) \times g) + ((h \times i) \times j)$, where $e+h=a-b$.

(2) For the purposes of the formula in sub-paragraph (1) above,

“a” is the amount determined under paragraph 2(2), (3) or (5) as the case may be;

“b” is the amount determined under paragraph 3;

“e” is that part of the “a–b” which the Secretary of State determines relates to places for day pupils at the school;

“h” is that part of “a–b” which the Secretary of State determines relates to places for boarding pupils at the school;

“f” is the number of places for day pupils for which the special school is funded for the financial year beginning on 1st April 1998;

“i” is the number of places for boarding pupils for which the special school is funded for the financial year beginning on 1st April 1998;

“g” is the number appearing to the Secretary of State to be the appropriate number of places for day pupils for which the special school could be funded in accordance with these Regulations for the financial year beginning on 1st April 1999;

“j” is the number appearing to the Secretary of State to be the appropriate number of places for boarding pupils for which the special school could be funded in accordance with these Regulations for the financial year beginning on 1st April 1999.

7. The protected level of funding for the financial year beginning on 1st April 1998 for—

Uppingham Community College, Rutland,

Casterton Community College, Rutland,

Vale of Catmose Community College, Rutland,

shall be as last determined before 15th December 1998 in accordance with regulation 5 of the 1998 Regulations less an amount calculated in the same way as “b” under paragraph 3.

8. Where it appears to the Secretary of State that, by reason of the particular circumstances of the school, the protected level of funding, calculated in accordance with the preceding paragraphs of this Schedule, is too low, he may after consultation with the governing body of the school and the local education authority, increase it by such amount as he considers to be fair and reasonable having regard to all the circumstances of the case.

SCHEDULE 5

Regulation 25

CONTENTS OF SCHEMES

The matters referred to in regulation 25, being matters connected with the financing of schools maintained by a local education authority, required to be dealt with in the local education authority's scheme are as follows:

1. The carrying forward from one financial year to another of surpluses and deficits arising in relation to school's budget shares including budget shares as defined in section 101(3)(c) of the 1996 Act.
2. The carrying forward from one financial year to another of surpluses and deficits arising in relation to any maintenance, special purpose or capital grant within the meaning of Chapter VI of Part III of the 1996 Act paid in respect of the school.
3. Amounts which may be charged against schools' budget shares.
4. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
5. The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.
6. Terms on which services and facilities are provided by the authority for schools maintained by them.
7. The payment of interest by or to the authority.
8. The times at which amounts equal in total to the school's budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.
9. The virement between budget heads within the delegated budget.
10. Circumstances in which the authority may delegate to the governing body the power to spend any part of the authority's local schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act.
11. The use of delegated budgets and of sums made available to the governing body by the authority which do not form part of delegated budgets.
12. Borrowing by governing bodies.
13. The banking arrangements that may be made by governing bodies.
14. A statement as to the personal liability of governors in respect of schools' budget shares having regard to section 50(7) of the 1998 Act.
15. A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act.
16. The keeping of a register of any business interests of the governors and the head teacher.
17. The provision of information by and to the governing body.
18. The maintenance of inventories of assets.
19. Plans of a governing body's expenditure.
20. A statement as to the taxation of sums paid or received by a governing body.

21. Insurance.

22. The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc. Act 1974(48).

23. The repayment to the Secretary of State of loans made to the governing body under section 255 of the 1996 Act.

24. The provision of legal advice to the governing body.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the expenditure which makes up a local education authority's "local schools budget" for a financial year.

These Regulations specify the nature of the planned expenditure which a local education authority may deduct from their local schools budget in order to arrive at their "individual schools budget" for a financial year.

An authority's individual schools budget is to be divided between the schools which they maintain in the form of budget shares for each school. These Regulations provide the basis on which a local education authority may determine the amount from their individual schools budget to be allocated to each school as its budget share for a financial year.

These Regulations require a local education authority to deal in a scheme prepared by them with specified matters connected with the financing of schools which they maintain.