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STATUTORY INSTRUMENTS

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**2004 No. 3130**

**EDUCATION, ENGLAND**

**The Financing of Maintained  
Schools (England) Regulations 2004**

*Made* - - - - *9th December 2004*  
*Laid before Parliament* *23rd December 2004*  
*Coming into force* - - *13th January 2005*

In exercise of the powers conferred on the Secretary of State by sections 47, 48(1) and (2) and 138(7) of the School Standards and Framework Act 1998(1) the Secretary of State for Education and Skills hereby makes the following Regulations:

**PART 1**

**INTRODUCTION**

**Citation, commencement, application and interpretation**

**1.—(1)** These Regulations may be cited as the Financing of Maintained Schools (England) Regulations 2004 and shall come into force on 13th January 2005.

(2) Save for regulation 2(2), these Regulations shall apply for the purposes of the financing of maintained schools in England in the financial year beginning on 1st April 2005.

(3) In these Regulations—

- (a) “the 1996 Act” means the Education Act 1996(2);
- (b) “the 1998 Act” means the School Standards and Framework Act 1998;
- (c) “the 2000 Act” means the Learning and Skills Act 2000(3);
- (d) “the 2002 Act” means the Education Act 2002;

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(1) 1998 c. 31. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of “prescribed” and “regulations” see section 142(1). Section 48 was amended by section 40 of and Schedule 3 to the Education Act 2002 c. 32.

(2) 1996 c. 56.

(3) 2000 c. 21.

- (e) “the 1999 Regulations” means the Financing of Maintained Schools Regulations 1999**(4)**;
- (f) “the 2000 Regulations” means the Financing of Maintained Schools (England) Regulations 2000**(5)**;
- (g) “the 2001 Regulations” means the Financing of Maintained Schools (England) Regulations 2001**(6)**;
- (h) “the 2002 Regulations” means the Financing of Maintained Schools (England) Regulations 2002**(7)**;
- (i) “the 2003 Regulations” means the Financing of Maintained Schools (England) Regulations 2003**(8)**; and
- (j) “the 2003 (No. 2) Regulations” means the Financing of Maintained Schools (England) (No. 2) Regulations 2003;
- (k) “the Budget Regulations” means the LEA Budget, Schools Budget and Individual Schools Budget Regulations (England) 2004**(9)**;
- (l) a reference to a former grant-maintained or grant-maintained special school is a reference to a school which was such a school within the meaning of the 1996 Act immediately before 1st April 1999;
- (m) a reference to a governing body includes the temporary governing body of a proposed school falling within sub-paragraph (q);
- (n) a reference to a local education authority’s formula is a reference to a formula as provided in regulation 7;
- (o) a reference to the LSC is a reference to the Learning and Skills Council for England**(10)**;
- (p) “maintained school” means a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school**(11)**;
- (q) a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or a community or foundation special school includes a proposed school which on implementation of proposals for the establishment of the school will be such a school and which has a temporary governing body;
- (r) 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**(12)**;
- (s) a reference to a primary or secondary school means a primary or secondary school which is a community, foundation or voluntary school, or a maintained nursery school;
- (t) a reference to proposals for the establishment of a school is a reference to a proposal for the establishment of the school under sections 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act, section 113A of and Schedule 7A to the 2000 Act**(13)** or section 70 of the 2002 Act;
- (u) “standards fund grant” means the sum of money paid under that name to a local education authority by the Secretary of State under section 14 of the Education Act 2002;

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**(4)** S.I. 1999/101.

**(5)** S.I. 2000/478.

**(6)** S.I. 2001/475.

**(7)** S.I. 2002/377.

**(8)** S.I. 2003/453, as amended by S.I. 2003/3247.

**(9)** S.I. 2004/3131.

**(10)** The Learning and Skills Council for England was established under section 1 of the 2000 Act.

**(11)** This definition reflects subsection (1A) of section 45 of the 1998 Act which was inserted by paragraph 99 of Schedule 21 to the 2002 Act.

**(12)** Section 494 was substituted by paragraph 128 of Schedule 30 to the 1998 Act.

**(13)** Section 113A and Schedule 7A were inserted by section 7 of, and Schedule 9 to, the 2002 Act.

- (v) “School Standards Grant” means the sum of money paid under that name to a local education authority by the Secretary of State under section 14 of the Education Act 2002.

### **Revocation of the 2003 Regulations, and operation of the 2003 (No. 2) Regulations**

2. The 2003 Regulations are revoked on 1st April 2005.

(2) Save as provided by the 2003 (No. 2) Regulations a school’s budget share for the financial year beginning on 1st April 2004 may only be redetermined in the financial year beginning on 1st April 2005 in accordance with the provisions of the 2003 (No. 2) Regulations if such redetermination makes provision for—

- (a) pupils permanently excluded or admitted following a permanent exclusion; or
- (b) the correction of errors, whether in calculation or data, under any of the provisions of those Regulations.

## **PART 2**

### **SCHOOLS' BUDGET SHARES: MAIN PROVISIONS**

#### **Determination of budget shares**

3. This Part and Part 3 apply for the purposes of determining the amount which a local education authority may determine as a maintained school’s budget share for the financial year beginning on 1st April 2005.

#### **Allocation of individual schools budget**

4. A local education authority shall allocate in the financial year beginning on 1st April 2005 in accordance with this Part and Part 3 all of their individual schools budget for that financial year as the budget shares of schools which they maintain.

#### **Timing of determination of budget shares**

5. The amount of a school’s budget share for the financial year beginning on 1st April 2005 shall be initially determined by the local education authority before the beginning of that financial year.

(2) A local education authority may decide not to allocate initially all of their individual schools budget in accordance with this Part in the form of budget shares at the beginning of the financial year and instead to retain an amount for the purpose of redeterminations or the correction of errors but such amount must be used for that purpose or distributed to schools as required by regulation 21(4) before the end of the financial year.

#### **Consultation**

6.—(1) Subject to paragraph (2), a local education authority shall consult the governing body and head teacher of every school which they maintain about any 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 under the 2003 (No. 2) Regulations in the financial year beginning on 1st April 2004 (including any new factors, criteria, methods, principles or rules).

(2) Paragraph (1) shall not apply to changes made pursuant to regulation 5(2), 15, 16, 21(5) or 22.

(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 the financial year.

(4) The requirement to consult in paragraph (1) can be satisfied by consultation which takes place during the financial year beginning on 1st April 2004 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**

7.—(1) A local education authority shall determine before the beginning of the financial year beginning on 1st April 2005, and after the consultation referred to in regulation 6, 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 and in Part 3.

(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) A local education authority may not use factors or criteria in their formula under this Part which make an allowance, in whole or in part, for—

- (a) any amount allocated to the school from School Standards Grant paid to the authority; or
- (b) any standards fund grant, received by the authority, of an amount determined by the Secretary of State by reference to a formula, and decisions about the spending of which the authority are required to delegate to the governing bodies of schools.

(4) Subject to regulation 28 (additional arrangements approved by the Secretary of State), a local education authority shall use the formula determined under paragraph (1) in all determinations and redeterminations of budget shares in respect of the financial year.

### **Pupil numbers**

8.—(1) In determining budget shares for primary schools (but not maintained nursery schools), and secondary schools, a local education authority shall take into account in their formula the number of registered pupils at those schools on such date or dates as may be determined by the authority in accordance with regulation 9, weighted if the authority consider it appropriate in accordance with paragraph (6).

(2) For the purposes of paragraph (1), the number of registered pupils does not include any pupils —

- (a) in places which the authority recognise as reserved for children with special educational needs;
- (b) in nursery classes (except where the authority chooses not to exercise its discretion under regulation 11);
- (c) in boarding accommodation at boarding schools other than special schools (in relation to the funding of boarding accommodation only);
- (d) in respect of whom grant is payable to the authority by the LSC; or
- (e) in classes in respect of which funding is allocated under regulation 12(3).

(3) A local education authority may in determining budget shares for special schools, maintained nursery 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 maintained nursery 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 (6).

(4) A local education authority may, in determining budget shares for primary schools, take into account in their formula the number of pupils at those primary schools funded under regulation 12(3) on such date or dates as may be determined by the authority, weighted if the authority consider it appropriate in accordance with paragraph (6).

(5) Where a local education authority estimate the number of registered pupils at a school they must consult the head teacher of that school.

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

- (a) in respect of all pupils, including pupils under five—
  - (i) age, including weighting according to key stage or year group;
  - (ii) whether a pupil is provided with nursery education by a school;
  - (iii) special educational needs;
  - (iv) whether the pupil is attending a middle school;
  - (v) whether a pupil at a school is also attending an institution within the further education sector; and
  - (vi) whether the pupil is in a class in respect of which funding is allocated under regulation 12(3);
- (b) in respect of pupils aged under five only—
  - (i) their exact age when admitted to the school;
  - (ii) whether they have been admitted to the school in excess of planned admission limits agreed with the authority; and
  - (iii) hours of attendance.

(7) A local education authority may adjust the number of registered pupils used to determine or redetermine 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.

### **Dates for ascertaining pupil numbers**

9.—(1) Where the authority determine only one date for the purposes of regulation 8(1) that must be a date which falls—

- (a) before 1st April 2005; and
- (b) in the school year in which 1st April 2005 falls.

(2) Where the authority determine more than one date for the purposes of regulation 8(1) then—

- (a) one of those dates must satisfy paragraph (1) above;
- (b) of the other date or dates—
  - (i) no date may be earlier than the beginning of the school year in which 1st April 2005 falls; and
  - (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 or those dates.

(3) Paragraphs (1) and (2) shall not apply in relation to pupils in nursery or reception classes, or in maintained nursery schools whom the authority take into account under regulation 8(3).

### **Pupil numbers: Dual registration**

10. Where a pupil is, in accordance with regulations made under section 434 of the 1996 Act<sup>(14)</sup>, a registered pupil at more than one school then that pupil shall be treated as being a full-time pupil at each such school unless the authority expressly provide otherwise in their formula.

### **Places**

11.—(1) In determining budget shares for—

- (a) special schools, or
- (b) primary or secondary schools with places which the authority recognise as reserved for children with special educational needs or for children in nursery classes,

a local education authority may take into account in their formula the number of places they wish to fund in those special schools, the number of reserved places described in sub-paragraph (b) at those schools, and the special educational needs in question.

(2) A local education authority shall provide that if any places are taken into account in accordance with paragraph (1)(a), the number shall be no fewer than the number of registered pupils at the school on 20th January 2005.

(3) In determining budget shares for—

- (a) schools with boarding accommodation, or
- (b) maintained nursery schools,

a local education authority may take into account in their formula the amount of boarding accommodation which they wish to fund and the number of places they wish to fund in those maintained nursery schools.

### **Infant Class Funding**

12.—(1) In determining budget shares for schools, a local education authority may take into account in their formula the limitation on infant class sizes under regulations made pursuant to section 1 of the 1998 Act<sup>(15)</sup> in accordance with paragraphs (2) to (4).

(2) Where, as a result of the regulations referred to in paragraph (1) there are fewer than thirty children in any infant class at any school, a local education authority, in making provision under paragraph (1), may include in that school's budget share an amount of money in respect of each place in any infant class which is not funded as a result of other provisions in these Regulations, provided that this amount of money shall be the same in respect of each such place at any one school.

(3) In determining the budget share of any school, a local education authority may include an amount of money in respect of any infant class at that school.

(4) For the purposes of this regulation, the number of classes required at any school to fulfil the requirements imposed by the regulations referred to in paragraph (1) shall be determined by the local education authority.

### **Differential funding**

13.—(1) A local education authority may use factors or criteria which differentiate between different categories or descriptions of schools in so far as the functions of the governing bodies of

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<sup>(14)</sup> The relevant Regulations, as at the date that these Regulations are made, are the Education (Pupil Registration) Regulations 1995 (S.I. 1995/2089) which remain in force by virtue of paragraph 1 of Schedule 39 to the 1996 Act. Amending instruments are S.I. 1997/2624 and S.I. 2001/2802.

<sup>(15)</sup> The Education (Infant Class Sizes) (England) Regulations 1998 (S.I. 1998/1973).

those schools justify such differentiation but may not otherwise do so except as required or expressly permitted by these Regulations.

(2) A local education authority shall use factors or criteria which differentiate between a school and other schools of the same category or description if such differentiation is justified by reference to the choice that that school's governing body have made as to the inclusion in their school's budget share of funding in respect of expenditure of the kinds referred to in paragraphs 16(a) and (b), 27 or 29 of Schedule 3 to the Budget Regulations.

(3) A local education authority are not required to use factors or criteria in their formula which differentiate between—

- (a) maintained nursery schools;
- (b) primary and secondary schools, and special schools; or
- (c) schools whose pupils are in different age ranges,

but they may do so.

(4) If a local education authority choose to use a particular factor or criterion to delegate funding to all or some of the schools which they maintain, and a school which it is proposed to discontinue during the financial year did not receive funding in accordance with that factor or criterion in the financial year beginning on 1st April 2004, then this regulation shall not require the local education authority to delegate such funding to that school in accordance with that factor or criterion, but they may do so.

#### **Additional factors or criteria**

14.—(1) Subject to regulation 13 (differential funding), 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 1.

(2) A local education authority shall, in determining budget shares for both primary and secondary schools which they maintain, take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at all such schools if they have no factor elsewhere in their formula which is based on such incidence.

(3) A factor included in an authority's formula pursuant to paragraph 17 of Schedule 1 is not, for the purpose of paragraph (2), a factor based on the incidence of social deprivation among pupils registered at a school.

(4) An authority may, in determining the budget share for a maintained nursery school, use a factor which compensates for all or some of the difference between the budget share as determined in accordance with other factors in its formula and relevant expenditure on the school in the financial year beginning on 1st April 2003.

#### **Minimum funding guarantee**

15.—(1) In determining budget shares for maintained schools a local education authority shall ensure—

- (a) in respect of primary and secondary schools that the amount of each school's budget share for the financial year beginning 1st April 2005 meets the guaranteed funding level calculated in accordance with the provisions of paragraphs 1 to 4 of Schedule 2;
- (b) in respect of special schools that their formula shall provide for an increase in their initially determined budget share in the financial year beginning 1st April 2005 calculated in accordance with paragraph 5 of Schedule 2; and
- (c) in respect of nursery schools—

- (i) that the school's budget share is increased in accordance with paragraph (a) and paragraphs 1 and 3 of Schedule 2, or
- (ii) that their formula provides for an increase in any amount allocated in accordance with paragraph (b) and paragraph 5 of Schedule 2, save that instead of the increase referred to in paragraph 5, the formula shall provide for an increase of 5%.

(2) Paragraph (1) does not apply to any school opening on or after 1st April 2005 save in the circumstances set out in paragraph 4 of Schedule 2.

### **Sixth form funding**

**16.**—(1) A secondary school's budget share for the financial year beginning on 1st April 2005 shall include an amount ("the Amount") equal to any sum notified to the local education authority by the LSC as being the allocation ("the Allocation") in respect of that school's sixth form contained within a grant payable to the local education authority under section 7 of the 2000 Act. The Amount shall include, on a net basis:

- (a) any portion of the Allocation for the academic year beginning on 1st August 2004 which is in respect of a period falling within the financial year beginning on 1st April 2005;
- (b) any portion of the Allocation for the academic year beginning on 1st August 2005 which is in respect of a period falling within the financial year beginning on 1st April 2005;
- (c) any amount specifically allocated in respect of an increase in amounts payable under the Teachers' Pensions Regulations 1997<sup>(16)</sup> for the financial year beginning on 1st April 2005;
- (d) any downward adjustment of the Allocation for the academic year beginning on 1st August 2004, where the authority was notified of such adjustment after 1st November 2004;
- (e) one third of any upward adjustment of the Allocation for the academic year beginning on 1st August 2004, where the authority was notified of such adjustment after 1st November 2004; and
- (f) any amount specifically allocated by the LSC as an additional uplift to the allocation for the period 1st August 2004 to 31st July 2005, for the portion of that period beginning on 1st April 2005, or to the amount referred to in paragraph (1)(c).

(2) A local education authority may, in determining budget shares, use a factor which allocates funding in respect of sixth forms.

(3) A local education authority may, in determining budget shares for schools with sixth forms, reduce the amount payable to each such school (using factors other than those authorised by regulation 8) under the formula used by the authority to determine that school's budget share by a sum representing that element which is duplicated in the Allocation under sub-paragraphs (a) to (e) of paragraph (1). In determining the amount of the reduction the authority shall have regard to the particular circumstances of each school.

(4) In this regulation, "academic year" means any period of twelve months beginning on 1st August.

**17.** A secondary school's budget share for the financial year beginning on 1st April 2005 shall be redetermined by 31st March 2006 pursuant to written notification from the LSC of a revised allocation in respect of the sum referred to in regulation 16(1).

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(16) S.I. 1997/3001 as amended by S.I. 1998/2255, S.I. 1999/607, S.I. 2000/665, S.I. 2000/2431, S.I. 2000/3028, S.I. 2001/871 and S.I. 2002/3058.



### **Budget share adjustments in relation to the financial year beginning on 1st April 2004: Pupil numbers**

18.—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2004 was determined pursuant to regulation 8(1) or (3) of the 2003 (No. 2) Regulations other than in cases where pupil numbers were weighted according to special educational needs.

(2) Subject to paragraph (3), to the extent that a school's budget share for the financial year beginning on 1st April 2004 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 for that financial year,

the local education authority shall determine that school's budget share for the financial year beginning on 1st April 2005 so as to take into account those differences.

(3) A local education authority may determine a school's budget share so as to make such adjustments as are appropriate to take into account, wholly or partly, any increases in pupil numbers during the course of the financial year beginning on 1st April 2004.

### **Budget share adjustments in relation to the financial year beginning on 1st April 2004: Non-pupil number factors**

19.—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2004 was determined other than pursuant to regulation 8(1) or (3) of the 2003 (No. 2) Regulations or was so determined in accordance with pupil numbers weighted according to special educational needs.

(2) Where—

- (a) there has been a change in the data on the basis of which that determination was made; and
- (b) that change was not taken into account in a redetermination of the school's budget share for the financial year beginning on 1st April 2004,

the local education authority may determine that school's budget share for the financial year beginning on 1st April 2005 so as to take into account those changes.

### **New, reorganised and closing schools**

20.—(1) In the case of—

- (a) a proposed school as referred to in regulation 1(3)(t);
- (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;
- (d) a school which is the subject of a prescribed alteration within the meaning of the 1998 Act;
- (e) a school which is to be discontinued,

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.

(2) In the case of a school falling within sub-paragraph (1)(a) the local education authority 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.

(3) In the case of schools falling within sub-paragraphs (1)(c) or (1)(d) such factors or criteria may only be used within seven years of the date of implementation of the relevant change to the school.

(4) 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) the 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.

### **Redetermination of budget shares**

**21.**—(1) A local education authority shall include factors or criteria in their formula which enable them, if they so wish, to redetermine a school's budget share during the course of the financial year to take account wholly or partly of—

- (a) changes during the financial year in the number or estimates of the number of registered pupils (including the substitution of actual numbers for estimates) at the school by reference to which the budget share was determined in accordance with regulation 8(1) or (3) other than in cases where pupil numbers were weighted according to special educational needs;
- (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 shall redetermine a school's budget share in accordance with paragraph (1)(a) where such a redetermination would result in an increase to the school's budget share, unless the authority, in initially determining the school's budget share, have, for the purposes of regulation 8(1), determined a date or dates under regulation 9(2)(b)(ii).

(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 34 of Schedule 3 to the Budget Regulations.

(4) Where the local education authority propose to retain part of their individual schools budget pursuant to regulation 5(2) for the purpose of redeterminations or the correction of errors they shall include factors or criteria in their formula which require them to redetermine schools' budget shares before the end of the financial year so as to distribute to schools the unallocated balance of any such retained amount on the basis of pupil numbers in accordance with regulation 8(1) or (3).

(5) 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 or redetermine 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 22 (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 34 of Schedule 3 to the Budget Regulations.

### **Pupils permanently excluded or admitted following a permanent exclusion**

22.—(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

$A \times (B/52)$

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 ("the relevant date")), determined by the authority, in accordance with this Part, to be attributable for the full financial year 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 as determined in accordance with this Part and Part 3 by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom a grant is payable to the authority by the LSC, the amount attributable to that pupil shall be £2,920); 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 another school with a different pupil age range, 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 admitting school's budget share shall be increased by an amount which may not be less than the amount

$D \times (E/F)$

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; and

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

**Additional provisions for redeterminations in relation to financial years beginning on or before 1st April 2003: (1) Former grant-maintained or grant-maintained special schools in the period before they became such schools and (2) Schools which were never such schools**

23.—(1) A local education authority may in the circumstances described in paragraph (2) redetermine a school's budget share for the financial year beginning on 1st April 2005 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school, by reference to which the following were determined—

- (a) the school's budget share within the meaning of the 1996 Act for any financial year beginning on or before 1st April 1998; or
  - (b) in the case of a school which is not a former grant-maintained or grant-maintained special school, the school's budget share within the meaning of the 1998 Act for a financial year beginning on 1st April 1999, 1st April 2000, 1st April 2001, 1st April 2002 or 1st April 2003.
- (2) The circumstances referred to in paragraph (1) are that—
- (a) such matters 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 or the 1998 Act or its maintenance grant (as a former grant-maintained or grant-maintained special school); and
  - (b) such redetermination as is proposed could have been made in relation to the preceding financial year in question under the terms of—
    - (i) the authority's scheme within the meaning of the 1996 Act in force in that year;
    - (ii) in the case of the financial year beginning on 1st April 1999, the 1999 Regulations;
    - (iii) in the case of the financial year beginning on 1st April 2000, the 2000 Regulations or the Financing of Maintained Schools (England) (No 2) Regulations 2000<sup>(17)</sup>;
    - (iv) in the case of the financial year beginning on 1st April 2001, the 2001 Regulations;
    - (v) in the case of the financial year beginning on 1st April 2002, the 2002 Regulations, or
    - (vi) in the case of the financial year beginning 1st April 2003, the 2003 Regulations.

**Additional provisions for redeterminations in relation to the financial years beginning on 1st April 1999, 1st April 2000, 1st April 2001, 1st April 2002 or 1st April 2003: Former grant-maintained or grant-maintained special schools**

24.—(1) A local education authority may redetermine a former grant-maintained or grant-maintained special school's budget share for the financial year beginning on 1st April 2005 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school, by reference to which the school's budget share for the financial year beginning on 1st April 1999, 1st April 2000, 1st April 2001, 1st April 2002 or 1st April 2003 was determined if—

- (a) such matters have not already been taken into account in any determination or redetermination of that school's budget share for any financial year or financial years;
- (b) such redetermination as is proposed could have been made in the financial year beginning on 1st April 1999 (or, as the case may be, the financial year beginning on 1st April 2000, 1st April 2001, 1st April 2002 or 1st April 2003) in accordance with the 1999 Regulations (or, as the case may be, the 2000 Regulations or the Financing of Maintained Schools

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(17) S.I. 2000/1090.

(England) (No 2) Regulations 2000, the 2001 Regulations, the 2002 Regulations or the 2003 Regulations).

(2) In so far as a determination under paragraph (1) would require the amount that would otherwise be the budget share of the school to be reduced, it may not be reduced by an amount greater than the amount by which the school's budget share for the financial year beginning on 1st April 1999 (or, as the case may be, the financial year beginning on 1st April 2000, 1st April 2001, 1st April 2002 or 1st April 2003) determined in accordance with regulation 18 (transitional funding) of the 1999 Regulations (or, as the case may be, regulation 18 (transitional funding) of the 2000 Regulations, regulation 20 (transitional funding) of the 2001 Regulations, regulation 21 (transitional funding) of the 2002 Regulations or regulation 20 (transitional funding) of the 2003 Regulations) could have been reduced.

(3) In so far as a determination under paragraph (1) would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of the school in the financial year beginning on 1st April 1999, the financial year beginning on 1st April 2000 or 1st April 2001 (or, as the case may be, the financial year beginning on 1st April 2002 or 1st April 2003) under regulation 18 (transitional funding) of the 1999 Regulations (or, as the case may be, regulation 18 (transitional funding) of the 2000 Regulations, regulation 20 (transitional funding) of the 2001 Regulations, regulation 21 (transitional funding) of the 2002 Regulations, or regulation 20 (transitional funding) of the 2003 Regulations.)

**Additional provisions for redeterminations in relation to financial years beginning on or before 1st April 1998: Former grant-maintained or grant-maintained special schools**

**25.—**(1) A local education authority may in the circumstances described in paragraph (2) redetermine a former grant-maintained or grant-maintained special school's budget share for the financial year beginning on 1st April 2005 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school, by reference to which the school's maintenance grant (as a grant-maintained or grant-maintained special school) was determined for any financial year beginning on or before 1st April 1998.

(2) The circumstances referred to in paragraph (1) are that—

- (a) such matters 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 or the 1998 Act or its maintenance grant (as a grant-maintained or grant-maintained special school);
- (b) such redetermination as is proposed could have been made in the preceding financial year in question in relation to a school maintained by the authority under the terms of the authority's scheme within the meaning of the 1996 Act in force in that year; and
- (c) any increase or decrease in the amount of the school's budget share to take into account changes in the school's non-domestic rates liability does not exceed the change in the school's net liability in respect of rates.

(3) In so far as a determination under paragraph (1), arising from adjustments relating to the financial year beginning on 1st April 1998, would require the amount that would otherwise be the budget share of the school to be reduced, it may not be reduced by an amount greater than the amount by which the school's maintenance grant for that financial year determined in accordance with regulation 9 (transitional funding) of the 1998 Regulations could have been reduced.

(4) In so far as a determination under paragraph (1), arising from adjustments relating to the financial year beginning on 1st April 1998, would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of

the school in the financial year beginning on 1st April 1998 under regulation 9 (transitional funding) of the 1998 Regulations.

### **Percentage of “pupil-led” funding**

**26.**—(1) In determining and redetermining budget shares for primary and secondary schools a local education authority shall ensure that their formula provides that at least 75% of the amount which is their individual schools budget, less the amounts referred to in paragraph (2), is allocated under any one or more of the following sub-paragraphs which are applicable—

- (a) in accordance with regulation 8(1) or (3);
- (b) in accordance with regulation 8(6)(a)(iv) or (v);
- (c) in accordance with regulation 11(3)(b);
- (d) in accordance with regulation 12(2) or (3);
- (e) 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;
- (f) to places in primary schools which the authority recognise as reserved for children in nursery classes;
- (g) to places in primary or secondary schools which the authority recognise as reserved for children with special educational needs;
- (h) for pupils with statements of special educational needs where funding in respect of such pupils forms part of schools' budget shares;
- (i) to places for pupils in boarding accommodation at boarding schools other than special schools;
- (j) in accordance with regulation 14(2), provided criteria are used which refer to the characteristics of pupils or their parents; and
- (k) in accordance with regulation 16.

(2) For the purposes of this regulation the following amounts are to be excluded from the local education authority's individual schools budget—

- (a) the budget shares of special schools;
- (b) any part of the individual schools budget retained pursuant to regulation 5(2) for the purpose of redeterminations or the correction of errors in relation to special schools.

## **PART 3**

### **CORRECTION OF ERRORS AND ADDITIONAL ARRANGEMENTS APPROVED BY THE SECRETARY OF STATE**

#### **Correction of errors**

**27.** A local education authority may at any time during the financial year redetermine a school's budget share for the financial year beginning on 1st April 2004 in order to correct an error in a determination or redetermination under these Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise, provided the error is of a kind not contemplated by any specific error correction provision in an authority's formula.

### **Additional arrangements approved by the Secretary of State**

**28.**—(1) 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 these Regulations.

(2) Authorisations given and arrangements approved by the Secretary of State under the 2000 Regulations, the 2001 Regulations, the 2002 Regulations, the 2003 Regulations or the 2003 (No.2) Regulations shall, unless the contrary intention appears in such authorisation or arrangements, continue to apply in relation to the financial year beginning on 1st April 2005.

## **PART 4**

### **SCHEMES**

#### **Required content of schemes**

**29.** 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 3.

#### **Manner of publication**

**30.** 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 on its coming into force and in the circumstances prescribed in regulation 31 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—
  - (i) at the principal education office of the authority, and
  - (ii) at each school maintained by the authority or on a website which is maintained by the authority and accessible by the public.

#### **Additional occasions when schemes require publication**

**31.** 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 on the coming into force of any revision of it.

9th December 2004

*David Miliband*  
Minister of State,  
Department for Education and Skills

## SCHEDULE 1

Regulation 14

**ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT  
IN A LOCAL EDUCATION AUTHORITY'S FORMULA UNDER REGULATION 14**

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

Where a local education authority take new factors or criteria into account in their formula or delete factors from their formula or determine a formula substantially or wholly different from the previous year, they may make such transitional provision as they consider reasonable.

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 is not their first language.
3. Turnover of pupils other than as part of the general admissions process at a school.
4. Admission arrangements at a school.
5. The size, condition and characteristics of a school's buildings and grounds relative to those of other schools maintained by the authority.
6. A school which has a split site: the funding must be in accordance with criteria published by the authority.
7. Such physical facilities, organisational facilities for the education of pupils, or communications facilities, as are found at some schools only.
8. Rates payable in respect of the premises of each school (including actual or estimated cost).
9. Use of energy by schools.
10. Rent payable in respect of school premises or payments in respect of the use by a school of facilities not exclusively occupied by that school (including actual or estimated cost).
11. Transport to and from activities outside the school premises which form part of the school's curriculum or transport between the school and other educational facilities attended by pupils (including actual or estimated cost).
12. Hire of facilities outside school premises (including actual or estimated cost).
13. Insurance: the funding must be equal to the amount which would be spent on insurance for the school in question if amounts were not delegated to the governing body for such insurance or, if the authority do not insure, the appropriate proportion of the amount that would have been spent had they insured, to be determined on a basis decided by the authority.
14. Payments in relation to a private finance transaction as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(18) (including actual or estimated cost).
15. Amounts payable to a school which is, as the result of the discontinuance of one or more maintained schools, either established or, pursuant to Chapter 2 of Part 2 of the 1998 Act, the subject of prescribed alterations, to reflect the extent to which a school which has been discontinued has spent more than or has not spent all of its budget share (within the meaning of the 1998 Act) in any financial year. Any such factor or criterion must provide that any amount deducted shall not exceed the amount which the school receives during the financial year as part of its budget share by virtue of being a new school.
16. Whether a school is to be discontinued in the financial year or the following financial year.

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(18) S.I. 1997/319 as amended.



**17.** School milk, meals and other refreshment: the authority may not treat any element of this expenditure as having a negative value.

**18.** Salaries at a school (including actual or estimated cost): the funding must be in accordance with a scale published by the authority.

**19.** Safeguarding of salaries in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 122 of the 2002 Act<sup>(19)</sup> or other salaries (including actual or estimated cost).

**20.** Social priority allowances paid in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 122 of the 2002 Act (including actual or estimated cost).

**21.** The differential in recruitment and retention costs in different areas in which schools are located.

**22.** The need for single payments to be allocated to primary, secondary or special schools, or any combination of such schools, regardless of size.

**23.** The need for payments to be allocated to schools, of a size and satisfying other conditions, specified by the authority.

**24.** Reductions in school budget shares of 3% or more determined by the authority but not to the extent that the school has spent more than or has not spent all of its budget share (within the meaning of the 1998 Act) or its maintenance grant (as a grant maintained or grant maintained special school) in any financial year. (The authority must publish the percentage figure and an explanation of how any amounts using such a factor or criteria will be determined including, if applicable, the use to be made of any sliding scale).

**25.** 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).

**26.** Effect of taxation on schools.

**27.** Housing development or armed forces movements leading to a reduction in numbers on roll at a school of at least 20% within one year.

**28.** Such items of expenditure in connection with provision for pupils registered at other schools as are prescribed by the School Budget Shares (Prescribed Purposes)(England) Regulations 2002<sup>(20)</sup>.

**29.** Incidence of Newly Qualified Teachers.

**30.** Incidence of pupils from ethnic minority groups having below average levels of academic achievement in relation to other pupils in the authority's area, to be determined on a basis decided by the authority.

**31.** Incidence of nursery classes and places recognised by the authority as reserved for children with special educational needs.

**32.** Prior attainment of pupils entering a school.

**33.** Advanced Skills Teachers employed at a school.

**34.** Permanent exclusions from a school (including estimates).

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<sup>(19)</sup> As at the date these Regulations are made the relevant document is the School Teachers' Pay and Conditions Document 2004 (ISBN 0 11 2711 634). That document was given effect in the Education (School Teachers' Pay and Conditions) (No.2) Order 2004/2142.

<sup>(20)</sup> S.I. 2002/378.

## SCHEDULE 2

Regulation 15

## THE MINIMUM FUNDING GUARANTEE

**Primary and Secondary Schools**

1. In paragraphs 1 to 4—
  - (a) references to the number of pupils excludes those funded by grant paid to the authority by the LSC under section 7 of the 2000 Act;
  - (b) the “relevant number” of pupils for a financial year is the number of pupils registered at the school and used for the purpose of determining the adjusted budget share for that financial year, save that where the authority has not exercised its discretion under regulation 8(3) to take the number of pupils in places which the authority recognises as reserved for children with special educational needs, or in nursery classes, into account in their formula, then the number of those places shall be added to the relevant number for the purposes of this Schedule;
  - (c) the “adjusted budget share” is a school’s budget share determined in accordance with Parts 2 and 3 of these Regulations but not taking into account the effect of regulations 12, 15, 16(1), 18, 19, 22, 23, 24, and 25, paragraphs 8, 14 and 29 of Schedule 1 and any amounts added in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves school, including amounts for pupil exclusions above that permitted by regulation 22 but not including amounts for the cost of providing free school meals;
  - (d) references to an initially determined adjusted budget share for the financial year beginning on 1st April 2004 include the effect of any additional arrangement approved by the Secretary of State under regulation 28 of the 2003 (No.2) Regulations, but exclude any amounts which have been included pursuant to the following provisions—
    - (i) regulations 12, 16(1) and (3), 18, 19, 22, 23, 24 and 25 of the 2003 (No.2) Regulations;
    - (ii) paragraphs 8, 14 and 29 of Schedule 1 to the 2003 (No.2) Regulations; and
    - (iii) any amounts in respect of funding for named pupils which are deducted from a school’s budget share when that pupil leaves school, including amounts for pupil exclusions above that permitted by regulation 22 but not including amounts for the cost of providing free school meals;
  - (e) where a school has opened after 1st April 2004 but before 1st April 2005, its initially determined budget share for the financial year beginning on 1st April 2004 for the purposes of this Schedule shall be the amount that it would have been had the school opened on 1st April 2004, adjusted in accordance with sub-paragraph (d).
2. Subject to paragraphs 3 and 4, the guaranteed funding level shall be calculated as follows—
  - (a) where the relevant number of pupils for the financial year beginning on 1st April 2005 is the same as the relevant number for the financial year beginning on 1st April 2004, the guaranteed funding level shall be A;
  - (b) where the relevant number of pupils for the financial year beginning on 1st April 2005 is higher than the relevant number for the financial year beginning on 1st April 2004, the guaranteed funding level shall be the greater of either

$$A + (B \times C), \text{ or } (D/E) \times F;$$

- (c) where the relevant number of pupils for the financial year beginning on 1st April 2005 is lower than the relevant number for the financial year beginning on 1st April 2004, the guaranteed funding level shall be

$$A - (B \times C).$$

where—

A is the initially determined adjusted budget share for the financial year beginning on 1st April 2004 multiplied by 1.05 in respect of primary schools and 1.04 in respect of secondary schools;

B is the difference between the relevant number of pupils for the financial years beginning on 1st April 2004 and on 1st April 2005;

C is the mean value of funding per pupil in the school's adjusted budget share for the financial year beginning on 1st April 2004 multiplied by 0.84 in respect of primary schools and by 0.91 in respect of secondary schools<sup>(21)</sup>;

D is the initially determined adjusted budget share for the financial year beginning on 1st April 2004;

E is the relevant number of pupils for the financial year beginning on 1st April 2004; and

F is the relevant number of pupils for the financial year beginning on 1st April 2005, multiplied by 1.049 in respect of primary schools and 1.039 in respect of secondary schools.

3. Save where paragraph 4 applies, where the relevant number of pupils for the financial year beginning either on 1st April 2004 or on 1st April 2005, is 75 or fewer, that school's guaranteed funding level shall be

$$A + (B \times G / H \times 1.05)$$

in respect of primary schools, and

$$A + (B \times G / H \times 1.04)$$

in respect of secondary schools, where—

A and B have the same meaning as in paragraph 2,

G is the total funding within the initially determined adjusted budget share for the financial year beginning on 1st April 2004 determined on the basis of pupil numbers, and

H is the relevant number of pupils for the financial year beginning on 1st April 2004.

4. Where a new school opens on or after 1st April 2005 which is a replacement for two or more schools being discontinued in the financial year beginning on 1st April 2005, its guaranteed funding level shall be calculated in accordance with paragraph 2, save that the figure in respect of the new school's initially determined adjusted budget share for the financial year beginning 1st April 2004 shall be determined using the sum of the relevant number of pupils in the discontinued schools for that financial year as the relevant number for the purposes of paragraph 1(b).

### Special Schools

- 5.—(1) A local education authority shall provide in their formula that any amount allocated in accordance with regulation 11(1)(a) in respect of a place at a special school shall be at least 4% higher than the amount initially determined in relation to the financial year beginning on 1st April

(21) These figures are arrived at by multiplying the percentage of the budget share determined on the basis of pupil numbers by 1.05 in respect of primary schools and 1.04 in respect of secondary schools; (80% in respect of primary schools and 87.5% in respect of secondary schools).

2004 in respect of a place appropriate to a pupil with the same characteristics at that school under the corresponding provision in the 2003 (No.2) Regulations.

(2) That portion of the initially determined budget share of a special school for the financial year beginning on 1st April 2005 calculated otherwise than in accordance with regulation 11 (but not including adjustments due under regulations 18, 19 and 22) shall be at least 4% higher than that portion of the initially determined budget share for the financial year beginning on 1st April 2004 calculated otherwise than in accordance with regulation 11 of the 2003 (No.2) Regulations but not including regulations 18, 19 and 22 of those Regulations.

### SCHEDULE 3

Regulation 29

#### CONTENTS OF SCHEMES

The matters referred to in regulation 29, 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 schools' 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 6 of Part 3 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 LEA budget or 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<sup>(22)</sup>.

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.

25. Funding for child protection issues.

26. School meals.

27. To whom in the authority complaints should be made by persons working at the school or by school governors about financial management or financial propriety at the school and how such complaints will be dealt with.

28. Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the Education Act 2002.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

A local education 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, for the financial year beginning on 1st April 2005, a local education authority may determine or redetermine the amount from their individual schools budget to be allocated to each school as its budget share for that financial year.

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

The only notable changes from the Financing of Maintained Schools (England) (No.2) Regulations 2003 are some reorganisation of the provisions in regulation 15 and Schedule 2, including an increase in the multiplication factor in the funding formula in paragraphs 2 and 3 of the Schedule, and an increase in the percentage referred to in paragraph 5.

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(22) 1974. c. 37.

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

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