
STATUTORY INSTRUMENTS

1997 No. 996

The Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1997

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1997 and shall come into force on 1st April 1997.

(2) These Regulations apply in relation to the financial year beginning on that date.

(3) Subject to paragraph (4), these Regulations apply in respect of—

(a) grant-maintained schools situated in England; and

(b) grant-maintained special schools situated in England not being such schools established in pursuance of proposals made by the funding authority under section 339(2) of the 1996 Act.

(4) These Regulations do not apply in respect of grant-maintained schools which are established pursuant to proposals under section 211 or 212 of the 1996 Act (proposals for establishment of new schools) except to such a school which is established—

(a) where section 213(3) of the 1996 Act applies (proposals by promoters to establish a new school in place of an existing independent school which it is proposed to discontinue on or before the date of implementation of the proposals in respect of the new school); or

(b) in connection with the discontinuance of another grant-maintained school pursuant to proposals published under section 267 or 268 of the 1996 Act⁽¹⁾.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the 1996 Act” means the Education Act 1996;

“Central AMG” means the amount determined under regulation 8 or under that regulation as it has effect by virtue of regulation 10 or 13, as the context may require;

“Direct AMG” means the amount determined under regulation 6, 7, 12 or 19;

“financial year in question” means the financial year beginning in 1997;

“local education authority” means—

(1) Those grant-maintained schools established pursuant to proposals under section 211 or 212 of the 1996 Act in respect of which these Regulations do not apply are covered by the Education (New Grant-maintained Schools) (Finance) Regulations 1997 (S.I. 1997/956).

Status: This is the original version (as it was originally made).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

- (a) in relation to any grant-maintained primary or secondary school and any financial year relating to such a school, the local education authority for the area in which the school is situated;
- (b) where such a school is situated in the area of more than one local education authority, such local education authority as the Secretary of State, after consultation with those local education authorities concerned, may determine; and
- (c) in relation to any grant-maintained special school and any financial year relating to such a school,
 - (i) the local education authority by which the school was maintained immediately before it became a grant-maintained special school, or
 - (ii) where that authority is the subject of a structural or boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992⁽²⁾ effected by an order made under section 17 of that Act, such other local education authority as the Secretary of State may, after consultation with that authority, notify to that authority and to the funding authority in writing;

“preceding financial year” means the financial year beginning in 1996;

“pupils with statements of special educational needs” means pupils for whom statements of their special educational needs are maintained under section 324 of the 1996 Act;

“the 1996 Regulations” means the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1996⁽³⁾;

(2) 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, references to regulations being references to regulations of these Regulations—

aggregated budget	section 101(3)(b) of the 1996 Act
allocation formula	section 106(2) of the 1996 Act
capital grants	section 246(1) of the 1996 Act
change in the characteristics of the school	regulation 6(14)
comparable maintained school	regulation 6(10)
date of implementation of the proposals	sections 200(2) and 217 of the 1996 Act
delegated budget	section 115(b) of the 1996 Act
financial year	section 579(1) of the 1996 Act
general schools budget	section 101(3)(a) of the 1996 Act
maintained school	regulation 6(10)
maintenance grant	section 244(1) of the 1996 Act
relevant authority	regulation 39(2)
relevant date	regulations 29(7) and 49(7)
relevant expenditure	regulation 16(3)
relevant percentage	regulation 8(2)

(2) 1992 c. 19.

(3) S.I. 1996/889.

scheme	section 101(1) of the 1996 Act
school's budget share	section 101(3)(c) and (6) of the 1996 Act
special purpose grants	section 245(1) of the 1996 Act.

(3) In these Regulations references to a school becoming a grant-maintained school are references to a school 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(4).

(4) For the purposes of these Regulations, a school becomes a grant-maintained school on the date of implementation of the proposals in respect of the school under Part III of the 1996 Act.

(5) In these Regulations references to primary or secondary schools do not include such schools which are special schools.

(6) Unless the context otherwise requires, any reference in these Regulations to—

- (a) a numbered Part, regulation or Schedule is a reference to the Part, regulation or Schedule in these Regulations so numbered; and
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

Revocation and transitional provisions

3.—(1) The 1996 Regulations are revoked.

(2) Notwithstanding the provisions of these Regulations

- (a) the Education (Grant-maintained Schools) (Finance) Regulations 1989(5) shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1990, and
 - (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the former maintaining authority (within the meaning of those Regulations) of such a school in respect of that year;
- (b) the Education (Grant-maintained Schools) (Finance) Regulations 1990(6) shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1991, and
 - (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the former maintaining authority (within the meaning of those Regulations) of such a school in respect of that year;
- (c) the Education (Grant-maintained Schools) (Finance) Regulations 1991(7) shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1992, and

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

(5) S.I. 1989/1287.

(6) S.I. 1990/549, amended by S.I. 1990/2279, 1991/353.

(7) S.I. 1991/353.

- (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the former maintaining authority (within the meaning of those Regulations) of such a school in respect of that year;
- (d) the Education (Grant-maintained Schools) (Finance) Regulations 1992⁽⁸⁾ shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1993, and
 - (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the former maintaining authority (within the meaning of those Regulations) of such a school in respect of that year;
- (e) the Education (Grant-maintained Schools) (Finance) Regulations 1993⁽⁹⁾ shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1994, and
 - (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the former maintaining authority (within the meaning of those Regulations) of such a school in respect of that year; and
- (f) all other regulations made under section 244 of the 1996 Act⁽¹⁰⁾ shall continue to apply for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year to which they applied, and
 - (ii) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the local education authority (within the meaning of those Regulations) of such a school in respect of that year.

(3) Paragraph (1) is without prejudice to the continued operation after 31st March 1997 of any requirements imposed by the Secretary of State or the funding authority on a governing body to whom payments in respect of maintenance grant, capital grant and special purpose grant have been made under one or more (as the case may be) of the regulations made under section 247 of the 1996 Act⁽¹¹⁾.

PART 2

MAINTENANCE GRANT SCHEME REPLICATION

Application of Part 2

4. This Part applies for the purpose of determining the amount of maintenance grant payable in respect of—

⁽⁸⁾ S.I. 1992/555; amended by S.I. 1992/1095.

⁽⁹⁾ S.I. 1993/568; amended by S.I. 1993/843.

⁽¹⁰⁾ The relevant Regulations are S.I. 1994/938, 1994/2111, 1995/936 (Amended by 1995/1554) and 1996/889.

⁽¹¹⁾ The relevant Regulations are S.I. 1989/1287, 1990/549 (amended by 1990/2270 and 1991/353), 1991/353, 1992/555 (amended by 1992/1095), 1993/568 (amended by 1993/843), 1994/938, 1994/2111, 1995/936 (amended by 1995/1554) and 1996/889. See the effect of paragraphs 1(3) and 2(1) of Schedule 39 to the 1996 Act.

- (a) a primary school in respect of which these Regulations apply whose maintenance grant is not determined under Part 3;
- (b) a secondary school in respect of which these Regulations apply whose maintenance grant is not determined under Part 3;
- (c) a special school in respect of which these Regulations apply.

Determination of amount of maintenance grant

5.—(1) The amount of maintenance grant payable for the financial year in question in respect of a school whose maintenance grant falls to be determined under this Part,—

- (a) in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question pursuant to proposals published under section 212 of the 1996 Act, shall be the aggregate of the following amounts—
 - (i) an amount (Direct AMG) determined in accordance with regulation 19,
 - (ii) an amount (Central AMG) determined in accordance with regulation 8 (or that regulation as it has effect in accordance with regulation 13 (apportionment)), and
 - (iii) an amount determined in accordance with regulation 9 (Section 11 funding), regulation 11 (as it has effect in accordance with regulation 20(1)) or regulation 20(2) (school meals), regulation 22 (contingencies) and regulation 23 (nursery education), subject, in the case of such a school which becomes a grant-maintained school after 1st April in the financial year in question, to apportionment under regulation 21; and
- (b) in any other case, subject to regulation 15 (which provides an alternative method of determining the amount of maintenance grant for such schools which became grant-maintained schools in the financial year in question), shall be the aggregate of the following amounts—
 - (i) an amount (Direct AMG) determined in accordance with (as the case may be) regulation 6, 7 or 12,
 - (ii) an amount (Central AMG) determined in accordance with regulation 8 (or that regulation as it has effect in accordance with regulation 10 (cash protection) or 13 (apportionment)),
 - (iii) an amount determined in accordance with regulation 9 (Section 11 funding), regulation 11 (school meals) (or that regulation as it has effect in accordance with regulation 14 (apportionment)), regulation 22 (contingencies) and regulation 23 (nursery education),
 - (iv) (where applicable) an amount determined in accordance with regulations 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
 - (v) (where applicable) an amount determined in accordance with regulations 27 and 28 (deductions representing excessive surpluses in previous years and excessive severance payments).

(2) Where in the opinion of the funding authority precise calculation for the purpose of determining any of the amounts referred to in paragraph (1)—

- (a) would be impracticable;
- (b) would not significantly affect the amount; or
- (c) would be disproportionately costly having regard to the complexity of the calculation and the likely effect on the amount,

paragraph (1) shall have effect as if it required the funding authority to determine as the amount of maintenance grant payable for the financial year in question such amount as appears to them to be fair and reasonable having regard in particular to the local education authority's scheme.

Determination of Direct AMG for a complete financial year by reference to a comparable maintained school's budget share

6.—(1) Subject to regulation 7 (alternative method of determining Direct AMG where the school became a grant-maintained school before 1st April) and paragraph (2) below, this regulation applies in the case of a school which became a grant-maintained school on or before 1st April in the financial year in question.

(2) This regulation shall not apply in the case of a school which becomes a grant-maintained school on 1st April in the financial year in question pursuant to proposals published under section 212 of the 1996 Act.

(3) In any case to which this regulation applies, and subject to paragraph (9) and to regulation 7, the funding authority shall determine an amount which appears to them to be equal or approximate to an amount which the local education authority could have determined, by the application (subject to the following provisions of this regulation) of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as such a school's budget share for the financial year in question.

(4) Where—

- (a) at any time before the beginning of the financial year in question the allocation formula included a particular factor; and
- (b) the scheme has been revised, varied or replaced under section 111 or 114 of the 1996 Act at any time before the relevant date in relation to the school as initially determined in accordance with regulation 29(2), and for the financial year in question—
 - (i) no such provision is included in the allocation formula, or
 - (ii) the proportion of a comparable maintained school's budget share derived from the application of that provision would be less than it would have been had the scheme not been so revised, varied or replaced,

the allocation formula shall be deemed, for the purposes of determining the amount under paragraph (3), to include such provision for taking into account any such factor as it had effect immediately before the scheme was so revised, varied or replaced:

Provided that the funding authority shall add to, or subtract from, any sum derived from the application of the said provision such amount as appears to them to be fair and reasonable having regard to any increase or decrease in the actual or planned level of spending of the local education authority in respect of schools maintained by them occurring during or since the financial year which preceded the financial year in which such revision, variation or replacement occurred.

(5) Where, by or in consequence of a structural or boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992(12), effected by an order made under section 17 of that Act, a local education authority ("the transferor authority") ceases on a particular date to exercise functions in relation to an area, paragraph (4) shall apply as if the scheme of the transferor authority had been the scheme of the authority ("the transferee authority") by which such functions are exercisable in relation to that area on and after that date and the transferee authority's scheme was a revision, variation or replacement of the transferor authority's scheme under section 111 or 114 of the 1996 Act.

(12) 1992 c. 19.

(6) Where the local education authority in relation to a grant-maintained special school has been determined by the Secretary of State under part (c)(ii) of the definition of “local education authority” in regulation 2(1), and the allocation formula in that new authority’s scheme contains no provision for taking into account the needs of special schools, paragraph (4) above shall apply as if the scheme of the former maintaining authority had been the scheme of the new authority and the new authority’s scheme was a revision, variation or replacement of that scheme under section 111 or 114 of the 1996 Act.

(7) Where—

(a) by the application of the allocation formula a part of a school’s budget share is determined by reference to—

- (i) an amount of expenditure attributable to each registered pupil of each relevant age or falling within each relevant age group,
- (ii) an amount or amounts (as the case may be) of expenditure attributable to any unit of measurement adopted for any factor included in the allocation formula, or
- (iii) the amount or amounts (as the case may be) of expenditure attributable to any other such factor; and

(b) the proportion that any such amount is of a comparable maintained school’s budget share is less in the financial year in question than it would have been in a previous financial year,

the amount or amounts of expenditure so attributable shall be deemed by the funding authority, in applying the allocation formula for the purpose of determining the amount under paragraph (3), to be the amount or amounts determined in accordance with paragraph (8).

(8) For the purposes of paragraph (7), the funding authority shall determine as the amount or amounts of expenditure so attributable for the purposes of the allocation formula the amount or amounts so attributable in such previous financial year as the funding authority shall decide, adjusted by such amount or amounts as appears or appear to them to be fair and reasonable having regard, in particular, to—

- (a) any increase or decrease in the actual or planned level of spending of the local education authority in respect of schools maintained by them occurring during or since that year; and
- (b) any significant change in the characteristics of the school occurring as aforesaid or which it appears to the funding authority will be likely to occur before the end of the financial year in question.

(9) Where a school which became a grant-maintained school pursuant to proposals published under section 212 of the 1996 Act possesses a characteristic which is relevant to its needs and the allocation formula does not include a factor which relates to that characteristic then the funding authority may, after consultation with the local education authority and the governing body of the school, in determining the amount under paragraph (3) add such an amount in respect of that characteristic as appears to them to be fair and reasonable.

(10) Subject to paragraphs (11), (12) and (13), references in this Part to a maintained school are references to a school maintained by the local education authority in question, and references to a comparable maintained school are—

(a) in the case of a primary or secondary school, references to a maintained county school, any characteristics of which relevant for the purposes of any formula of a kind referred to in paragraph (3) are identical to any such characteristics of the grant-maintained school and are references (in particular) to a school—

- (i) the number of registered pupils in each age group at which is identical to the number of such pupils in each age group at the grant-maintained school, and
- (ii) any other factors affecting the needs of which (including, in particular, the number of registered pupils at the school who have special educational needs and the nature

of the special educational provision required to be made for them) are identical to any other factors affecting the needs of the grant-maintained school; and

- (b) in the case of a special school, references to a maintained special school any characteristics of which relevant for the purposes of any formula of a kind referred to in paragraph (3) are identical to any such characteristics of the grant-maintained special school.

(11) Where the allocation formula includes provision for taking into account the amount of any non-domestic rate payable in respect of a school, the funding authority shall, in applying the allocation formula for the purpose of determining the amount under paragraph (3), apply the provision as if the amount of the non-domestic rate payable was—

- (a) in the case of a school which was a charity before becoming a grant-maintained school, that payable in respect of a comparable maintained school which is a charity; and
- (b) in the case of a school which was not a charity before becoming a grant-maintained school, that payable in respect of a comparable maintained school which is not a charity.

(12) For the purposes of this regulation, it is to be assumed that there is a comparable maintained school covered by the local education authority's scheme whether or not there is in fact such a school; and, for the purposes of paragraph (11), it is to be further assumed that a comparable maintained school is capable of being a charity.

(13) In this regulation—

“charity” means an institution established for charitable purposes only;

“factor” means, in relation to the allocation formula, any circumstance, fact or matter affecting the needs of individual schools and subject to variation from school to school which is to be taken into account in accordance with the allocation formula; and

“relevant” in relation to “age” and “age group” means an age group separately treated in the allocation formula for the purposes of determining that part of each school's budget share which is to be determined by reference to numbers of registered pupils.

(14) References in these Regulations to any change in the characteristics of the school include, in particular, references to any change in the number of registered pupils thereat.

Alternative method of determining Direct AMG for a complete financial year by reference to historic data

7.—(1) Subject to paragraph (2), in any case where the school became a grant-maintained school before 1st April in the financial year in question, the funding authority may if they think fit, and after consulting the local education authority and the governing body of the school, instead of determining an amount under regulation 6(3), determine an amount in accordance with paragraph (3).

(2) This regulation shall not apply in the case of a school which is situated in the area of a local education authority which, by or in consequence of a structural or a boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992, effected by an order made under section 17 of that Act, is not the local education authority which maintained it in the preceding financial year.

(3) Where the funding authority decide to determine an amount in accordance with this paragraph they shall determine an amount by—

- (a) taking the amount which was determined under regulation 6, 7, 12 or 19 of the 1996 Regulations as the amount of maintenance grant, comparable to a maintained school's budget share, payable in respect of the school for the preceding financial year; and
- (b) adjusting that amount by such amount as appears to them to be fair and reasonable having regard, in particular, to—

- (i) any increase or decrease in the actual or planned level of spending of the local education authority in respect of the schools maintained by them occurring since that financial year; and
- (ii) any significant change in the characteristics of the school occurring as aforesaid or which it appears to them is likely to occur before the end of the financial year in question.

Determination of Central AMG

8.—(1) Subject to regulations 10 (cash protection) and 13 (apportionment), the funding authority shall determine an amount for Central AMG which is equal to the relevant percentage of the aggregate of the amount determined in respect of the school for Direct AMG.

(2) In these Regulations the relevant percentage is the percentage determined in accordance with Schedule 1.

Section 11 funding

9.—(1) Subject to paragraph (2), the funding authority shall determine in respect of the period in the financial year in question during which the school is a grant-maintained school (“the period in question”), the amount, if any, which it appears to them, were the school maintained by the local education authority, could have been allocated for the purposes of the school in accordance with the authority’s scheme in support of expenditure of the kind referred to in section 11 of the Local Government Act 1966(13) in respect of posts approved by the Secretary of State for the purpose of making grants in respect of such expenditure, not being expenditure expected to be offset by income received as central government grants or grant from any of the European Communities.

(2) If no such amount as referred to in paragraph (1) could have been so allocated in respect of the period in question the funding authority shall determine—

- (a) the amount which could have been so allocated in respect of an equivalent period in the last financial year, if any, in which any amount could have been so allocated; or
- (b) if no such amount as is referred to in sub-paragraph (a) above could have been so allocated such amount as appears to them to be fair and reasonable, being not more than half of the amount of “approved expenditure” which they estimate will be incurred by the governing body of the school for the period in question.

(3) In paragraph (2)(b) “approved expenditure” means expenditure of the kind referred to in section 11 of the Local Government Act 1966 both in respect of posts and of an amount approved by the Secretary of State for the purpose of making grants in respect of such expenditure.

Cash protection for Central AMG and Section 11 funding

10.—(1) Subject to paragraphs (3), (4) and (5), paragraph (2) applies in the case of a school which became a grant-maintained school before 1st April in the financial year in question and in respect of which the amount first referred to in regulation 8(1) (determination of Central AMG) or, where the funding authority determine an amount under regulation 9 (Section 11 funding) in respect of the school, the aggregate of those amounts is less than 85.7 per cent of the amount which was determined in respect of the school for the preceding financial year, or which would have been so determined had the school been grant-maintained throughout the preceding financial year, under (as the case may be) regulation 8 (determination of Central AMG) (ignoring for this purpose the

(13) 1966 c. 42, as substituted by section 1(1) of the Local Government (Amendment) Act 1993 (c. 27). Section 11 is extended by section 211 of the Education Reform Act 1988 to which there are amendments not relevant to these Regulations.

effect of regulation 10 (cash protection)) or regulation 16(4) (amount of percentage addition under alternative method of determining amount of maintenance grant) of the 1996 Regulations.

(2) In any case to which this paragraph applies, regulation 8 (determination of Central AMG) shall have effect as if it required the funding authority to determine an amount equal to 85.7 per cent of the amount which was determined in respect of the school for the preceding financial year under the aforementioned regulations of the 1996 Regulations or which would have been so determined had the school been grant-maintained throughout the preceding financial year.

(3) In the case of the Little Heath Grant-maintained Special School, Romford, the funding authority shall, for the purposes of paragraphs (1) and (2), instead of the amount which was actually determined in respect of that school for the preceding financial year under regulation 8 of the 1996 Regulations, determine an amount on the basis that the relevant percentage in relation to the London Borough of Redbridge, was 15.1 per cent.

(4) Paragraph (5) applies where a school, which became a grant-maintained school before 1st April in the financial year in question, is significantly enlarged, as part of proposals involving the discontinuance of another school which also became a grant-maintained school before 1st April in the financial year in question, and in respect of the first mentioned school the amount first referred to in regulation 8(1) (determination of Central AMG) or, where the funding authority determine an amount under regulation 9 (Section 11 funding) in respect of that school, the aggregate of those amounts is less than 85.7 per cent of the amount which was determined in respect of both the schools referred to above for the preceding financial year, or which would have been so determined had the school been grant-maintained throughout the preceding financial year, under (as the case may be) regulation 8 (ignoring for this purpose the effect of regulation 10) or regulation 16(4) of the 1996 Regulations.

(5) In any case to which this paragraph applies, regulation 8 (determination of Central AMG) shall have effect as if it required the funding authority to determine such amount as appears to them to be fair and reasonable, being not less than the amount first referred to in regulation 8(1), or, where the funding authority determine an amount under regulation 9 (Section 11 funding) in respect of the school, the aggregate of those amounts, and not more than an amount equal to 85.7 per cent of the amount which was determined in respect of both schools for the preceding financial year under the aforementioned regulations of the 1996 Regulations or which would have been so determined had the school been grant-maintained throughout the preceding financial year.

(6) Paragraph (7) applies in the case of Surrey Square Infant School and Surrey Square Junior School, Southwark if the amount first referred to in regulation 8(1) (determination of Central AMG) or, where the funding authority determine an amount under regulation 9 (Section 11 funding) in respect of that school, the aggregate of those amounts is less than 85.7 per cent of that part of the amount which was determined in respect of the Surrey Square Infant and Junior School, Southwark for the preceding financial year under (as the case may be) regulation 8 (determination of Central AMG) (ignoring for this purpose the effect of regulation 10 (cash protection)) or regulation 16(4) (amount of percentage addition under alternative method of determining amount of maintenance grant) of the 1996 Regulations referable to the infant or junior department of that school, as the case may be.

(7) Where this paragraph applies in the case of Surrey Square Infant School or Surrey Square Junior School, regulation 8 (determination of Central AMG) shall have effect as if it required the funding authority to determine an amount equal to 85.7 per cent of that part of the amount which was determined in respect of the Surrey Square Infant and Junior School for the preceding financial year, under the aforementioned regulations of the 1996 Regulations, referable to the infant or junior department, as the case may be.

Calculation of an amount in respect of the provision of school meals

11.—(1) Subject to regulations 14 (apportionment) and 20 (schools becoming grant-maintained in the financial year in question pursuant to proposals published under section 212 of the 1996 Act), the funding authority shall determine an amount in respect of the provision of school meals calculated by the application of the following formula—

$$\frac{(M \times F)}{(P)} + \frac{(S \times G)}{(B)}$$

,where

M is the number of registered pupils in receipt of free school meals at the school on a date in the preceding financial year determined by the funding authority;

F is the total of the local education authority's planned expenditure for the financial year in question in providing meals to pupils in receipt of free school meals at relevant schools;

P is the number of registered pupils in receipt of free school meals at relevant schools on a date in the preceding financial year determined by the funding authority;

S is the number of registered pupils at the school who bought meals at the school on a date in the preceding financial year determined by the funding authority;

G is the total of the local education authority's planned expenditure for the financial year in question on school meals, other than free school meals, at relevant schools and excluding expenditure to be met from any charges for such meals; and

B is the number of registered pupils at relevant schools who bought meals at those schools on a date in the preceding financial year determined by the funding authority.

(2) In paragraph (1)—

“planned expenditure” means the initial amount appropriated by the local education authority for meeting expenditure at all relevant schools excluding any such expenditure falling within their aggregated budget; and

“relevant schools” means all primary or all secondary schools or all special schools maintained or formerly maintained by the authority required to be covered by a statement for the year under section 122(2) of the 1996 Act, according as to whether the school is a primary school, a secondary school or a special school.

Determination of Direct AMG for part of a financial year

12.—(1) This regulation applies in the case of a school which becomes a grant-maintained school after 1st April in the financial year in question, other than a school which does so pursuant to proposals published under section 212 of the 1996 Act (where regulation 19 applies).

(2) In any case to which this regulation applies the funding authority shall determine an amount in accordance with paragraph (3).

(3) The funding authority shall determine an amount which appears to them to be equal or approximate to that amount of the school's budget share for the financial year in question in respect of which, immediately before the school became grant-maintained, sums had neither been deducted by the maintaining local education authority in accordance with their scheme nor made available pursuant to section 116(2) and (3) of the 1996 Act, or, if made available, had not been spent by the governing body of the school in exercise of their powers under section 116(5) of the 1996 Act.

Determination of Central AMG — apportionment for schools becoming grant-maintained part way through a financial year

13.—(1) This regulation applies in the case of a school which becomes a grant-maintained school after 1st April in the financial year in question.

(2) Where this regulation applies, regulation 8 (determination of Central AMG) shall have effect as if it required the funding authority to determine the relevant percentage of the amount determined in accordance with the following formula—

$$\frac{(A \times J)}{365}$$

,where

J is the amount of the school’s budget share for the financial year in question or, in the case of a school which becomes a grant-maintained school pursuant to proposals published under section 212 of the 1996 Act, the amount determined in respect of the school in accordance with regulation 19, and

A is the number of days in the financial year falling on or after the date on which the school becomes a grant-maintained school.

Apportionment in respect of the provision of school meals for schools becoming grant-maintained part way through a financial year

14.—(1) This regulation applies in the case of a school which becomes a grant-maintained school after 1st April in the financial year in question other than a school which does so pursuant to proposals published under section 212 of the 1996 Act (where regulation 20 applies).

(2) Where, in the case of any school to which this regulation applies, the amount of maintenance grant is determined in accordance with regulation 5(1)(b), the amount of maintenance grant payable in respect of the provision of school meals determined under regulation 11 for the financial year in question shall be apportioned in accordance with the following formula—

$$\frac{A \times C \times F}{B}$$

,where

A is the number of days in the financial year falling on or after the date on which the school becomes a grant-maintained school;

B is 365;

C is the amount determined in accordance with regulation 11 (school meals);

F bears the value ascribed to it in the table below according to the date on which the proposals in respect of the school were implemented—

date of implementation of the proposals 1st April–31st July	F= 1.0
date of implementation of the proposals 1st August–31st December	F= 1.015
date of implementation of the proposals 1st January–31st March	F= 1.02

Alternative method of determination of maintenance grant by reference to historic data for schools which become grant-maintained in the financial year in question

15.—(1) The funding authority, in the case of a school which becomes a grant-maintained school in the financial year in question, may, subject to paragraph (2), instead of making a determination under regulation 5(1)(b), determine the amount of maintenance grant payable in respect of the school for that year in accordance with the following provisions of this regulation.

(2) This regulation shall not apply in the case of a school which is situated in the area of a local education authority which, by or in consequence of a structural or a boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992, effected by an order made under section 17 of that Act, is not the local education authority which maintained it in the preceding financial year.

(3) In any case to which this regulation applies, the amount of maintenance grant payable in respect of the school for the financial year in question shall be the sum of the amounts determined in accordance with regulations 16(1) and 17.

(4) The funding authority shall consult the local education authority and the governing body of the school before determining the amount of maintenance grant payable in respect of the school for the financial year in question in accordance with this regulation.

16.—(1) The funding authority shall determine an amount which is the sum of the amounts determined in accordance with paragraphs (2), (4) and (5), subject to any adjustment made in accordance with paragraph (6).

(2) The funding authority shall determine an amount which appears to them to be equal or approximate to the amount of relevant expenditure incurred by the maintaining local education authority in respect of the school in the preceding financial year.

(3) Schedule 2 shall have effect for the purposes of determining the amount of relevant expenditure incurred by the authority in that year.

(4) The funding authority shall determine an amount which is equal to the relevant percentage of the amount determined in accordance with paragraph (2).

(5) The funding authority shall determine an amount in respect of the local education authority's planned expenditure on the provision of school meals calculated by the application of the following formula—

$$\frac{(M \times F)}{(F)} - \frac{(S \times G)}{(B)},$$

,where

M, F, P, S, G and B represent the matters respectively denoted by those letters in regulation 11.

(6) The sum of the amounts determined in accordance with paragraphs (2), (4) and (5) may be adjusted by such amount as the funding authority are satisfied is fair and reasonable having regard, in particular, to—

- (a) any increase or decrease in the actual or planned level of spending of the local education authority in respect of the schools maintained by them occurring during or since the end of the preceding financial year; and
- (b) any significant change in the characteristics of the school occurring as aforesaid or which it appears to the funding authority will be likely to occur before the end of the financial year in question.

17. The funding authority shall determine—

- (a) an amount equal to the amount which would have been determined in respect of the school in accordance with regulations 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) if the amount of maintenance grant for the school were to be determined under regulation 5(1)(b); and

- (b) where, if the amount of maintenance grant for the school were to be so determined, an amount would have been determined in respect of the school in accordance with regulation 9 (Section 11 funding), that amount.

Apportionment of maintenance grant determined by reference to historic data for schools which become grant-maintained after 1st April in the financial year in question

18. Where in the case of a school which becomes a grant-maintained school after 1st April in the financial year in question the amount of maintenance grant is determined in accordance with regulation 15 (which provides for the determination of the amount of maintenance grant by an alternative method to that provided for in regulation 5(1)(b)), the amount of maintenance grant payable in respect of the school for the financial year in question shall be apportioned in accordance with the following formula—

$$\frac{A \times C \times F}{B} + G,$$

,where

C is the amount determined in respect of the school in accordance with regulation 16(1);

G is the amount or amounts determined in respect of the school in accordance with regulation 17; and

A, B, and F represent the matters respectively denoted by those letters in regulation 14(2) (apportionment of provision for school meals).

Determination of Direct AMG for a school which becomes grant-maintained in the financial year in question pursuant to proposals published under section 212 of the 1996 Act

19.—(1) This regulation applies in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question pursuant to proposals published under section 212 of the 1996 Act(14).

(2) Subject to paragraph (3), in any case to which this regulation applies, the funding authority shall determine an amount (Direct AMG) which appears to them to be equal or approximate to an amount which the local education authority could have determined, by the application (subject to the following provisions of this regulation) of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as such a school's budget share for the complete financial year in question.

(3) Where the allocation formula determines a part of a school's budget share by reference to the number of registered pupils at the school on a date or dates which are before the date on which the school became a grant-maintained school, the funding authority may in determining the number of registered pupils at the school for the purposes of paragraph (2) substitute for that date or dates a date or dates in the first school term during which the school was a grant-maintained school.

(4) Paragraphs (4), (5), (9), (11), (12) and (13) of regulation 6 (allocation formula) shall also apply to this regulation.

(14) These Regulations do not apply to those grant-maintained schools established pursuant to proposals under section 212 of the 1996 Act to which the Education (New Grant-maintained Schools) (Finance) regulations 1997 (S.I. 1997/956) apply, see regulation 1(3) and (4) of these Regulations.

Determination of an amount in respect of the provision of school meals for a school which becomes grant-maintained in the financial year in question pursuant to proposals published under section 212 of the 1996 Act

20.—(1) In the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question pursuant to proposals published under section 212 of the 1996 Act, the formula in regulation 11 (school meals) shall apply but “S” shall be the number of registered pupils at the school who bought meals at the school on a date in the financial year in question determined by the funding authority.

(2) Without prejudice to regulation 30 (adjustments), until such time as the funding authority are able to determine an amount by the application of the formula in regulation 11, as modified by this regulation, having regard to the date determined by them for the purposes of “S”, the funding authority shall determine such amount (“the estimated amount”) in respect of the provision of school meals as appears to them to be fair and reasonable and if the amount subsequently determined in accordance with the said formula is different from the estimated amount, they may revise their determination accordingly (whether or not this reduces the amount of maintenance grant payable in respect of the school for the financial year in question).

Apportionment of maintenance grant determined under regulation 5(1)(a) for a school which becomes grant-maintained pursuant to proposals published under section 212 of the 1996 Act

21. The amount of maintenance grant payable for the financial year in question in respect of a school which becomes a grant-maintained school after 1st April in the financial year in question, pursuant to proposals published under section 212 of the 1996 Act, shall be the amount determined in accordance with regulation 5(1)(a) apportioned in accordance with the following formula—

$$\frac{(A \times C \times F)}{(B)} + \frac{(A \times D)}{(B)} + E,$$

, where

A, B and F represent the matters respectively denoted by those letters in regulation 14(2) (apportionment of provision for school meals);

C is the amount determined in accordance with regulation 11 (as it has effect in accordance with regulation 20(1)) or regulation 20(2) (school meals);

D is the sum of the amounts determined in accordance with regulation 19 (Direct AMG); and

E is the amount determined in accordance with regulation 8 or that regulation as it has effect in accordance with regulation 13 (apportionment) (Central AMG), regulation 9 (Section 11 funding), regulation 22 (contingencies) and regulation 23 (nursery education).

Contingencies

22. The funding authority shall determine the amount which it appears to them, were the school maintained by the local education authority, could have been allocated for the purposes of the school in accordance with the authority’s scheme in respect of contingencies.

Nursery Education

23. Where the school provides education for junior pupils who have not attained the age of five years, the funding authority shall determine an amount in respect of such provision which they are satisfied is fair and reasonable having regard in particular to the extent to which, in their opinion, the cost of such provision ought to be met from the amount determined in accordance with (as the case may be) regulation 6, 12 or 19 (Direct AMG).

Determination of an amount representing the unspent sum of a previous financial year's budget share

24.—(1) This regulation applies in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question.

(2) In any case to which this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1)(b) shall include an amount determined in accordance with paragraph (3).

(3) The funding authority shall determine the amount which appears to them to be equal or approximate to that amount of the school's budget share for any financial year prior to the financial year in question in respect of which sums had neither been deducted by the maintaining local education authority in accordance with their scheme nor made available pursuant to section 116(2) or (3) of the 1996 Act, or, if made available, had not been spent by the governing body in exercise of their powers under section 116(5) of that Act.

Determination of an amount in respect of a budget deficit in previous financial years

25.—(1) Subject to paragraph (4), this regulation applies in the case of a school which becomes a grant-maintained school between 1st April 1995 and 1st April 1997 inclusive.

(2) In any case to which this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1)(b) shall have deducted from them such amount, if any, determined in accordance with paragraph (3).

(3) The funding authority, having consulted the local education authority and the governing body of the school, shall determine such amount, if any, as appears to them to be fair and reasonable, in respect of any deficit incurred by the school in respect of its budget share in any previous financial year, having regard, in particular, to the following matters—

- (a) the existence and the terms of any agreement in writing between the then governing body of the school and the maintaining local education authority regarding the repayment of such deficit;
- (b) the existence in the maintaining local education authority's scheme of provision permitting schools to anticipate their budget shares for the following year in order to finance planned items of expenditure;
- (c) evidence that the maintaining local education authority took steps to reduce schools' budget shares where deficits have occurred and did not allow schools to carry over deficits from one year to the other with no planned reduction;
- (d) the practice of the local education authority, in respect of schools which they maintain, regarding the writing off of deficits incurred by such schools in respect of their budget shares in previous financial years; and
- (e) the amount, if any, previously determined in respect of the school by the funding authority in accordance with regulation 15(3), 16(3) or 30(10) of the 1995 Regulations and regulation 25(3), 26(3) or 42(6) of the 1996 Regulations.

(4) This regulation shall not apply in the case of a school if the funding authority, in accordance with regulation 15(3) of the 1995 Regulations or regulation 25(3) of the 1996 Regulations, determined no amount in respect of that school.

Determination of an amount in respect of sums deducted from a school's budget share

26.—(1) This regulation applies in the case of a school which becomes a grant-maintained school after 1st April in the financial year in question.

(2) In any case to which this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1) (b) shall include such amount, if any, determined in accordance with paragraph (3).

(3) The funding authority, having consulted the local education authority and the governing body of the school, shall determine such amount, if any, as appears to them to be fair and reasonable, being all or part of any sum deducted from the school's budget share for the financial year in question by the maintaining local education authority in respect of any deficit incurred by the school in respect of its budget share in any previous financial year, having regard, in particular, to the following matters—

- (a) the existence and the terms of any agreement in writing between the then governing body of the school and the maintaining local education authority regarding the repayment of such deficit;
- (b) the existence in the maintaining local education authority's scheme of provision permitting schools to anticipate their budget shares for the following year in order to finance planned items of expenditure;
- (c) evidence that the maintaining local education authority took steps to reduce schools' budget shares where deficits have occurred and did not allow schools to carry over deficits from one year to the other with no planned reduction; and
- (d) the practice of the local education authority, in respect of schools which they maintain, regarding the writing off of deficits incurred by such schools in respect of their budget shares in previous financial years.

Excessive surpluses

27.—(1) The funding authority shall determine the amount which appears to them to be equal or approximate to that amount of the school's maintenance grant and special purpose grant paid in respect of costs incurred by the school in respect of Value Added Tax for any financial year prior to the financial year in question which has not been spent by the governing body ("the unspent amount").

(2) Paragraph (3) applies where the unspent amount is greater than the sum of—

- (a) 20 per cent of the amount of maintenance grant that would, ignoring the effects of this regulation, be payable in respect of the school for the financial year in question; and
- (b) the amount of special purpose grant which the funding authority estimate they would, ignoring the effects of this regulation, pay to the governing body in the financial year in question in respect of costs incurred by the school in respect of Value Added Tax.

(3) Where this paragraph applies, the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1) shall have deducted from them such amount, if any, as the funding authority, having consulted the governing body of the school, may determine being no greater than the difference between the unspent amount and the sum of the amounts referred to in paragraph (2)(a) and (b).

Excessive severance payments

28.—(1) This regulation applies in a case where the funding authority are, after consultation with the governing body of the school, of the opinion that the governing body have, on or after 1st January 1997, made a payment in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school which is, having regard to all the circumstances of the case, excessive.

(2) Where this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1) shall have

deducted from them such part of the payment referred to in paragraph (1) as the funding authority regard as excessive.

Relevant date

29.—(1) Subject to regulation 37 (relevant date for the purposes of a redetermination of the amount of maintenance grant), any amount required to be determined by the funding authority under this Part shall be determined on the information available to them on the relevant date.

(2) In paragraph (1), the relevant date is such date as the funding authority may determine and different dates may be determined for different cases or classes of case.

(3) The funding authority may, in any case where they consider it appropriate to do so, redetermine the relevant date.

(4) Where—

(a) the funding authority determine the relevant date, in respect of any school for the financial year in question, in accordance with paragraph (2); or

(b) they redetermine the relevant date in accordance with paragraph (3),

they shall notify the governing body of the school and the local education authority in writing of that fact.

(5) Where there is not available to the funding authority on the relevant date sufficient information as will, in their opinion, allow them to determine any amount referred to in paragraph (1) they may determine the amount of maintenance grant payable in respect of the school on such basis as appears to them to be fair and reasonable having regard to the information available to them on the relevant date.

(6) The funding authority shall not take into account any information made available to them after the relevant date (but before the date of their determination) for the purposes of determining the amount of maintenance grant payable in respect of a school for the financial year in question.

(7) References in this Part to the relevant date are references to the date referred to in paragraph (2) unless the relevant date has been redetermined in accordance with paragraph (3) in which case it is a reference to that date as redetermined.

Adjustments

30.—(1) Without prejudice to paragraph (5) but subject to regulation 36 (transfer of site), this paragraph applies where—

(a) after determining the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this Part it appears to the funding authority that, by reason of—

(i) any change in the characteristics of the school,

(ii) any change in the level of spending by the local education authority,

(iii) any other change affecting the needs of the school, or

(iv) the level of spending by the local education authority on any matter included in accordance with regulation 4(a) of the Education (School Financial Statements) (Prescribed Particulars etc.) Regulations 1995⁽¹⁵⁾ in Part 1 of the authority's statement prepared under section 122(4) of the 1996 Act for the financial year beginning in 1996 exceeding the planned level of spending on that matter included in accordance with Schedule 1 to those Regulations in Part 1 of the authority's statement prepared under section 122(2) of that Act for that year,

(15) S.I. 1995/208.

the amount so payable should be revised; or

- (b) the funding authority are satisfied that their determination of the amount of maintenance grant payable in respect of any school for the financial year in question was made in ignorance of, or was based on a mistake as to, some material fact, or was not in accordance with these Regulations.

(2) In any case to which paragraph (1) applies, the funding authority may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with these Regulations and, if the amount so redetermined is different from the amount previously determined, revise their determination accordingly.

(3) Subject to paragraph (4), paragraph (2) shall not enable the funding authority to revise their determination of maintenance grant so as to reduce the amount of grant payable in respect of the school concerned for the financial year in question.

(4) The funding authority may revise their determination of maintenance grant so as to reduce the amount payable where—

- (a) that determination was made in ignorance of, or was based on a mistake as to, some material fact; and
- (b) such ignorance or mistake was not attributable to an act or omission of the local education authority.

(5) Where it appears to the funding authority that, by reason of any extraordinary circumstances, the amount of maintenance grant determined in respect of a school for the financial year in question is insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with paragraph (6), and revise their determination accordingly.

(6) Where the funding authority decide to redetermine the amount of maintenance grant by virtue of paragraph (5), they shall redetermine that amount by adding to it such amount as appears to them to be necessary for the purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

Schools with wide age ranges

31.—(1) This regulation applies in the case of a primary or secondary school which provides full-time education suitable to the requirements of pupils within an age range which spans from between 5 and 7 years of age inclusive to between 16 and 18 years of age inclusive.

(2) Where it appears to the funding authority that the amount of maintenance grant determined in respect of a school to which this regulation applies for the financial year in question is insufficient because of the nature of such a school to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may, after consultation with the local education authority and the governing body of the school, redetermine the amount of maintenance grant payable in respect of the school for the year and revise their determination by adding such amount as appears to them to be fair and reasonable for the purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

Schools situated in the area of a local education authority which is not the area of the former maintaining authority

32.—(1) Subject to paragraph (2), where a primary or secondary school is situated in the area of a local education authority which is not the area of the local education authority which maintained it immediately before it became a grant-maintained school, the funding authority may redetermine the amount of maintenance grant payable in respect of the school for the year and revise their

determination by adding to or deducting from the amount so determined such sum as, having consulted the local education authority and the governing body of the school, appears to them to be fair and reasonable in all the circumstances having regard in particular to the differences between the scheme of the former maintaining local education authority and the scheme of the local education authority in whose area the school is situated.

(2) Paragraph (1) shall not apply where the circumstances referred to in that paragraph exist only by or in consequence of a structural or a boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992⁽¹⁶⁾ effected by an order made under section 17 of that Act.

Redetermination to take into account local education authority capital expenditure from the revenue account

33.—(1) The funding authority may redetermine the amount of maintenance grant payable in respect of the school for the year and revise their determination by adding to the amount so determined such sum as appears to them to be fair and reasonable having regard to—

- (a) the amount of expenditure of a capital nature incurred by the local education authority in respect of relevant schools;
- (b) the proportion of the total amount of expenditure of a capital nature incurred by the local education authority charged to a revenue account of the authority as defined in section 41(2) of the Local Government and Housing Act 1989⁽¹⁷⁾;
- (c) the amount of capital grants paid to the governing body of the school by the funding authority in the financial year in question.

(2) In paragraph (1)—

“expenditure of a capital nature” means expenditure treated by the local education authority as expenditure of a capital nature;

“relevant schools” means all primary or all secondary schools or all special schools maintained or formerly maintained by the authority required to be covered by a statement for the year under section 122(2) of the 1996 Act, according as to whether the school is a primary school, a secondary school or a special school.

Notice of revisions to the governing body and the local education authority

34. Where in accordance with regulation 20 (redetermination of school meals), 30 (adjustments), 31 (schools with wide age ranges), 32 (schools situated in the area of a local education authority which is not the area of the former maintaining authority) or 33 (capital expenditure from the revenue account) the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question they shall give notice thereof to the local education authority and to the governing body of the school.

Further revisions

35. A determination which has been revised in accordance with regulation 30, 31, 32 or 33 may be further revised in accordance with those regulations and may be so further revised notwithstanding that the funding authority are satisfied that the revised determination was not made in accordance with these Regulations.

⁽¹⁶⁾ 1992 c. 19.

⁽¹⁷⁾ 1989 c. 42.

Transfer of site

36.—(1) Where, after the funding authority have determined under this Part the amount of maintenance grant payable in respect of any school for the financial year in question, the school is transferred to a new site in the area of another local education authority (not being a relevant authority defined in regulation 39(2)), the provisions of this Part shall apply for the purposes of redetermining the amount of maintenance grant payable in respect of the school for that year as if the school had not been so transferred.

(2) Where, after the funding authority have determined under Part 3 the amount of maintenance grant payable in respect of any school for the financial year in question, the school is transferred to a new site in the area of another local education authority (not being a relevant authority defined in regulation 39(2)), the provisions of that Part shall continue to apply for the purposes of redetermining the amount of maintenance grant payable in respect of the school for that year as if the school had not been so transferred.

Applications of relevant date provisions to a redetermination of the amount of maintenance grant

37.—(1) In its application for the purposes of any redetermination under regulation 30 (adjustments) of the amount of maintenance grant payable in respect of a school for the financial year in question, regulation 29 (relevant date) shall have effect subject to the following provisions of this regulation.

(2) Where the redetermination of maintenance grant is under regulation 30(2) on one or more of the grounds specified in paragraph (1)(a) of that regulation, the funding authority may take into account for the purposes of the redetermination any information received by them after the relevant date which relates to any of the reasons for making the redetermination.

(3) Where the redetermination of maintenance grant under regulation 30(2) is made on the grounds, specified in paragraph (1)(b) of that regulation, that the funding authority are satisfied that their determination was made in ignorance of, or was based on a mistake as to, some material fact, they may take into account any information received by them after the relevant date which relates to that fact.

(4) Where in accordance with paragraphs (2) and (3) any additional information is taken into account by the funding authority for the purposes of redetermining grant under regulation 30(2), they may take that information into account for the purposes of making any further redetermination under that regulation.

(5) Regulation 29 (relevant date) shall not apply where a redetermination is made by the funding authority in accordance with regulation 30(5) and (6) (redetermination by reason of extraordinary circumstances), 31 (schools with wide age ranges), 32 (schools situated in the area of a local education authority which is not the area of the former maintaining authority) or 33 (capital expenditure from the revenue account).

(6) Where the redetermination of maintenance grant is in accordance with regulation 20 (redetermination of school meals), the funding authority may take into account information received by them after the relevant date which relates to the number of registered pupils at the school who bought meals at the school on the date determined by the funding authority.

Requirements which may be attached to payment of maintenance grant

38.—(1) The requirement set out in paragraph 1 of Schedule 3 (conduct of school) is specified as a requirement which may be imposed by the funding authority on governing bodies to whom payments of maintenance grant are or have been made.

(2) The funding authority may determine, for the purposes of the application of section 247(1) and (2) of the 1996 Act to such governing bodies, any requirement referred to in paragraphs 2 to 4 of Schedule 3 (requirements as to accounts and financial affairs).

PART 3

MAINTENANCE GRANT—COMMON FUNDING FORMULA

Application and interpretation of Part 3

39.—(1) This Part applies for the purpose of determining the amount of maintenance grant payable in respect of—

- (a) a secondary school in respect of which these Regulations apply situated in the area of a secondary relevant authority which became a grant-maintained school on or before 1st April in the financial year in question;
- (b) a school in respect of which these Regulations apply which is deemed to be a primary school by virtue of the Education (Middle Schools) Regulations 1980(18) but which, in the financial year in question, had, prior to a change in its character, been a secondary school whose maintenance grant was determined under this Part;
- (c) a primary school in respect of which these Regulations apply situated in the area of a primary relevant authority which became a grant-maintained school on or before 1st April in the financial year in question;
- (d) a school in respect of which these Regulations apply which is deemed to be a secondary school by virtue of the Education (Middle Schools) Regulations 1980 but which, in the financial year in question, had, prior to a change in its character, been a primary school whose maintenance grant was determined under this Part; or
- (e) a secondary school situated in the area of a secondary relevant authority or a primary school situated in the area of a primary relevant authority, to which these Regulations apply, which became a grant-maintained school after 1st April in the financial year in question in connection with the discontinuance of another grant-maintained school whose maintenance grant was determined under this Part .

(2) In this Part—

“CFF floor” in relation to a grant-maintained school, a new grant-maintained school or a primary or secondary school or new primary or secondary school maintained by a local education authority means the amount determined for that school under regulation 48;

“CFF share” means—

- (a) in relation to a grant-maintained secondary school, a new grant-maintained secondary school or a secondary school or a new secondary school maintained by a local education authority the share determined for that school under regulation 42(1), and in relation to a grant-maintained primary school, a new grant-maintained primary school or a primary school or a new primary school maintained by a local education authority the share determined for that school under regulation 42(2), or,
- (b) where regulation 42(4) applies, the amount of that share as redetermined in accordance with regulation 42(4)(b), or the aggregate of that redetermined share and the amount added to it in accordance with regulation 42(4)(c), as the case may be;

“existing CFF area” means the area of a secondary relevant authority falling within part (a) of the definition of “secondary relevant authority” in this regulation;

“new CFF area” means the area of a secondary relevant authority falling within part (b) of the definition of “secondary relevant authority” in this regulation;

“new grant-maintained school” means a grant-maintained school established in the financial year in question pursuant to proposals under section 211 or 212 of the 1996 Act except such a school which is established—

- (a) where section 213(3) of the 1996 Act applies (proposals by promoters to establish a new school in place of an existing independent school which it is proposed to discontinue on or before the date of implementation of the proposals in respect of the new school); or
- (b) in connection with the discontinuance of another grant-maintained school pursuant to proposals published under section 267 or 268 of the 1996 Act;

“new schools” means new grant-maintained schools and new primary and secondary schools maintained by a local education authority;

“primary CFF area” means the area of a primary relevant authority;

“primary relevant authority” means any of the following local education authorities—

- Essex County Council
- Gloucestershire County Council
- The London Borough of Hillingdon;

“relevant authority” means, in the case of a primary school, a primary relevant authority and, in the case of a secondary school, a secondary relevant authority;

“secondary relevant authority” means any of the following local education authorities—

- (a) The London Borough of Barnet
- The London Borough of Brent
- The London Borough of Bromley
- Calderdale Metropolitan Borough Council
- Cambridgeshire County Council
- The London Borough of Croydon
- Cumbria County Council
- Derby City Council
- Derbyshire County Council
- The London Borough of Ealing
- The London Borough of Enfield
- Essex County Council
- Gloucestershire County Council
- Hertfordshire County Council
- The London Borough of Hillingdon
- Kent County Council
- The Royal Borough of Kingston upon Thames
- The London Borough of Lambeth
- Lincolnshire County Council
- Surrey County Council

The London Borough of Sutton
 Swindon Borough Council **(19)**
 Walsall Metropolitan Borough Council
 The London Borough of Wandsworth
 Wiltshire County Council

- (b) Bournemouth Borough Council
 Luton Borough Council
 Milton Keynes Council
 Poole Borough Council
 Rutland County Council (District Council)
 Trafford Metropolitan Borough Council;

“primary schools total” in relation to any primary relevant authority means the amount determined by the Secretary of State under regulation 40(1)(b);

“secondary schools total” in relation to any secondary relevant authority means the amount determined by the Secretary of State under regulation 40(1)(a).

(3) In this Part—

references to age bands are references to the age bands for primary and secondary schools, as the case may be, described in paragraph 3A to H of Schedule 5;

references to grant-maintained schools, except in the definition of a new grant-maintained school, do not include new grant-maintained schools;

references to grant-maintained primary schools, except in paragraph (1), include schools referred to in paragraph (1)(e);

references to grant-maintained secondary schools, except in paragraph (1), include schools referred to in paragraph (1)(b);

references to new primary schools or new secondary schools maintained by an authority are references to primary or secondary schools maintained by a local education authority which were established in the financial year in question except to such schools which are established in connection with the discontinuance of another school maintained by that authority pursuant to proposals published under section 167 or 173 of the 1996 Act; and references to primary and secondary schools maintained by a local education authority (except in this paragraph) do not include new primary or new secondary schools maintained by a local education authority;

references to primary schools do not include nursery schools.

(4) This Part shall apply in relation to a grant-maintained school established in place of an existing independent school which was discontinued on or before the date of the establishment of that grant-maintained school, with the modifications set out in Schedule 4.

Secondary schools total and primary schools total

40.—(1) For the purposes of section 244(2) of the 1996 Act the Secretary of State shall determine for each relevant authority and in respect of the financial year in question the amount which appears to her, after consultation with the authority, to be the appropriate amount of expenditure of a recurrent nature to be incurred on—

- (a) in the case of a secondary relevant authority, grant-maintained and new grant-maintained secondary schools situated in the area of that authority and secondary schools and new secondary schools maintained by that authority;
 - (b) in the case of a primary relevant authority, grant-maintained and new grant-maintained primary schools situated in the area of that authority and primary schools and new primary schools maintained by that authority.
- (2) For the purposes of paragraph (1) expenditure is “of a recurrent nature” if it is not of a class or description specified in Schedule 8.
- (3) The Secretary of State shall notify the funding authority and the relevant authority of the primary schools total and the secondary schools total determined by her in respect of that relevant authority.

Determination of amount of maintenance grant

41.—(1) The amount of maintenance grant payable for the financial year in question in respect of a school whose maintenance grant falls to be determined under this Part shall be the aggregate of the amount of the school’s CFF share for that year and any amounts to be added to, or deducted from, that amount determined by the funding authority in respect of the school and that year in accordance with regulations 43(1)(c) and 44 to 47.

(2) Where in the opinion of the funding authority precise calculation for the purpose of determining any of the amounts referred to in paragraph (1)—

- (a) would be impracticable;
- (b) would not significantly affect the amount; or
- (c) would be disproportionately costly having regard to the complexity of the calculation and the likely effect on the amount,

paragraph (1) shall have effect as if it required the funding authority to determine as the amount of maintenance grant payable for the financial year in question such amount as appears to them to be fair and reasonable having regard in particular to the relevant authority’s scheme.

Determination of a school’s CFF share

42.—(1) The funding authority shall determine for each grant-maintained and new grant-maintained secondary school situated in the area of a secondary relevant authority and each secondary school and new secondary school maintained by that authority the amount of the school’s share of the secondary schools total for that authority and year obtained by dividing that total between those schools in accordance with Schedule 5.

- (a) (2) (a) The funding authority shall determine for each primary relevant authority an amount referred to in this Part as the “adjusted primary schools total”.
- (b) This is the amount which remains after deducting from the primary schools total for the authority for that year 0.2 per cent of that total (“the error contingency”) for the purpose of making provision within that total for redetermining the amounts of the CFF shares of grant-maintained and new grant-maintained primary schools situated in the area of the authority and primary schools and new primary schools maintained by the authority on the grounds referred to in regulation 53(1) (redetermination of a primary school’s CFF share on grounds of mistake).

(3) The funding authority shall determine for each grant-maintained and new grant-maintained primary school situated in the area of a primary relevant authority and each primary school and new primary school maintained by that authority the amount of the school’s share of the adjusted primary

schools total for that authority and year obtained by dividing that total between those schools in accordance with Schedule 5.

(4) Where the amount of the CFF share of a school is less than the CFF floor for that school the funding authority shall—

(a) calculate the amount per pupil (within the meaning of paragraph 16A to F of Schedule 5) which would be required, if—

(i) in the case of a secondary school, the amount of the CFF share of each grant-maintained or new grant-maintained secondary school situated in the area of the relevant authority concerned and each secondary school or new secondary school maintained by them, or

(ii) in the case of a primary school, the amount of the CFF share of each grant-maintained or new grant-maintained primary school situated in the area of the relevant authority concerned and each primary school and new primary school maintained by them,

were to be redetermined in accordance with that Schedule (but substituting for the amount per pupil referred to in that paragraph in relation to the authority the recalculated amount per pupil), to produce within the adjusted primary schools total or the secondary schools total, as the case may be, for the authority for the financial year in question the amount (referred to below as the “supplementary amount”) required to permit the amount of the CFF share of each school which is less than the amount of its CFF floor or which would be less than that amount if the amount of the CFF share of each school were to be redetermined as aforesaid, to equal the amount of the school’s CFF floor, by adding a share of the supplementary amount to the amount of the school’s CFF share;

(b) redetermine the amount of the CFF share of each grant-maintained or new grant-maintained primary or secondary school situated in the area of the relevant authority concerned and each primary or secondary school or new primary or new secondary school maintained by them, as the case may be, in accordance with Schedule 5 but substituting for the amount per pupil referred to in paragraph 16A to F of that Schedule the amount calculated in accordance with sub-paragraph (a) above; and

(c) add to the amount of the CFF share (as so redetermined) of each school which is less than the amount of its CFF floor the amount by which the latter amount exceeds the former amount.

Link to budgets

43.—(1) Except in relation to Rutland County Council (District Council), where the amount of the primary or secondary schools budget for any relevant authority for the financial year in question (defined in paragraph (2)) exceeds the primary or secondary schools total, as the case may be, for that authority and year, the funding authority shall—

(a) determine the amount (referred to in sub-paragraph (b) below as “the increased amount”) by which that budget exceeds that total;

(b) determine to two decimal places the percentage which the increased amount is of the primary or secondary schools total, as the case may be, for the authority;

(c) add to the amount of the CFF share for each grant-maintained primary or secondary school, as the case may be, situated in the area of the authority the amount obtained by multiplying the amount of that share by that percentage; and

(d) add to the amount of the error contingency determined under regulation 42(2) the amount obtained by multiplying that amount by that percentage.

(2) For the purposes of paragraph (1) the amount of an authority's primary or secondary schools budget for the financial year in question is the sum for that financial year of the amounts specified in sub-paragraphs (a) to (f) below less the amount specified in sub-paragraph (g) below—

- (a) the aggregate of the amounts which the funding authority determine would be the amounts of maintenance grant in respect of all grant-maintained primary or secondary schools, as the case may be, except those referred to in regulation 39(4) (grant-maintained schools established in place of existing independent schools), situated in the area of the authority if those amounts were determined in accordance with Part 2 and regulations 10 (cash protection) and 33 (capital expenditure from the revenue account) did not apply in the case of any schools and any increase in the number of registered pupils resulting from a significant change in the character of the school falling to be implemented wholly or partly in the financial year in question was ignored;
- (b) the aggregate of the budget shares of all primary or all secondary schools, as the case may be, maintained by the authority;
- (c) the aggregate of the amounts which equal the relevant percentage of the budget shares referred to in sub-paragraph (b) above;
- (d) the aggregate of the amounts which it appears to the funding authority would be the amounts determined under regulation 11 (school meals) in respect of all primary or secondary schools, as the case may be, maintained by the authority if those schools had been grant-maintained schools to which that regulation applies;
- (e) the aggregate of the CFF shares of all new grant-maintained primary schools or secondary schools, as the case may be, in the area of the authority;
- (f) the aggregate of the CFF shares of all new primary or secondary schools, as the case may be, maintained by the authority; and
- (g) where under the relevant authority's scheme amounts for—
 - (i) pupils with statements of special educational needs,
 - (ii) in the case of Cumbria County Council only, identified pupils with special educational needs who do not have statements and in respect of whom funding is allocated other than on the basis referred to in paragraph 5(7) of Schedule 5, and
 - (iii) places in schools, other than special schools, for pupils with special educational needs,

are included in the authority's aggregated budget for that financial year, the aggregate of such amounts for all primary or all secondary schools, as the case may be, in the area of the relevant authority.

Sums to be added to the CFF share

44.—(1) Where, in the case of any school whose maintenance grant for the financial year in question falls to be determined under this Part, it appears to the funding authority that regulation 10 (cash protection) would have applied if that grant had fallen to be determined under Part 2, they shall determine the amount which would have been determined in accordance with regulation 10 in respect of the school (referred to in paragraph (2) below as “the protected amount”).

(2) In any case to which paragraph (1) applies the funding authority shall add to the amount of the school's CFF share the amount by which the protected amount exceeds the difference between the amount of that share and the CFF floor.

(3) Where, in the case of any school whose maintenance grant for the financial year in question falls to be determined under this Part, it appears to the funding authority that an amount would have been determined under regulation 9 (Section 11 funding) if that grant had fallen to be determined under Part 2, they shall determine that amount and add it to the amount of the school's CFF share.

(4) Where, in the case of any school whose maintenance grant for the financial year in question falls to be determined under this Part, it appears to the funding authority that the amount determined under regulation 6, if that grant had fallen to be determined under Part 2, would have included an amount representing a comparable maintained school's share of funding treated by the authority under their scheme as funding for—

- (a) pupils with statements of special educational needs allocated in accordance with the allocation formula under the authority's scheme;
 - (b) in the case of Cumbria County Council only, identified pupils with special educational needs who do not have statements and in respect of whom funding is allocated other than on the basis referred to in paragraph 5(7) of Schedule 5; or
 - (c) places in schools, other than special schools, for pupils with special educational needs,
- they shall determine that latter amount and add it to the amount of the school's CFF share.

(5) The funding authority shall add to the amount of the CFF share of any school whose maintenance grant for the financial year in question falls to be determined under this Part and which became a grant-maintained school on 1st April in the financial year in question, an amount which appears to them to be equal or approximate to that amount of the school's budget share for any financial year prior to the financial year in question in respect of which sums had neither been deducted by the maintaining local education authority in accordance with their scheme nor made available pursuant to section 116(2) or (3) of the 1996 Act, or, if made available, had not been spent by the governing body in exercise of their powers under section 116(5) of that Act.

Sums to be deducted from the CFF share : deficits incurred in respect of budget share in previous financial years

45.—(1) The funding authority shall deduct from the amount of the CFF share of any school whose maintenance grant for the financial year in question falls to be determined under this Part and which became a grant-maintained school between 1st April 1995 and 1st April 1997 inclusive an amount determined in accordance with paragraph (2).

(2) The funding authority, having consulted the former maintaining local education authority and the governing body of the school, shall determine such amount, if any, as appears to them to be fair and reasonable, in respect of any deficit incurred by the school in respect of its budget share in any previous financial year, having regard, in particular, to the following matters—

- (i) the existence and the terms of any agreement in writing between the then governing body of the school and the maintaining local education authority regarding the repayment of such deficit,
- (ii) the existence in the maintaining local education authority's scheme of provision permitting schools to anticipate their budget shares for the following year in order to finance planned items of expenditure,
- (iii) evidence that the maintaining local education authority took steps to reduce schools' budget shares where deficits have occurred and did not allow schools to carry over deficits from one year to the other with no planned reduction,
- (iv) the practice of the local education authority, in respect of schools which they maintain, regarding the writing off of deficits incurred by such schools in respect of their budget shares in previous financial years, and
- (v) the amount, if any, previously determined by the funding authority in accordance with regulation 15(3), 16(3) or 30(10) of the 1995 Regulations and regulation 25(3), 26(3) or 42(6) of the 1996 Regulations.

Sums to be deducted from the CFF share: excessive surpluses

46.—(1) The funding authority shall, in respect of a school whose maintenance grant for the financial year in question falls to be determined under this Part, determine the amount which appears to them to be equal or approximate to that amount of the school's maintenance grant, and any special purpose grant paid in respect of costs incurred by the school in respect of Value Added Tax, for any financial year prior to the financial year in question which has not been spent by the governing body ("the unspent amount").

(2) Paragraph (3) applies where the unspent amount is greater than the sum of—

- (a) 20 per cent of the amount of maintenance grant that would, ignoring the effects of this regulation, be payable in respect of the school for the financial year in question; and
- (b) the amount of special purpose grant which the funding authority estimate they would, ignoring the effects of this regulation, pay to the governing body in the financial year in question in respect of costs incurred by the school in respect of Value Added Tax.

(3) Where this paragraph applies, the funding authority shall deduct from the amount of the CFF share of the school such amount, if any, as the funding authority, having consulted the governing body of the school, may determine being no greater than the difference between the unspent amount and the sum of the amounts referred to in paragraph (2)(a) and (b).

Sums to be deducted from the CFF share: excessive severance payments

47.—(1) This regulation applies in a case where the funding authority are, after consultation with the governing body of a school whose maintenance grant for the financial year in question falls to be determined under this Part, of the opinion that the governing body have, on or after 1st January 1997, made a payment in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school which is, having regard to all the circumstances of the case, excessive.

(2) Where this regulation applies, the funding authority shall deduct from the amount of the CFF share of the school such part of the payment referred to in paragraph (1) as the funding authority regard as excessive.

CFF floor

48.—(1) In the case of a grant-maintained secondary school or a secondary school maintained by a local education authority situated in an existing CFF area its CFF floor shall, subject to the following provisions of this regulation, be the amount determined by the Secretary of State on or before 1st April 1997, for the purposes of section 244(2) of the 1996 Act, as the school's CFF floor for the financial year in question and if no amount is so determined it shall be the amount determined as the school's CFF floor under regulation 43 (but ignoring the effect of paragraph (11)) of the 1996 Regulations.

(2) In the case of a grant-maintained primary school or a primary school maintained by a local education authority situated in a primary CFF area or a grant-maintained secondary school or a secondary school maintained by a local education authority situated in a new CFF area its CFF floor shall be the amount determined by the funding authority in accordance with the following provisions of this regulation.

(3) In the case of a primary school situated in a primary CFF area or a secondary school situated in a new CFF area, which was a grant-maintained school throughout the preceding financial year, the funding authority shall determine the amount of the maintenance grant determined (or, subject to paragraph (4), if that amount was redetermined in the preceding financial year, the amount as most recently so redetermined) under the 1996 Regulations for the school for that year—

- (i) reduced by such amount as appears to the funding authority to be required, where regulation 10(2) or (4) of the 1996 Regulations (cash protection) applied for the purpose of determining (or redetermining) that grant, to reflect the amount which would have been determined under regulation 8(1) of those Regulations (determination of Central AMG) for that purpose if regulation 10(2) or (4) of those Regulations had not so applied,
- (ii) reduced by an amount which appears to the funding authority to be equivalent to any amounts for pupils with statements of special educational needs or for places in schools, other than special schools, for pupils who have special educational needs included in the relevant authority's aggregated budget under their scheme as it applied in that year, and
- (iii) reduced by an amount which appears to the funding authority to be equivalent to any amounts determined under regulation 9 of the 1996 Regulations (Section 11 funding).

(4) To the extent that the amount of maintenance grant referred to in paragraph (3) was redetermined as mentioned in that paragraph by reason of any increase or decrease in the number of registered pupils at the school, no account shall be taken of that redetermination for the purposes of that paragraph.

(5) In the case of a primary school situated in a primary CFF area or a secondary school situated in a new CFF area, which was not a grant-maintained school at any time during the preceding financial year, the amount is the aggregate of the following amounts—

- (a) the amount of the school's budget share for the preceding financial year as initially determined (or, subject to paragraph (6), if that share was revised in the preceding financial year, as most recently so revised)—
 - (i) increased by the amount which it appears to the funding authority would have been the amount required to be determined for the school and that year under regulation 8(1) of the 1996 Regulations (determination of Central AMG) if the school had been a grant-maintained school and the relevant percentage for the purposes of that regulation (instead of the percentage determined in accordance with Schedule 1 to those Regulations) had been the percentage determined in accordance with Schedule 1 to these Regulations,
 - (ii) reduced by an amount equivalent to any amounts for pupils with statements of special educational needs or for places in schools, other than special schools, for pupils who have special educational needs included in the relevant authority's aggregated budget under their scheme as it applied in that year; and
- (b) the amount which it appears to the funding authority would have been the amount required to be determined for the school and that financial year under regulations 9 (expenditure due to ethnic minority population), 11 (school meals), 22 (contingencies) and 23 (nursery education) of the 1996 Regulations (disregarding any amount which would have been required to be determined under regulation 22 (contingencies) of those Regulations in respect of changes in the number of registered pupils at the school), if the school had been a grant-maintained school throughout that year,

apportioned, where proposals under section 167 or 173 of the 1996 Act to cease to maintain or discontinue the school fall to be implemented on a date in the financial year in question, in accordance with the formula

$$\frac{R \times Q}{365}$$

where—

R is the aggregate amount determined in accordance with sub-paragraphs (a) and (b) above; and

Q is the number of days in that year which precede the date on which the authority are to cease to maintain the school.

(6) To the extent that the amount of the school's budget share referred to above in paragraph (5)(a) was revised as therein mentioned by reason of any increase or decrease in the number of registered pupils at the school, no account shall be taken of that revision for the purposes of that sub-paragraph.

(7) In the case of a primary school situated in a primary CFF area or a secondary school situated in a new CFF area, which became a grant-maintained school after 1st April in the preceding financial year, the aggregate of the amount referred to in paragraph (3), leaving out of account its apportionment under regulation 18 of the 1996 Regulations, and of the amount referred to in paragraph (5), adjusted in each case pro rata according to the date in that financial year on which the school became a grant-maintained school.

(8) In the case of a school which, in the opinion of the funding authority, admits significantly more pupils in the financial year in question than it would normally because another school was discontinued, or the local education authority ceased to maintain it, in the preceding financial year, its CFF floor shall be such amount as the funding authority may determine, after consultation with the local education authority, having regard to the CFF floors that would have been determined in respect of both schools had one not been discontinued or the local education authority had not ceased to maintain it and making such adjustments as they consider fair and reasonable.

(9) Where a school is to be discontinued, or the local education authority are to cease to maintain it, in the financial year in question then the funding authority shall reduce the amount of its CFF floor, after consultation with the local education authority, by such amount as they consider fair and reasonable.

(a) (10) (a) Except in relation to the London Borough of Hillingdon, as a primary relevant authority, where it appears to the funding authority that in the preceding financial year the maintenance grant or budget share of a primary school situated in a primary CFF area or a secondary school situated in a new CFF area, was determined on the basis of an incorrect estimate of the numbers of registered pupils at the school for any part of that year, then the funding authority shall add to the amount determined in accordance with the foregoing provisions of this regulation in respect of that school an amount calculated in accordance with sub-paragraph (b) below.

(b) The amount is an amount arrived at by—

(i) taking the number which appears to the funding authority to be the number of registered pupils at the school in each age band on the date to which the estimate relates less the estimated number of pupils in each age band on that date multiplied by 7/12;

(ii) multiplying the amount for each age band under (i) above by the amount set out in, whichever is appropriate of, column (1), (2), (3) or (4) for that age band and in respect of that relevant authority in table 1 or 2 in Schedule 6, according as to whether the school is a primary or a secondary school; and

(iii) multiplying the sum of the amounts derived from (ii) above by the unit cost for age band 3 as shown in column (5) in table 1 in Schedule 6, in the case of a secondary school, or by the unit cost for age band 2P as shown in column (5) in table 2 in Schedule 6, in the case of a primary school.

(11) The funding authority shall add to the amount determined in respect of each school under the preceding provisions of this regulation an amount calculated by—

(a) multiplying the number of registered pupils, except any pupils referred to in sub-paragraph (b) below, in each age band on 16th January 1997, less the number of registered pupils which it appears to the funding authority were in each age band on 18th January 1996, by the amount set out in, whichever is appropriate of, column (1), (2), (3) or (4) in table 1 or 2 in Schedule 6 for that age band in respect of that relevant authority, according as to whether the school is a primary or secondary school; and

- (b) (i) multiplying the number of registered pupils, at a school situated in the area of Essex County Council, who were admitted to the school in the summer term in the preceding financial year, on or before a date determined by the funding authority, and who will attain the age of 5 years at or before the end of that term, less the number of such pupils who were so admitted in the summer term in the financial year before the preceding financial year, on or before a date determined by the funding authority, by
 - (ii) the amount set out in column (2) in table 2 in Schedule 6 for that age band in respect of that relevant authority; and
- (c) multiplying the aggregate of the amounts derived from sub-paragraphs (a) and (b) above by the unit cost for age band 3 as shown in column (5) in table 1 in Schedule 6, in the case of a secondary school, or by the unit cost for age band 2P as shown in column (5) in table 2 in Schedule 6, in the case of a primary school.

(12) The funding authority shall multiply the amount determined in respect of each primary or secondary school, as the case may be, in accordance with the preceding provisions of this regulation by a figure which is the aggregate of the amounts determined in respect of all primary or secondary schools, as the case may be, to which this regulation applies in the area of the relevant authority in accordance with paragraphs (1) to (9) divided by the sum of the amounts so determined in accordance with paragraphs (1) to (11).

(13) If the aggregate of the amounts determined in respect of each primary or secondary school in the area of a relevant authority by the funding authority in accordance with paragraph (12) is greater than—

- (a) the adjusted primary schools total or the secondary schools total, as the case may be, for that authority; or
- (b) in the case of the London Borough of Brent, the secondary schools total less the total contingency amount referred to in paragraph 16D(2) of Schedule 5 (“the adjusted secondary schools total”),

then the funding authority shall multiply the amount so determined in respect of each school by a figure which is the adjusted primary schools total, the secondary schools total or the adjusted secondary schools total for that authority, as the case may be, divided by the aggregate of the amounts determined in respect of each school in the area of that authority in accordance with paragraph (12).

(14) In the case of a primary school situated in a primary CFF area or a secondary school situated in a new CFF area, the funding authority shall adjust the amount determined in accordance with the foregoing provisions of this regulation by such amount, if any, as appears to them to be fair and reasonable, having consulted the relevant authority, to take into account any transfer of an amount of funding in respect of a pupil pursuant to section 494 of the 1996 Act.

(15) The CFF floor for a new school shall be zero.

Relevant date

49.—(1) Subject to regulation 55, any amount required to be determined by the funding authority under this Part or Schedule 4 (special provision for former independent schools) shall be determined on the information available to them on the relevant date.

(2) In paragraph (1), the relevant date is such date as the funding authority may determine and different dates may be determined for different cases or classes of case.

(3) The funding authority may, in any case where they consider it appropriate to do so, redetermine the relevant date.

(4) Where—

- (a) the funding authority determine the relevant date in respect of any school for the financial year in question in accordance with paragraph (2); or

(b) they redetermine the relevant date in accordance with paragraph (3), they shall notify the governing body of the school and the local education authority in writing of that fact.

(5) Where there is not available to the funding authority on the relevant date sufficient information as will, in their opinion, allow them to determine any amount referred to in paragraph (1) they may determine the amount of maintenance grant payable in respect of the school on such basis as appears to them to be fair and reasonable having regard to the information available to them on the relevant date.

(6) The funding authority shall not take into account any information made available to them after the relevant date (but before the date of their determination) for the purposes of determining the amount of maintenance grant payable in respect of a school for the financial year in question.

(7) References in this Part of these Regulations to the relevant date are references to the date referred to in paragraph (2) unless the relevant date has been redetermined in accordance with paragraph (3) in which case it is a reference to that date as redetermined.

Adjustments

50.—(1) Without prejudice to paragraph (13) but subject to paragraphs (10) to (12) and regulation 54, where, after the funding authority have determined the amount of maintenance grant payable in respect of any school for the financial year in question, any of paragraphs (2) to (6) apply, the funding authority may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with paragraphs (7) to (9).

(2) This paragraph applies where it appears to the funding authority that the number of registered pupils at a school exceeds the number of pupils used for the purposes of determining the amount of its maintenance grant for the financial year in question, and that the relevant authority's scheme makes provision in relation to such increases in pupil numbers at a school.

(3) This paragraph applies where proposals published under section 259 or 260 of the 1996 Act to make a significant change in the character of the school fall to be implemented wholly or partly in the financial year in question.

(4) This paragraph applies where it appears to the funding authority that the amount of the relevant authority's primary or secondary schools budget, as the case may be, for the financial year in question has changed from that initially determined under regulation 43(2).

(5) This paragraph applies where after determining the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this Part it appears to the funding authority that, by reason of—

- (a) any change in the characteristics of the school,
- (b) any change in the level of spending by the local education authority which affects any of the matters referred to in regulation 44,
- (c) any other change affecting the needs of the school, or
- (d) the level of spending by the local education authority on any matter included in accordance with regulation 4(a) of the Education (School Financial Statements) (Prescribed Particulars etc.) Regulations 1995(20) in Part 1 of the authority's statement prepared under section 122(4) of the 1996 Act for the financial year beginning in 1996 exceeding the planned level of spending on that matter included in accordance with Schedule 1 to those Regulations in Part 1 of the authority's statement prepared under section 122(2) of that Act for that year,

the amount so payable should be revised.

(6) Subject to regulation 53 (use of contingency amount to correct mistakes in the CFF share for a primary school), this paragraph applies where the funding authority are satisfied that their determination of the amount of maintenance grant payable in respect of any school for the financial year in question was made in ignorance of, or was based on a mistake as to, some material fact, or was not in accordance with these Regulations.

(7) In any case to which paragraph (3) applies, the funding authority may redetermine the amount of maintenance grant payable in respect of the school for the financial year in question by adding to it the amount calculated by the formula—

$$Z \times \frac{A}{365}$$

, where

Z is the amount which equals (b)-(a) where (a) is the amount of the CFF share for the school (or, where that amount has been redetermined for the purposes of redetermining the amount of maintenance grant in accordance with paragraph 6, that amount as so redetermined) less the amount if any, added under regulation 42(4)(c); and (b) is the amount determined in accordance with paragraph (8); and

A is the number of days in the financial year falling on or after the date on which the proposals referred to in paragraph (3) fall to be implemented.

(8) For the purposes of paragraph (7) the funding authority shall—

(a) redetermine the total number of funding units for the school in accordance with Schedule 5—

(i) substituting, in cases where pupils numbers are determined in accordance with paragraph 3B, D E or F of Part III of Schedule 5 (relevant authorities which do not use estimates of pupil numbers), for the number of registered pupils at the school in the particular age band or bands affected by the change in character the number which the funding authority estimate will be the number of registered pupils at the school in that age band or bands on the date on which the proposals fall to be implemented; or

(ii) substituting, in cases where pupils numbers are determined in accordance with paragraph 3A, C or G of Part III of Schedule 5 (relevant authorities which use estimates of pupil numbers), for the number which they estimated would be the number of registered pupils at the school in the particular age band or bands affected by the change in character on the date for estimates in the pupil count, the number which they estimate will be the number of such pupils on the date on which the proposals fall to be implemented; and

(b) multiply the total number of funding units for the school redetermined in accordance with sub-paragraph (a) above by the amount per pupil for the relevant authority in whose area the school is situated determined in relation to that authority in accordance with paragraph 16A to F of Schedule 5 (or, where that amount has been recalculated in accordance with regulation 42(4)(c), that amount as so recalculated) for the purposes of the initial determination of maintenance grant for the school for the financial year in question.

(9) The funding authority may redetermine the amount of maintenance grant payable in respect of the school for the financial year in question—

(a) in any case to which paragraph (2) applies, by adding such amount as appears to them would have been payable to the school under the relevant authority's scheme, had the school been covered by the scheme, in relation to such increases;

(b) in any case to which paragraph (4), (5) or (6) applies, in accordance with the provisions of this Part, and

if the amount so redetermined is different from the amount previously determined, revise their determination in respect of that school and, if appropriate, in respect of any or all grant maintained primary or secondary schools in the area of the relevant authority in question and primary and secondary schools maintained by that authority, as the case may be, accordingly.

(10) Where, after redetermining the amount of maintenance grant payable in respect of a school for the financial year in question under any of paragraphs (7) to (9), the funding authority further so redetermine that amount, they shall reduce that amount (as so redetermined) by such amount (if any) as seems to them to be appropriate, having regard to any redetermination of the amount of maintenance grant payable in respect of the school for the financial year in question previously made by them under any of those paragraphs.

(11) Subject to paragraph (12), the funding authority may not, in accordance with this regulation and regulation 43 (link to budgets) or in accordance with this regulation and regulation 44 (sums to be added to the CFF share), revise their determination of maintenance grant so as to reduce the amount of grant payable in respect of the school concerned for the financial year in question.

(12) The funding authority may revise their determination of maintenance grant in accordance with this regulation and regulation 43 or 44 so as to reduce the amount payable where—

- (a) that determination was made in ignorance of, or was based on a mistake as to, some material fact; and
- (b) such ignorance or mistake was not attributable to an act or omission of the local education authority.

(13) Where it appears to the funding authority that, by reason of any extraordinary circumstances, the amount of maintenance grant determined in respect of a school for the financial year in question is insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with paragraph (14).

(14) Where the funding authority decide to redetermine the amount of maintenance grant by virtue of paragraph (13), they shall redetermine that amount by adding to it such amount as appears to them to be necessary for the purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

(15) Where the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this regulation they shall give notice thereof to the governing body of the school and to the local education authority.

Further revisions

51. A determination which has been revised in accordance with regulation 50, 51 or 53 may be further revised in accordance with those regulations and may be so further revised notwithstanding that the funding authority are satisfied that the revised determination was not made in accordance with these Regulations.

Deemed primary schools and deemed secondary schools

52.—(1) This regulation applies in the case of a school referred to in regulation 39(1)(b) or (d) (middle school deemed to be a primary or secondary school).

(2) Subject to regulation 54 (transfer of site), where it appears to the funding authority that the amount of maintenance grant determined in respect of a school to which this regulation applies for the financial year in question is insufficient because of the nature of such a school to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may after consultation with the local education authority and the governing body of the school redetermine the amount of maintenance grant payable in respect of the school for the year

by adding to it such amount as appears to them to be fair and reasonable for the purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

(3) Where the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this regulation they shall give notice thereof to the governing body of the school and to the local education authority.

Error contingency amount for primary schools

53.—(1) Subject to regulation 54 (transfer of site), where the funding authority are satisfied that their determination of the amount of the CFF share for any primary school for that year was made in ignorance of, or was based on a mistake as to, some material fact, or was not in accordance with these Regulations, they may, before 1st October in the financial year in question, redetermine that amount in accordance with the provisions of this Part and, if the amount so redetermined is different from the amount previously determined, revise their determination for that school and, if appropriate, for all schools in the area of that primary relevant authority and adjust the contingency amount for that primary relevant authority accordingly.

(2) Subject to regulation 54 (transfer of site), where, in the case of any primary relevant authority, paragraph (3) applies, the funding authority shall, as soon as practicable after 1st October in the financial year in question, redetermine the amount of maintenance grant payable in respect of each primary school situated in the area of the authority by adding to it the amount determined in respect of the school in accordance with paragraph (5).

(3) This paragraph applies where on 1st October in the financial in question—

- (a) it appears to the funding authority that the available amount in respect of the relevant authority is less than the contingency amount in respect of that authority; or
- (b) the funding authority have not redetermined—
 - (i) the amount of maintenance grant payable in respect of any primary school situated in the area of the relevant authority for that year on the grounds referred to in paragraph (1) (redetermination because of mistake); or
 - (ii) the amount of the CFF share for any primary school maintained by that authority for that year (or the sum of that amount and any amounts to be added to it in accordance with the preceding provisions of these Regulations, as the case may be) on those grounds.

(4) For the purposes of this regulation and Schedule 7—

the “available amount” means the amount which equals the difference between the contingency amount for that year and the aggregate of any amounts referred to in paragraph (3)(b) which have been redetermined on the grounds referred to in that paragraph; and

the “contingency amount” means the amount (“the error contingency”) deducted from the primary schools total for the authority for that year under regulation 42(2), including any amount added to that error contingency under regulation 43(1)(d).

(5) For the purposes of paragraph (2) the funding authority shall determine for each grant-maintained primary school situated in the area of the relevant authority and each primary school maintained by that authority the amount of the school’s share of, where paragraph (3)(a) applies, the available amount, or, where paragraph (3)(b) applies, the contingency amount obtained by dividing that amount between those schools in accordance with Schedule 7.

(6) Where the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this regulation they shall give notice thereof to the governing body of the school and to the local education authority.

Transfer of site

54.—(1) Where, after the funding authority have determined under this Part the amount of maintenance grant payable in respect of any school for the financial year in question, the school is transferred to a new site in the area of another relevant authority, regulations 50, 52, 53 and 57 shall apply as if the school had not been so transferred.

(2) Where, after the funding authority have determined under Part 2 the amount of maintenance grant payable in respect of any school for the financial year in question, the school is transferred to a new site in the area of a relevant authority, the provisions of that Part shall continue to apply for the purposes of redetermining the amount of maintenance grant payable in respect of the school for that year as if the school had not been so transferred.

Application of relevant date provisions to a redetermination of the amount of maintenance grant

55.—(1) In its application for the purposes of any redetermination under regulation 50, 53 or 57 of the amount of maintenance grant payable in respect of a school for the financial year in question, regulation 49 shall have effect subject to the following provisions of this regulation.

(2) Where the redetermination of maintenance grant under regulation 50 is made on one or more of the grounds specified in paragraphs (2) to (6) of that regulation the funding authority may take into account for the purposes of the redetermination any information received by them after the relevant date which relates to any of the reasons for making the redetermination.

(3) Where in accordance with paragraph (2) any additional information is taken into account by the funding authority for the purposes of redetermining grant under regulation 50, they may take that information into account for the purposes of making any further redetermination under that regulation.

(4) Regulation 49 shall not apply where a redetermination is made by the funding authority in accordance with regulation 50(13) and (14).

Requirements which may be attached to payment of maintenance grant

56. Regulation 38 applies for the purposes of this Part as it applies for the purposes of Part 2.

Pupil number contingencies in the London Borough of Brent

57.—(1) The funding authority shall, as soon as practicable after 1st October in the financial year in question, redetermine in accordance with, and so far as required by, the following provisions of this regulation the amount of maintenance grant payable in respect of each school situated in the area of the London Borough of Brent (“the authority”) whose maintenance grant falls to be determined under this Part.

(2) If, on 1st October in the financial year in question, it appears to the funding authority that the GM contingency amount is greater than or equal to the aggregate of pupil increase amounts for each school whose maintenance grant falls to be determined under this Part in the area of the authority then the funding authority shall redetermine the amount of maintenance grant payable in respect of each such school (in so far as required by the following provisions of this paragraph) by adding to it—

- (a) the pupil increase amount for that school; and
- (b) where the GM contingency amount is greater than the aggregate of pupil increase amounts, an amount determined in accordance with paragraph (3).

- (a) (3) (a) The funding authority shall determine in respect of each school whose maintenance grant falls to be determined under this Part in the area of the authority the

number appearing to them to be the number of registered pupils at the school on 16th January 1997.

- (b) The funding authority shall determine the aggregate of the numbers determined in accordance with sub-paragraph (a) above.
- (c) The funding authority shall determine the amount obtained by dividing the GM contingency amount, less the aggregate of pupil increase amounts, by the number determined under sub-paragraph (b) above.
- (d) The funding authority shall determine, as the amount to be added under paragraph (2)(b), the amount obtained by multiplying the amount determined under sub-paragraph (c) above by the number of registered pupils at the school determined under sub-paragraph (a) above.

(4) If, on 1st October in the financial year in question, it appears to the funding authority that the GM contingency amount is less than the aggregate of pupil increase amounts for each school whose maintenance grant falls to be determined under this Part in the area of the authority then the funding authority shall redetermine the amount of maintenance grant payable in respect of each such school (in so far as required by the following provisions of this paragraph) by adding to it the amount which is equal to—

$$\frac{A}{B} \times C,$$

, where

A is the GM contingency amount;

B is the aggregate of pupil increase amounts for each school whose maintenance grant falls to be determined under this Part in the area of the authority; and

C is the pupil increase amount for the school.

(5) In this regulation—

“GM contingency amount” means the amount referred to in paragraph 16D(7) of Schedule 5;

“pupil increase amount” means the pupil increase credit multiplied by the amount per pupil for the authority calculated under paragraph 16D of Schedule 5 or as recalculated under regulation 42(4)(a); and

“pupil increase credit” means

$$\frac{7}{12} \times (Y \times Z),$$

, where

Y is the number by which the number, appearing to the funding authority to be the number of registered pupils at the school on a date in September 1997 determined by the Secretary of State, exceeds the number appearing to them to be the aggregate of—

- (a) the number of registered pupils at the school on 16th January 1997; and
- (b) 5 per cent of that number or 15 whichever is the smaller; and

Z is the number in column (3) opposite the entry for the authority in table 1 in Part VI of Schedule 5.

(7) Where the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this regulation they shall give notice thereof to the governing body of the school and to the local education authority.

PART 4

CAPITAL AND SPECIAL PURPOSE GRANTS

Capital grants

58.—(1) Subject to paragraph (2), the funding authority may pay capital grants in respect of expenditure of a capital nature of a class or description specified in Schedule 8 incurred or to be incurred by the governing body of a school in respect of which these Regulations apply.

(2) In the case of a special school which is established in a hospital, paragraph (1) shall apply only in respect of expenditure of a class or description specified in paragraph 1(d) of Schedule 8.

Special purpose grants

59.—(1) The funding authority may pay special purpose grants in respect of expenditure of any class or description specified in Schedule 9 incurred or to be incurred by the governing body of a school in respect of which these Regulations apply—

- (a) for or in connection with the educational purposes so specified; or
- (b) in respect of any expenses so specified being expenses which it appears to the funding authority the governing bodies of such schools cannot reasonably be expected to meet from maintenance grant.

(2) Special purpose grants may be paid on a regular basis in respect of expenditure of a recurrent kind or by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.

Requirements which may be attached to payment of capital or special purpose grants

60.—(1) The requirements set out in paragraph 1 (conduct of the school) of Schedule 3 and paragraph (2) below are specified as requirements which may be imposed by the funding authority on governing bodies to whom payments of capital or special purpose grants are or have been made.

(2) The requirements referred to in paragraph (1) are—

- (a) a requirement that any such payment shall be applied for the purpose of defraying expenditure in respect of which it was made and for no other purpose; and
- (b) a requirement that such a payment shall be so applied before a date specified by the funding authority.

(3) The funding authority may determine for the purposes of the application of section 247(1) and (2) of the 1996 Act to such governing bodies as are referred to in paragraph (1)—

- (a) any requirement referred to in paragraphs 2 to 4 (requirements as to accounts and financial affairs) of Schedule 3;
- (b) any requirement formulated for the purpose of assisting the funding authority to be satisfied that a requirement imposed in accordance with paragraph (2) is being, or has been, complied with including, in particular, requirements as to the furnishing by the governing body of audited statements relating to expenditure in respect of which the grant has been paid together with such accounts, receipts, invoices and other information as the funding authority may require in order to verify the same; and
- (c) any requirement as to the repayment, in whole or in part, of payments made to the governing body in respect of such grant if any other requirement imposed by the funding authority in accordance with this regulation subject to which the payments were made is not complied with.

(4) The funding authority may determine for the purposes of the application of that section to such governing bodies as are referred to in paragraph (1), requirements as to the payment to the funding authority, if any conditions specified in the requirements are satisfied, of the whole or any part of the amount referred to in section 247(7) of the 1996 Act (subject always, where any payment is made in respect of capital grants, to the provisions of section 247(8) of that Act).

PART 5

RECOVERY OF AMOUNTS IN RESPECT OF MAINTENANCE GRANT FROM A LOCAL EDUCATION AUTHORITY

Determination of amount to be recovered

61.—(1) Subject to paragraph (2) below, the total amount which the Secretary of State may recover by virtue of section 256 of the 1996 Act from a local education authority named in a determination under that section applying that section in respect of any school in respect of which these Regulations apply, in relation to the financial year in question, is the amount determined in accordance with these Regulations as the amount of the maintenance grant payable in respect of the school and financial year in question (as from time to time revised) excluding any amount determined under regulation 33 (capital expenditure from the revenue account).

(2) The amount which would otherwise fall to be determined in accordance with paragraph (1) above as the total amount recoverable from a local education authority by virtue of section 256 of the 1996 Act in respect of any such school for the financial year in question may be reduced by an amount not exceeding the amount outstanding in respect of any excess amount recovered from the authority under that section in respect of the school in relation to any previous financial year.

PART 6

AMENDMENT

Recovery from local funds in respect of maintenance grant paid to a grant-maintained special school outside the local education authority's area.

62. Regulation 23(2) of the Education (Grant-maintained Special Schools) Regulations 1994⁽²¹⁾ (funding) shall be amended by the addition of a new sub-paragraph as follows—

“or

- (d) any grant-maintained special school outside the area of the authority which, immediately before it became such a school, was maintained by a local education authority which was the subject of a structural or boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992⁽²²⁾ made under section 17 of that Act.”.

⁽²¹⁾ S.I. 1994/653; regulation 23 was substituted by S.I. 1994/1231.

⁽²²⁾ 1992 c. 19.