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STATUTORY INSTRUMENTS

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**1995 No. 587**

**The Education (Grant-maintained Schools)  
(Finance) (Wales) Regulations 1995**

**PART II**

**MAINTENANCE GRANT**

**Determination of amount of maintenance grant**

4.—(1) Subject to paragraphs (2) and (4) and regulation 12, the amount of maintenance grant payable in respect of a school for the financial year in question shall be the sum of the following amounts—

- (a) an amount determined in accordance with (as the case may be) regulation 5, 6 or 7;
- (b) an amount determined in accordance with regulation 8 and (where applicable) regulation 9;
- (c) an amount determined in accordance with regulation 10(1); and
- (d) where an amount is required to be determined in accordance with regulation 11(3), the amount so determined.

(2) Where in the opinion of the Secretary of State 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 Secretary of State to determine as the amount of maintenance grant payable for the financial year in question such amount as appears to him to be fair and reasonable having regard in particular to the relevant authority's scheme.

(3) In these Regulations references to the financial year in question are references to the financial year in respect of which the determination of maintenance grant is made.

(4) Where the Secretary of State determines an amount under regulation 11(5) in respect of a school for the financial year in question, that amount shall be deducted from the sum of the amounts referred to in paragraph (1) in determining the amount of maintenance grant payable in respect of the school for the financial year in question under this regulation.

**Determination of an amount in respect of a comparable maintained school's budget share**

5.—(1) Subject to regulation 6, this regulation applies in the case of any school which becomes grant-maintained on or before 1st April in the financial year in question.

(2) The Secretary of State shall determine an amount which he is satisfied is or approximates to an amount which the relevant 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.

(3) Where—

- (a) at any time before the beginning of the financial year in question the allocation formula included provision for taking into account a particular characteristic of a school which will affect the needs of the school as distinct from those of other schools which do not share that characteristic; and
- (b) the scheme has been revised, varied or replaced under section 35 of the 1988 Act<sup>(1)</sup> at any time before the relevant date in relation to the school as initially determined (whether that is the date specified in regulation 15(2) or such other date as may be determined in accordance with that regulation), 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 varied or replaced;

the allocation formula shall be deemed for the purposes of determining the amount under paragraph (2), to include such provision as it had effect immediately before the scheme was so revised, varied or replaced:

Provided that the Secretary of State shall add to, or subtract from, any sum derived from the application of the said provision such amount as appears to him to be fair and reasonable having regard to any increase or decrease in the actual or planned level of spending of the relevant authority in respect of schools maintained by them occurring during or since the preceding financial year.

(4) 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 Secretary of State, in applying the allocation formula for the purpose of determining the amount under paragraph (2), to be the amount or amounts determined in accordance with paragraph (5).

(5) For the purposes of paragraph (4), the Secretary of State 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 Secretary of State shall decide, adjusted by such amount or amounts as appears or appear to him 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 relevant authority in respect of schools maintained by them occurring during or since that year; and

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(1) A new section 35 is substituted by section 274(2) of the 1993 Act.

- (b) any significant change in the characteristics of the school occurring as aforesaid or which it appears to the Secretary of State will be likely to occur before the end of the financial year in question.
- (6) Subject to paragraphs (7), (8) and (9), references in this Part to a maintained school are references to a school maintained by the relevant authority, and references to a comparable maintained school are references to a maintained county school, any characteristics of which relevant for the purposes of any formula of a kind referred to in paragraph (2) are identical to any such characteristics of the grant-maintained school and are references (in particular) to a school—
- (a) 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
- (b) 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.
- (7) Where the allocation formula includes provision for taking into account the amount of any non-domestic rate payable in respect of a school, the Secretary of State shall, in applying the allocation formula for the purpose of determining the amount under paragraph (2), apply that 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 grant-maintained, 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 grant-maintained, that payable in respect of a comparable maintained school which is not a charity.
- (8) For the purposes of this regulation, it is to be assumed that there is a comparable maintained school covered by the relevant authority's scheme whether or not there is in fact such a school; and, for the purposes of paragraph (7), it is to be further assumed that a comparable maintained school is capable of being a charity.
- (9) 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.
- (10) 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.
- 6.—(1)** In any case where the school becomes grant-maintained before 1st April in the financial year in question, the Secretary of State may if he thinks fit, instead of determining an amount under regulation 5(2), determine an amount in accordance with paragraph (2).
- (2) Where the Secretary of State decides to determine an amount in accordance with this paragraph he shall determine an amount by—
- (a) taking the amount which—
- (i) in the case of a school which becomes a grant-maintained school in or before the financial year ending on 31st March 1995, was determined in respect of the school under (as the case may be) regulation 5, 7 or 13(2) of the 1994 Regulations for that year; or

- (ii) in the case of a school which becomes a grant-maintained school after the financial year ending on 31st March 1995, is determined in respect of the school under (as the case may be) this paragraph or regulation 5, 7 or 13(2) for the financial year in which the date of implementation of the proposals in respect of the school falls; and
- (b) adjusting that amount by such amount as appears to him 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 relevant authority in respect of the schools maintained by them occurring since the financial year in respect of which the amount referred to in sub-paragraph (a) above was determined; and
  - (ii) any significant change in the characteristics of the school occurring as aforesaid or which it appears to him is likely to occur before the end of the financial year in question.

(3) In these Regulations references to the preceding financial year are references to the financial year immediately preceding the financial year in question.

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

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

(3) The Secretary of State shall determine an amount which appears to him to be equal 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 local education authority in accordance with their scheme nor made available pursuant to section 36(2) and (3)(2) of the 1988 Act, or, if made available, had not been spent by the governing body of the school in exercise of their powers under section 36(5) of the 1988 Act.

#### **Determination of an amount as a percentage addition**

8.—(1) Subject to regulation 9, the Secretary of State shall determine an amount which is equal to the relevant percentage of the amount determined in respect of the school in accordance with, as the case may be, regulation 5, 6 or 7.

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

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

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

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

where—

J is the amount of the school's budget share for the financial year in question, and

A and B represent the matters respectively denoted by those letters in regulation 16(2).

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(2) Section 36 is amended by section 12(6) of the Further and Higher Education Act 1992 (c. 13) and section 307 of, and paragraph 125 of Schedule 19 to, the 1993 Act.

### **Determination of an amount in respect of free school meals, contingencies, nursery education and expenditure due to ethnic minority population**

10.—(1) Subject to paragraph (2), the Secretary of State shall determine the amount which is the sum of the amounts determined in accordance with paragraphs (3) to (7).

(2) In any case where the Secretary of State determines an amount under regulation 6, paragraph (1) shall have effect as if it required him to determine an amount equal to the amount referred to in paragraph (3).

(3) The Secretary of State shall determine an amount in respect of the provision of free school meals calculated by the application of the following formula—

$$M \times F \times D$$

where—

M is the number of registered pupils in receipt of free school meals at the school on a date determined by the Secretary of State;

F is the amount determined by the Secretary of State for the purposes of section 81(2) of the 1993 Act in respect of the relevant authority and financial year in question as the amount which appears to him, after consultation with the authority, to represent, or approximate to, the expenditure to be incurred by the authority in respect of each free school meal provided by them to pupils in receipt of free school meals at relevant schools;

D is the number of school days in the financial year which fall on or after the date on which the school becomes grant-maintained.

(4) In these Regulations—

“relevant schools” means all primary or all secondary schools maintained or formerly maintained by the relevant authority required to be covered by a statement for the year under section 42 of the 1988 Act(3), according as to whether the school is a primary school or a secondary school; and

“school days” are days on which there is a school session at the school.

(5) The Secretary of State shall determine the amount which it appears to him, were the school maintained by the relevant authority, could have been allocated for the purposes of the school in accordance with the authority’s scheme in respect of contingencies.

(6) Where the school provides education for junior pupils who have not attained the age of five years, the Secretary of State shall determine an amount in respect of such provision which he is satisfied is fair and reasonable having regard in particular to the extent to which, in his opinion, the cost of such provision ought to be met from the amount determined in accordance with (as the case may be) regulation 5 or 7.

(7) The Secretary of State shall determine the amount (if any) which it appears to him, were the school maintained by the relevant 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(4) 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.

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(3) Section 42(4)(f) to (i) and (5)(b) is repealed by section 307(3) of, and Schedule 21 to, the 1993 Act. Subsections (6)(aa) and (8) are, respectively, inserted and substituted by section 275 of that Act.

(4) 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 1988 Act to which there is an amendment not relevant to these Regulations.

### **Determination of an amount representing sums unspent or overspent in respect of a previous financial year's budget share before a school becomes grant-maintained**

11.—(1) This paragraph applies where—

- (a) the determination of maintenance grant in respect of a school is for the financial year in which the school became grant-maintained; and
- (b) in a previous financial year the school (before becoming grant-maintained) had a delegated budget under a scheme made by the relevant authority.

(2) In any case to which paragraph (1) applies, the Secretary of State shall determine an amount in accordance with paragraph (3).

(3) The Secretary of State shall determine an amount which it appears to him is equal 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 local education authority in accordance with their scheme nor made available pursuant to section 36(2) and (3) of the 1988 Act, or, if made available, had not been spent by the governing body in exercise of their powers under section 36(5) of that Act.

(4) This paragraph applies in the case of a school which becomes a grant-maintained school on 1st April in the financial year in question if, immediately before becoming grant-maintained, the school had a delegated budget under a scheme made by the relevant authority.

(5) Where paragraph (4) applies, and the Secretary of State is satisfied that the school's budget share for the preceding financial year was less than the aggregate of the sums which, in respect of that financial year, were either—

- (a) sums deducted by the relevant authority in respect of the school's budget share in accordance with their scheme; or
- (b) sums spent by the governing body of the school (before becoming grant-maintained) in the exercise, or purported exercise, of their powers under section 36(5) of the 1988 Act,

he may determine as an amount to be deducted from the amount determined in respect of the school under regulation 4(1), such amount as he is satisfied it is fair and reasonable should be so deducted having regard to the amount which the relevant authority could have deducted in such a case in determining the school's budget share for the financial year in question had the school not become grant-maintained.

### **Determination of amount of maintenance grant otherwise than under regulation 4**

12.—(1) Notwithstanding the provisions of regulation 4, the Secretary of State may, in the case of a school which becomes grant-maintained in the financial year in question, determine the amount of maintenance grant payable to the governing body of the school for the financial year in question in accordance with the following provisions of this regulation.

(2) Subject to regulation 14(2), 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 13(1) and (where applicable) 14(1).

(3) The Secretary of State shall consult the relevant 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.

13.—(1) The Secretary of State 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 Secretary of State shall determine an amount which he is satisfied is equal to the amount of relevant expenditure incurred by the relevant 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 Secretary of State shall determine an amount which is equal to the relevant percentage of the amount determined in accordance with paragraph (2).

(5) The Secretary of State shall determine an amount in respect of the provision of free school meals calculated by the application of the following formula—

$$M \times F \times 190$$

where—

M and F represent the matters respectively denoted by those letters in regulation 10(3).

(6) The sum of the amounts determined in accordance with paragraphs (2), (4) and (5) may be adjusted by such amount as the Secretary of State is 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 relevant authority in respect of the schools maintained by them occurring during or since the preceding financial year, and
- (b) any significant change in the characteristics of the school occurring as aforesaid or which it appears to the Secretary of State will be likely to occur before the end of the financial year in question.

**14.**—(1) The Secretary of State shall determine an amount equal to the amount (if any) which would have been determined in respect of the school in accordance with regulation 11(3) if the amount of maintenance grant for the school were to be determined under regulation 4.

(2) The Secretary of State may determine an amount equal to the amount (if any) which he could have determined in accordance with regulation 11(5) if the maintenance grant payable in respect of the school had been determined under regulation 4 and, where he does so, paragraph (2) of regulation 12 shall have effect as though it provided for that amount to be deducted from the sum of the amounts referred to in that paragraph in determining the amount of maintenance grant payable in respect of the school under regulation 12 for the financial year in question.

### **Relevant date**

**15.**—(1) Subject to paragraphs (2) and (3) and regulation 18, any amount required to be determined by the Secretary of State under this Part shall be determined on the information available to him on the relevant date.

(2) In paragraph (1), the relevant date means 31st March in the preceding financial year or, for the purposes of determining the amount of maintenance grant payable in respect of any school for any financial year, such other date as the Secretary of State may determine.

(3) The Secretary of State may, in any case where he considers it appropriate to do so, redetermine the relevant date.

(4) Where—

- (a) the Secretary of State determines in accordance with paragraph (2) that, in respect of any school for any financial year, the relevant date should be a date other than 31st March in the preceding financial year, or
- (b) he redetermines the relevant date in accordance with paragraph (3),

he shall notify the governing body of the school and the relevant authority in writing of that fact.

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

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

(7) References in 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.

### **Apportionment of maintenance grant**

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

(2) Where in respect of any such school the amount of maintenance grant is determined in accordance with regulation 12, 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—

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

B is 365 or, where the financial year in question ends during a leap year, 366;

C is the amount determined in respect of the school in accordance with regulation 13(1);

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; and	F = 1.02

G is the amount determined in respect of the school in accordance with regulation 14(1).

### **Adjustments**

**17.**—(1) Without prejudice to paragraph (3), this paragraph applies where—

(a) after determining the amount of maintenance grant payable in respect of any school for any financial year in accordance with these Regulations it appears to the Secretary of State that, by reason of—

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

(ii) any change in the level of spending by the relevant authority, or

(iii) any other change affecting the needs of the school, the amount so payable should be revised; or



(b) the Secretary of State is satisfied that his determination of the amount of maintenance grant payable in respect of any school for any financial 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.

(2) In any case to which paragraph (1) applies, the Secretary of State 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 his determination accordingly.

(3) Where it appears to the Secretary of State that, by reason of any extraordinary circumstances, the amount of maintenance grant determined in respect of a school for any financial year is insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, he may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with paragraph (4), and revise his determination accordingly.

(4) Where the Secretary of State decides to redetermine the amount of maintenance grant by virtue of paragraph (3), he shall redetermine that amount by adding to it such amount as appears to him 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.

(5) Where in accordance with this regulation the Secretary of State revises the amount of maintenance grant payable in respect of any school for any financial year he shall give notice thereof to the governing body of the school and to the relevant authority.

(6) A determination which has been revised in accordance with this regulation may be further revised in accordance with this regulation and may be so further revised notwithstanding that the Secretary of State is satisfied that the revised determination was not made in accordance with these Regulations.

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

**18.—**(1) In its application for the purposes of any redetermination under regulation 17 of the amount of maintenance grant payable in respect of a school for any financial year, regulation 15 shall have effect subject to the following provisions of this regulation.

(2) Where the redetermination of maintenance grant under regulation 17(2) is made on one or more of the grounds specified in paragraph (1)(a) of that regulation the Secretary of State may take into account for the purposes of the redetermination any information received by him after the relevant date which relates to any of the reasons for making the redetermination.

(3) Where the redetermination of maintenance grant under regulation 17(2) is made on the grounds, specified in paragraph (1)(b) of that regulation, that the Secretary of State is satisfied that his determination was made in ignorance of, or was based on a mistake as to, some material fact, he may take into account any information received by him 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 Secretary of State for the purposes of redetermining grant under regulation 17(2), he may take that information into account for the purposes of making any further redetermination under that regulation.

(5) Regulation 15 shall not apply where a redetermination is made by the Secretary of State in accordance with regulation 17(3) and (4).

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

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**Requirements which may be attached to payment of maintenance grant**

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

(2) The Secretary of State may determine, for the purposes of the application of section 90(1) and (2) of the 1993 Act to such governing bodies, any requirement referred to in paragraphs 2 to 4 of Schedule 3.