
STATUTORY INSTRUMENTS

1997 No. 599

EDUCATION, ENGLAND AND WALES

WALES

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

<i>Made</i>	- - - -	<i>3rd March 1997</i>
<i>Laid before Parliament</i>		<i>10th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

In exercise of the powers conferred on the Secretary of State by sections 244(2), 245(2), 246(2), 251, 252, 253, 257 and 569(4) and (5) of the Education Act 1996(1) the Secretary of State for Wales hereby makes the following Regulations:

PART I
GENERAL

Citation and commencement

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

Interpretation

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

“the 1996 Act” means the Education Act 1996;

“the 1990 Regulations” means the Education (Grant-maintained Schools) (Finance) Regulations 1990(2);

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- (1) 1996 c. 56. For the application of sections 244 to 254 to Wales before the Schools Funding Council for Wales (which has yet not been established) begin to exercise their functions *see* section 249. Sections 244 to 258 apply to grant-maintained special schools and their governing bodies by virtue of regulation 23 of the Education (Grant-maintained Special School) Regulations 1994, S.I. 1994/653, as substituted by regulation 11 of the Education (Grant-maintained Special Schools) (Amendment) Regulations 1994, S.I. 1994/1231. For the meaning of “regulations” *see* section 579(1) of the 1996 Act.
- (2) S.I. 1990/549, amended by S.I. 1990/2279 and S.I. 1991/353.

Status: This is the original version (as it was originally made).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

“the 1994 Regulations” means the Education (Grant-maintained Schools) (Finance) (Wales) Regulations 1994⁽³⁾;

“the 1995 Regulations” means the Education (Grant-maintained Schools) (Finance) (Wales) Regulations 1995⁽⁴⁾;

“the 1996 Regulations” means the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) (Wales) Regulations 1996⁽⁵⁾;

“new school proposals” means proposals published under section 212 of the 1996 Act for the establishment of a new grant-maintained school;

“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;

“school” means a grant-maintained or grant-maintained special school situated in Wales.

(2) The expressions listed in the left-hand column below are respectively defined by or (as the case may be) are to be interpreted in accordance with the provisions listed in the right-hand column in relation to those expressions—

aggregated budget	section 101(3)(b) of the 1996 Act
allocation formula	section 106(2) of the 1996 Act
capital grants	section 252 of the 1996 Act
change in the characteristics of the school	regulation 5(10)
comparable maintained school	regulation 5(6)
date of implementation of the proposals	sections 200(2) of the 1996 Act
delegated budget	section 115(b) of the 1996 Act
financial year	section 579(1) of the 1996 Act
financial year in question	regulation 4(6)
general schools budget	section 101(3)(a) of the 1996 Act
maintenance grant	section 250(1) of the 1996 Act
preceding financial year	regulation 5(9)
relevant date	regulation 17(7)
relevant expenditure	regulation 15(3)
relevant percentage	regulation 8(2)
relevant schools	regulation 10(3)
scheme	section 101(1) of the 1996 Act
school’s budget share	section 101(3)(c) of the 1996 Act
school days	regulation 10(3)
special purpose grants	section 251 of the 1996 Act.

(3) S.I. [1994/610](#).

(4) S.I. [1995/587](#).

(5) S.I. [1996/537](#), amended by S.I. [1996/1334](#) and S.I. [1996/1911](#).

(3) Any reference in these Regulations to the relevant authority in relation to any school and any financial year relating to the school, is a reference to the local education authority which is, or was in that financial year, the local education authority for the area in which the school is situated (whether or not, as a result of local government reorganisation⁽⁶⁾, that authority has since ceased to exist).

(4) 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 Chapter II, IV or IX of Part III of the 1996 Act, or becoming a grant-maintained special school under Chapter II or IX of Part III of the 1996 Act⁽⁷⁾.

(5) 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 Chapter II, IV or IX of Part III of the 1996 Act.

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

- (a) a numbered regulation or Schedule is a reference to the 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.

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

Revocation and transitional provisions

3.—(1) The Education (Grant-maintained and Grant-maintained Special Schools) (Finance) (Wales) Regulations 1996, the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) (Wales) (Amendment) Regulations 1996 and the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) (Wales) (Amendment) (No. 2) Regulations 1996 are revoked.

(2) Notwithstanding the provisions of these Regulations—

- (a) the 1990 Regulations shall continue to apply in relation to primary and secondary schools for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable by the Secretary of State in respect of a school for the period commencing on 1st April 1990 and ending on 31st March 1994, and
 - (ii) determining (and revising) the total amount which the Secretary of State may recover under regulation 13 of those Regulations in respect of that period;
- (b) the 1994 regulations shall continue to apply in relation to primary and secondary schools for the purposes of—
 - (i) determining, apportioning and redetermining the amount of maintenance grant payable by the Secretary of State in respect of a school for the financial year ending on 31st March 1995, and
 - (ii) determining (and revising) the total amount which the Secretary of State may recover under regulation 23 of those Regulations in respect of that financial year; and
- (c) the 1995 regulations shall continue to apply in relation to primary and secondary schools for the purposes of—

⁽⁶⁾ See the Local Government (Wales) Act 1994, c. 19.

⁽⁷⁾ Chapter II is applied to maintained special schools by the Education (Grant-maintained Special Schools) Regulations 1994, S.I. 1994/653 amended by S.I. 1994/1231, 1994/2003 and 1996/111; and Chapter IX is applied to such schools by the Education (Groups including Grant-maintained Special Schools) Regulations 1994, S.I. 1994/779.

- (i) determining, apportioning and redetermining the amount of maintenance grant payable by the Secretary of State in respect of a school for the financial year ending on 31st March 1996, and
 - (ii) determining (and revising) the total amount which the Secretary of State may recover under regulation 23 of those Regulations in respect of that financial year.
- (d) the 1996 regulations shall continue to apply in relation to primary and secondary schools for the purposes of—
- (i) determining, apportioning and redetermining the amount of maintenance grant payable by the Secretary of State in respect of a school for the financial year ending on 31st March 1997, and
 - (ii) determining (and revising) the total amount which the Secretary of State may recover under regulation 23 of those Regulations in respect of that financial year.
- (3) Paragraph (1) is without prejudice to the continued operation after 31st March 1997 of any requirements imposed by the Secretary of State 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 of (as the case may be) the 1990, 1994, 1995 and 1996 Regulations.

PART II

MAINTENANCE GRANT

Determination of amount of maintenance grant

4.—(1) Subject to paragraphs (2) to (5) and regulations 14 and 18, 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 or that regulation as it has effect in accordance with 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) Any amounts which are determined by the Secretary of State in respect of a school for the financial year in question under regulations 11(5), 12(3) and 13(2) shall be added together and the total 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 that financial year under this regulation.

(3) 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) or (2)—

- (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,

those paragraphs shall have effect as if they 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.

(4) Where, in the case of a school which provides for pupils within an age range which spans from between 3 and 7 years of age (inclusive) to between 16 and 18 years of age (inclusive), it appears to the Secretary of State that the amount of maintenance grant such a school would receive under these Regulations (other than this paragraph) in respect of the financial year in question would be insufficient because of the nature of such a school to enable the governing body adequately to carry out their functions with respect to the conduct of the school, he may, after consultation with the relevant authority and the governing body of the school, 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 to the provisions of these Regulations (other than this paragraph) and to the relevant authority's scheme.

(5) In particular, the Secretary of State may, for the purposes of any calculation made for the purposes of a determination under paragraph (4), treat the school as a primary school or as a secondary school or as separate primary and secondary schools.

(6) 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.

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

5.—(1) Subject to regulation 6, this regulation applies—

- (a) in the case of a school which becomes a grant-maintained school on or before 1st April in the financial year in question otherwise than in pursuance of new school proposals; and
- (b) in the case of a school which becomes a grant-maintained school (whether on, before or after 1st April in the financial year in question) in pursuance of new school proposals.

(2) The Secretary of State shall determine an amount which appears to him to be equal or approximate 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 adjusted (where applicable) in accordance with paragraph (12).

(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 factor; and
- (b) the scheme has been revised, varied or replaced under sections 111 to 114 of the 1996 Act before the relevant date in relation to the school (as initially determined in accordance with regulation 17(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 revised, varied or replaced,

the allocation formula shall be deemed, for the purposes of determining the amount under paragraph (2), 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 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—

- (a) 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 financial year which preceded the financial year in which such revision, variation or replacement occurred; or

- (b) where the local education authority which was the relevant authority in relation to the financial year which preceded the financial year in which the scheme was replaced (“the old authority”) is not the same as the local education authority which is the relevant authority in relation to the financial year in question (“the new authority”), any difference between the actual or planned level of spending by the old authority for the financial year which preceded the financial year in which the scheme was replaced and the level of such spending by the new authority for the financial year in question in respect of such schools.
- (4) Subject to paragraph (11), 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 previous financial year;
 - (b) where the local education authority which was the relevant authority in relation to that previous financial year (“the old authority”) is not the same as the local education authority which is the relevant authority in relation to the financial year in question (“the new authority”), any difference between the actual or planned level of spending by the old authority for that previous financial year and the level of such spending by the new authority for the financial year in question in respect of such schools; and
 - (c) any significant change in the characteristics of the school occurring during or since that previous financial year 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) and (8), 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—
- (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 (2) 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 (2) are identical to any such characteristics of the grant-maintained special 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;
- “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; and
- “preceding financial year” means the financial year immediately preceding the financial year in question.
- (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.
- (11) Paragraph (4) and (5) do not apply in relation to any school which becomes a grant-maintained school pursuant to new school proposals.
- (12) In the case of such a school as is referred to in paragraph (11) which becomes a grant-maintained school after 1st April in the financial year in question, the amount determined in accordance with paragraph (2) shall be adjusted in accordance with the following formula—

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

, where

- A is the number of days in the financial year in question which fall on or after the date on which the school becomes a grant-maintained school;
- B is 365 or, where the financial year in question ends during a leap year, 366;
- C is the amount determined in accordance with paragraph (2); and
- 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

6.—(1) In the case of any school which becomes a grant-maintained school before 1st April in the financial year in question, the Secretary of State may if he thinks fit and after consulting the relevant authority and the governing body of the school, 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 became a grant-maintained school in or before the financial year ending on 31st March 1997, was determined in respect of the school under (as the case may be) regulation 5, 6, 7 or 13(2) of the 1996 Regulations for the preceding financial year; or
 - (ii) in the case of a school which becomes a grant-maintained school after the financial year ending on 31st March 1997, is determined in respect of the school under (as the case may be) this paragraph or regulation 5, 7 or 15(2) for the preceding financial year; 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 that financial year; and
 - (ii) any significant change in the characteristics of the school occurring since that financial year or which it appears to him is likely to occur before the end of the financial year in question.

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

(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 a grant-maintained school, sums had neither been deducted by the relevant 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 that 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, in relation to any relevant authority, the percentage determined in accordance with Schedule 1 in relation to that authority.

9.—(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 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 or, in the case of a school which becomes a grant-maintained school in pursuance of new school proposals, the amount determined in respect of the school in accordance with regulation 5 (before adjustment in accordance with paragraph (12) of that regulation), and

A and B represent the matters respectively denoted by those letters in regulation 5(12).

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

10.—(1) The Secretary of State shall determine the amount which is the sum of the amounts determined in accordance with paragraphs (2) to (6).

(2) 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—

$$M \times G \times A,$$

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;

G is the amount determined by the Secretary of State for the purposes of section 244(2) of the 1996 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;

A represents the matter denoted by that letter in regulation 5(12).

(3) In these Regulations—

“relevant schools” means all primary or all secondary schools or all special schools maintained or formerly maintained by the relevant authority required to be covered by a statement for the financial year in question under section 122 of the 1996 Act, according as to whether the school is a primary school, a secondary school or a special school; and

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

(4) 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.

(5) 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, 6 or 7.

(6) The Secretary of State shall determine in respect of the period in the financial year in question during which the school is a grant-maintained school or a grant-maintained special school 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 for the financial year in question 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⁽⁸⁾ 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.

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

11.—(1) This paragraph applies in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question if, in a previous financial year (before becoming grant-maintained), the school 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 relevant 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 in exercise of their powers under section 116(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 a grant-maintained school, 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 116(5) of the 1996 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 a grant-maintained school.

Excessive surpluses

12.—(1) The Secretary of State shall determine the amount which appears to him 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

⁽⁸⁾ 1966 c. 42 as substituted by section 1(1) of the Local Government (Amendment) Act 1993 (c. 27). Section 11 is extended by section 490 of the 1996 Act.

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 20% of the sum of—
- (a) 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 Secretary of State estimates he 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 Secretary of State shall deduct from the amount determined under regulation 4(1) such amount, if any, as he may, having consulted the governing body of the school, determine being no greater than the difference between the unspent amount and 20% of the sum of the amounts referred to in paragraph (2)(a) and (b).

Excessive severance payments

13.—(1) This regulation applies in a case where the Secretary of State is, 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 or otherwise improper.

(2) Where this regulation applies the Secretary of State shall deduct from the amount determined under regulation 4(1) such part of the payment referred to in paragraph (1) as he may determine as being excessive or otherwise improper.

Determination of amount of maintenance grant otherwise than under regulation 4

14.—(1) Notwithstanding the provisions of regulation 4, the Secretary of State may, in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question otherwise than in pursuance of new school proposals, determine the amount of maintenance grant payable to the governing body of the school for that financial year in accordance with the following provisions of this regulation.

(2) Subject to regulations 16(2) and 18, 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 15(1) and 16(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.

15.—(1) The Secretary of State shall determine an amount which is the sum of the amounts determined in accordance with paragraphs (2) and (4) as adjusted (where applicable) in accordance with paragraph (5) and apportioned (where applicable) 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 sum of the amounts determined in accordance with paragraphs (2) and (4) 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 during or since the preceding financial year or which it appears to the Secretary of State will be likely to occur before the end of the financial year in question.

(6) In the case of a school which became a grant-maintained school after 1st April in the financial year in question, the total amount determined in accordance with paragraphs (2), (4) and (5) shall be apportioned in accordance with the following formula—

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

where—

C is the total amount determined in accordance with those paragraphs; and

A, B and F represent the matters denoted by those letters in regulation 5(12).

16.—(1) The Secretary of State shall determine an amount equal to the sum of the amounts (if any) which would have been determined in respect of the school in accordance with regulations 10(2) and 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 14 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 14 for the financial year in question.

Relevant date

17.—(1) Subject to regulation 19, 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 is such date as the Secretary of State may determine and different dates may be determined for different cases or classes of cases.

(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 the relevant date in respect of any school for the financial year in question in accordance with paragraph (2), 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.

Adjustments

18.—(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 the financial year in question 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,
 - (iii) any other change affecting the needs of the school, or
 - (iv) the level of spending by the relevant authority on any matter included in accordance with regulation 4(a) of the Education (School Financial Statements) (Prescribed Particulars etc) Regulations 1995(9) in Part 1 of the authority's statement prepared under section 122(4) of the 1996 Act for the preceding financial year 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; or
- (b) the Secretary of State is satisfied that his 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 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 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, 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 the financial year in question 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

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

(2) Where the redetermination of maintenance grant under regulation 18(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 18(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 18(2), he may take that information into account for the purposes of making any further redetermination under that regulation.

(5) Regulation 17 shall not apply where a redetermination is made by the Secretary of State in accordance with regulation 18(3) and (4).

Requirements which may be attached to payment of maintenance grant

20.—(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 253(1) and (2) of the 1996 Act to such governing bodies, any requirement referred to in paragraphs 2 to 4 of Schedule 3.

PART III

CAPITAL AND SPECIAL PURPOSE GRANTS

Capital grants

21. The Secretary of State may pay capital grants in respect of expenditure of a capital nature of a class or description specified in Schedule 4 incurred or to be incurred by the governing body of a school.

Special purpose grants

22.—(1) The Secretary of State may pay special purpose grants in respect of expenditure of any class or description specified in Schedule 5 incurred or to be incurred by the governing body of a school—

- (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 Secretary of State the governing bodies of 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 special purpose grants

23.—(1) The requirements set out in paragraph 1 of Schedule 3 and paragraph (2) below are specified as requirements which may be imposed by the Secretary of State on governing bodies to whom payments of 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 Secretary of State.

(3) The Secretary of State may determine for the purposes of the application of section 253(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 of Schedule 3;
- (b) any requirement formulated with a view to the Secretary of State satisfying himself 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 he 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 him in accordance with this regulation subject to which the payments were made is not complied with.

(4) The Secretary of State may determine for the purposes of the application of that section to governing bodies to whom payments of special purpose grants are or have been made requirements as to the payment to him, if any conditions specified in the requirements are satisfied, of the whole or any part of the amount referred to in section 253(7) of the 1996 Act.

PART IV

RECOVERY OF AMOUNTS IN RESPECT OF MAINTENANCE GRANT FROM THE RELEVANT AUTHORITY

Determination of amount to be recovered

24.—(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 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).

(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 school for the financial year in question may be reduced by an amount

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not exceeding the amount outstanding in respect of any excess amount recovered by the Secretary of State under that section in respect of the school in relation to any previous financial year.

SCHEDULE 1

Regulations 8, 9 and 15(4)

DETERMINATION OF THE RELEVANT PERCENTAGE

1. In these Regulations the relevant percentage is the percentage which the amount determined in accordance with paragraph 2 is of the amount determined in accordance with paragraph 3.

2. The Secretary of State shall determine an amount which is equal to that part of the relevant authority's planned financial provision for their relevant schools included in their general schools' budget for the financial year in question which, in his opinion, would remain after deducting—

- (a) the authority's planned financial provision for their relevant schools included in their aggregated budget;
- (b) their planned expenditure in respect of their relevant schools on those descriptions of expenditure listed in paragraph 2 of Schedule 2;
- (c) an amount representing, or approximating to, the expenditure which the authority will incur in respect of the provision of free school meals calculated by the application of the following formula—

$$F \times P \times 190,$$

where

F represents the matter denoted by that letter in regulation 5(12); and

P is the number of registered pupils in receipt of free school meals at the authority's relevant schools on a date determined by the Secretary of State; and

- (d) the amount (if any) appropriated by the authority for meeting expenditure on contingencies in respect of their relevant schools;

Provided that in determining the amounts under sub-paragraphs (b) to (d) the Secretary of State shall exclude any such expenditure, or, in the case of sub-paragraph (d), any amount appropriated or allocated by the authority for meeting expenditure referred to in that sub-paragraph, falling within their aggregated budget.

3. The Secretary of State shall determine an amount which appears to him to be equal to that part of the relevant authority's aggregated budget as is available for allocation to their relevant schools for the financial year in question.

4. Regulation 17 applies in relation to amounts required to be determined under this Schedule as it applies to amounts required to be determined under Part 2 of these Regulations, references in that regulation to determining the amount of maintenance grant payable in respect of a school (however expressed) being read as references to determining any amount required to be determined under this Schedule.

SCHEDULE 2

Regulation 15(3)

RELEVANT EXPENDITURE

1. Subject to paragraph 2, the following heads or items of expenditure are to be included for the purposes of determining in accordance with regulation 15(2) the amount of relevant expenditure incurred by the relevant authority in the preceding financial year:

- (a) salaries of, and other costs attributable to, staff employed to work wholly or partly at the school;
- (b) expenditure on books, stationery and other educational equipment for use at the school;
- (c) expenditure on telephones and postage for the purposes of the school;

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- (d) examination fees incurred in relation to registered pupils at the school;
- (e) expenditure relating to the school premises, including in particular—
 - (i) heating and lighting;
 - (ii) caretaking and cleaning; and
 - (iii) rent, non-domestic rates, water rates and charges for the supply of water or the provision of sewerage services; and
- (f) any other expenditure treated by the authority as forming part of the direct costs of the school.

2. The heads or items of expenditure referred to in paragraph 1 are not to be included for the purposes of determining the amount of relevant expenditure to the extent that they fall within any of the following descriptions of expenditure, namely—

- (a) expenditure treated by the relevant authority as expenditure of a capital nature;
- (b) expenditure in respect of the repayment of the principal of, the payment of interest on and the discharge of any financial obligation in connection with, any loan raised to meet expenditure of a capital nature;
- (c) expenditure which is offset by income received as central government grant in support of specific expenditure;
- (d) expenditure required to meet the liabilities of the relevant authority in respect of compensation for premature retirement of—
 - (i) persons formerly employed by them to work at a school maintained by them; or
 - (ii) persons formerly employed by the governing body of a school maintained by them, where the decision to credit a person with a period of service for the purposes of payment of compensation for premature retirement was made before 1st April in the preceding financial year;
- (e) expenditure on the following items and on any necessary administrative costs associated therewith—
 - (i) transport of pupils between home and school;
 - (ii) the provision of clothing and board and lodging for pupils;
 - (iii) the granting of scholarships, exhibitions, bursaries or other allowances to pupils over compulsory school age, to enable pupils to take advantage of educational facilities without hardship to themselves or their parents;
 - (iv) education welfare officers, education social workers and educational psychologists where the expenditure is incurred in connection with the performance of a duty or the exercise of a power by the relevant authority which is to be performed or exercised by them both in relation to pupils at schools maintained by them and in relation to pupils at grant-maintained schools and grant-maintained special schools; and
 - (v) making assessments of, and making and reviewing statements for, children with special educational needs and making the special educational provision for pupils with statements of special educational needs specified in their statements;
- (f) expenditure in respect of the provision of education under section 19 of the 1996 Act;
- (g) expenditure offset by income received from Her Majesty's Chief Inspector of Schools in Wales; and
- (h) expenditure of the kind referred to in section 11 of the Local Government Act 1966 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 grant or grant from any of the European Communities.

SCHEDULE 3

Regulations 20 and 23

REQUIREMENTS WHICH MAY BE ATTACHED TO PAYMENT OF MAINTENANCE GRANTS AND SPECIAL PURPOSE GRANTS

1. A requirement that the governing body shall secure, so far as their powers extend, that the school is conducted in accordance with any requirements imposed by or under any enactment including, in particular, the 1996 Act or the instrument or articles of government for the school.
2. Requirements with respect to the maintenance of proper accounts including, in particular, requirements as to—
 - (a) the appointment by the governing body of a person who will be responsible to them for the administration of their financial affairs;
 - (b) the accounting systems and methods to be adopted by the governing body and the form of their accounts and supporting records;
 - (c) internal financial controls including, in particular, requirements as to the procedures to be adopted with respect to the receipt and disbursement of money by the governing body; and
 - (d) the publication of the governing body's accounts.
3. Requirements as to audit and inspection of the governing body's accounts, including, in particular, requirements as to—
 - (a) the procedure to be adopted in appointing and replacing auditors;
 - (b) any qualifications the auditors are to possess;
 - (c) the duration of auditors' appointments;
 - (d) the frequency of audits;
 - (e) the functions which are to be performed by the auditors in respect of the school;
 - (f) the inspection of accounts and supporting records on request by any person authorised by the Secretary of State; and
 - (g) examinations by persons authorised by the Secretary of State or the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the governing body of the school have used their resources in discharging their functions.
4. Such further requirements relating to the conduct of the school's financial affairs as the Secretary of State thinks fit.

SCHEDULE 4

Regulation 21

EXPENDITURE OF A CAPITAL NATURE

1. Expenditure of a capital nature is expenditure on, or in connection with,—
 - (a) the acquisition, reclamation, improvement or laying out of any land;
 - (b) the acquisition, construction, enlargement, improvement, repair or demolition of any building, wall, fence or other structure, or any playground or other hard-standing;

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- (c) the laying out of playing fields and other facilities for social activities and physical recreation; or
- (d) the provision of any furniture, plant, machinery, apparatus, vehicles, vessels and equipment;

used or intended to be used for the purposes of a school.

2. In paragraph 1 above “building” includes any fixtures and fittings affixed to a building.

SCHEDULE 5

Regulation 22(1)

EXPENDITURE IN RESPECT OF WHICH SPECIAL PURPOSE GRANTS MAY BE PAID

1. In this Schedule—

“eligible training” means—

- (a) the training or further training as teachers of persons other than qualified teachers who are employed by the governing body of a school; and
- (b) the further training of any qualified teacher who is employed by the governing body of a school; and

“trainee” means a person undergoing eligible training in respect of whom special purpose grant is being paid under these Regulations.

2. The expenditure in respect of which special purpose grants may be paid is—

- (a) expenditure for or in connection with any of the purposes relevant to schools for which grants for education support and training are for the time being payable by virtue of regulations made under section 484 of the 1996 Act⁽¹⁰⁾;
- (b) expenditure for or in connection with the training of any teacher or other member of the staff of a school including, in particular, expenditure on—
 - (i) tuition fees, examination fees and residential and other charges payable in respect of eligible training;
 - (ii) travelling, subsistence and other incidental expenses of a trainee;
 - (iii) that part of the remuneration of persons whose employment is necessary to free the trainees for training which relates to the period during which their employment is so necessary; and
 - (iv) the cost of providing (including the provision of premises), planning, co-ordinating, monitoring and evaluating eligible training:

Provided that where such costs are incurred for such purposes and for other purposes special purpose grant shall be payable only in respect of such proportion of those costs as is attributable to the provision, planning, co-ordinating, monitoring or evaluation of eligible training;

- (c) expenditure in respect of expenses which it appears to the Secretary of State the governing bodies of schools cannot reasonably be expected to meet from maintenance grant being expenses incurred or to be incurred for or in connection with—
 - (i) any structural survey which the Secretary of State has required to be carried out in respect of any building used for the purposes of the school;

⁽¹⁰⁾ The Regulations in force on the date of these Regulations are the Education (Grants for Education Support and Training) (Wales) Regulations 1997 (S.I. 1997/390).

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- (ii) the dismissal (whether by reason of redundancy or otherwise) or for the purpose of securing the resignation of any person who is or was a member of the staff of the school, and the premature retirement of such a person;
 - (iii) any costs incurred by the school in respect of Value Added Tax;
 - (iv) insurance of the school premises;
 - (v) meeting any urgent need of the school which in the opinion of the Secretary of State was occasioned by circumstances outside the control of the governing body;
 - (vi) the school becoming a grant-maintained school, and the assumption by the governing body of the responsibility for the conduct of the school, where those expenses are incurred within 12 months of the date of implementation of the proposals in respect of the school;
 - (vii) a contract for the provision of property and services to, or for the purposes of, the school, where the provision of the services is linked to and dependent upon the provision of the property;
- (d) expenditure of a class or description relevant to schools and for or in connection with the purpose for which grants are for the time being payable by virtue of regulations made under section 488 of the 1996 Act⁽¹¹⁾; and
- (e) any expenditure incurred for or in connection with the remuneration of any teacher who is employed to provide cover for the head teacher while the head teacher is attending any meeting or course in connection with his responsibilities as head teacher;
- (f) expenditure incurred or to be incurred by the governing body of primary schools in connection with—
- (i) the procurement of professional advice for the purposes of the school; and
 - (ii) staff absences.

3rd March 1997

William Hague
Secretary of State for Wales

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply only to grant-maintained schools and grant-maintained special schools situated in Wales, replace with modifications the Education (Grant-Maintained and Grant-Maintained Special Schools) (Finance) (Wales) Regulations 1996 (as amended), which are revoked. Like the earlier Regulations, the present Regulations extend to newly established grant-maintained schools and to grant-maintained special schools, as well as to former county and voluntary schools which have acquired grant-maintained status. The main changes of substance are outlined below.

Part II of the Regulations provides for the determination and redetermination of the amount of maintenance grant to be paid to governing bodies of grant-maintained schools and grant-maintained

⁽¹¹⁾ See the Education (Grants) (Travellers and Displaced Persons) Regulations 1993 S.I. 1993/569 as amended by S.I. 1995/543.

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special schools on a similar basis to that provided for under Part II of the 1996 Regulations (as amended), save that there is now provision for deducting from the amount determined under regulation 4 in respect of maintenance grant amounts representing, respectively, excessive unspent maintenance grant received in respect of earlier financial years (regulation 12) and excessive severance payments made on or after 1st January 1997 (regulation 13).

Parts III and IV are unchanged.

Schedules 1 to 4 are unchanged.

Schedule 5 (which sets out categories of expenditure in respect of which special purpose grants may be paid) includes a new category of special purpose grant to cover expenditure incurred under a contract for the provision of property and services to, or for the purposes of, a school, where the provision of the services is linked to and dependent upon the provision of the property (paragraph 2(c)(vii)).