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STATUTORY INSTRUMENTS

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**1997 No. 996**

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

**PART 2**

**MAINTENANCE GRANT SCHEME REPLICATION**

**Application of Part 2**

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

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

**Determination of amount of maintenance grant**

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

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

- (ii) an amount (Central AMG) determined in accordance with regulation 8 (or that regulation as it has effect in accordance with regulation 10 (cash protection) or 13 (apportionment)),
- (iii) an amount determined in accordance with regulation 9 (Section 11 funding), regulation 11 (school meals) (or that regulation as it has effect in accordance with regulation 14 (apportionment)), regulation 22 (contingencies) and regulation 23 (nursery education),
- (iv) (where applicable) an amount determined in accordance with regulations 24, 25 and 26, (additions or deductions representing unspent sums from previous budget shares, budget deficits from previous years and deductions from current year's budget share), and
- (v) (where applicable) an amount determined in accordance with regulations 27 and 28 (deductions representing excessive surpluses in previous years and excessive severance payments).

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

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

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

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

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

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

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

(4) Where—

- (a) at any time before the beginning of the financial year in question the allocation formula included a particular factor; and
- (b) the scheme has been revised, varied or replaced under section 111 or 114 of the 1996 Act at any time before the relevant date in relation to the school as initially determined in accordance with regulation 29(2), and for the financial year in question—
  - (i) no such provision is included in the allocation formula, or

- (ii) the proportion of a comparable maintained school's budget share derived from the application of that provision would be less than it would have been had the scheme not been so revised, varied or replaced,

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

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

(5) Where, by or in consequence of a structural or boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992(1), effected by an order made under section 17 of that Act, a local education authority ("the transferor authority") ceases on a particular date to exercise functions in relation to an area, paragraph (4) shall apply as if the scheme of the transferor authority had been the scheme of the authority ("the transferee authority") by which such functions are exercisable in relation to that area on and after that date and the transferee authority's scheme was a revision, variation or replacement of the transferor authority's scheme under section 111 or 114 of the 1996 Act.

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

(7) Where—

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

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

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

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

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

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(1) 1992 c. 19.

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

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

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

- (a) in the case of a primary or secondary school, references to a maintained county school, any characteristics of which relevant for the purposes of any formula of a kind referred to in paragraph (3) are identical to any such characteristics of the grant-maintained school and are references (in particular) to a school—
  - (i) the number of registered pupils in each age group at which is identical to the number of such pupils in each age group at the grant-maintained school, and
  - (ii) any other factors affecting the needs of which (including, in particular, the number of registered pupils at the school who have special educational needs and the nature of the special educational provision required to be made for them) are identical to any other factors affecting the needs of the grant-maintained school; and
- (b) in the case of a special school, references to a maintained special school any characteristics of which relevant for the purposes of any formula of a kind referred to in paragraph (3) are identical to any such characteristics of the grant-maintained special school.

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

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

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

(13) In this regulation—

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

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

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

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

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

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

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

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

- (a) taking the amount which was determined under regulation 6, 7, 12 or 19 of the 1996 Regulations as the amount of maintenance grant, comparable to a maintained school's budget share, payable in respect of the school for the preceding financial year; and
- (b) adjusting that amount by such amount as appears to them to be fair and reasonable having regard, in particular, to—
  - (i) any increase or decrease in the actual or planned level of spending of the local education authority in respect of the schools maintained by them occurring since that financial year; and
  - (ii) any significant change in the characteristics of the school occurring as aforesaid or which it appears to them is likely to occur before the end of the financial year in question.

### **Determination of Central AMG**

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

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

### **Section 11 funding**

9.—(1) Subject to paragraph (2), the funding authority shall determine in respect of the period in the financial year in question during which the school is a grant-maintained school ("the period in question"), the amount, if any, which it appears to them, were the school maintained by the local education authority, could have been allocated for the purposes of the school in accordance with the authority's scheme in support of expenditure of the kind referred to in section 11 of the Local Government Act 1966(2) 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.

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(2) 1966 c. 42, as substituted by section 1(1) of the Local Government (Amendment) Act 1993 (c. 27). Section 11 is extended by section 211 of the Education Reform Act 1988 to which there are amendments not relevant to these Regulations.

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

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

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

### **Cash protection for Central AMG and Section 11 funding**

**10.**—(1) Subject to paragraphs (3), (4) and (5), paragraph (2) applies in the case of a school which became a grant-maintained school before 1st April in the financial year in question and in respect of which the amount first referred to in regulation 8(1) (determination of Central AMG) or, where the funding authority determine an amount under regulation 9 (Section 11 funding) in respect of the school, the aggregate of those amounts is less than 85.7 per cent of the amount which was determined in respect of the school for the preceding financial year, or which would have been so determined had the school been grant-maintained throughout the preceding financial year, under (as the case may be) regulation 8 (determination of Central AMG) (ignoring for this purpose the effect of regulation 10 (cash protection)) or regulation 16(4) (amount of percentage addition under alternative method of determining amount of maintenance grant) of the 1996 Regulations.

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

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

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

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

aforementioned regulations of the 1996 Regulations or which would have been so determined had the school been grant-maintained throughout the preceding financial year.

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

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

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

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

$$\frac{(M \times F)}{(I^*)} + \frac{(S \times G)}{(B)}$$

,where

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

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

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

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

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

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

(2) In paragraph (1)—

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

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

### **Determination of Direct AMG for part of a financial year**

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

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

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

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

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

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

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

,where

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

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

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

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

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

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

,where

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

B is 365;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

,where

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

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

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

17. The funding authority shall determine—

- (a) an amount equal to the amount which would have been determined in respect of the school in accordance with regulations 24, 25 and 26 (additions or deductions representing unspent sums from previous budget shares, budget deficits from previous years and deductions from current year's budget share) if the amount of maintenance grant for the school were to be determined under regulation 5(1)(b); and
- (b) where, if the amount of maintenance grant for the school were to be so determined, an amount would have been determined in respect of the school in accordance with regulation 9 (Section 11 funding), that amount.

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

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

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

,where

- C is the amount determined in respect of the school in accordance with regulation 16(1);
- G is the amount or amounts determined in respect of the school in accordance with regulation 17; and
- A, B, and F represent the matters respectively denoted by those letters in regulation 14(2) (apportionment of provision for school meals).

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

19.—(1) This regulation applies in the case of a school which becomes a grant-maintained school on or after 1st April in the financial year in question pursuant to proposals published under section 212 of the 1996 Act(3).

(2) Subject to paragraph (3), in any case to which this regulation applies, the funding authority shall determine an amount (Direct AMG) which appears to them to be equal or approximate to an amount which the local education authority could have determined, by the application (subject to

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

the following provisions of this regulation) of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as such a school's budget share for the complete financial year in question.

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

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

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

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

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

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

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

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

, where

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

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

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

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

## **Contingencies**

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

## **Nursery Education**

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

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

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

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

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

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

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

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

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

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

- (d) the practice of the local education authority, in respect of schools which they maintain, regarding the writing off of deficits incurred by such schools in respect of their budget shares in previous financial years; and
- (e) the amount, if any, previously determined in respect of the school by the funding authority in accordance with regulation 15(3), 16(3) or 30(10) of the 1995 Regulations and regulation 25(3), 26(3) or 42(6) of the 1996 Regulations.

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

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

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

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

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

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

### **Excessive surpluses**

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

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

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

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

### **Excessive severance payments**

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

(2) Where this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 5(1) shall have deducted from them such part of the payment referred to in paragraph (1) as the funding authority regard as excessive.

### **Relevant date**

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

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

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

(4) Where—

- (a) the funding authority determine the relevant date, in respect of any school for the financial year in question, in accordance with paragraph (2); or
- (b) they redetermine the relevant date in accordance with paragraph (3),

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

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

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

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

### **Adjustments**

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

- (a) after determining the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this Part it appears to the funding authority that, by reason of—
- (i) any change in the characteristics of the school,
  - (ii) any change in the level of spending by the local education authority,
  - (iii) any other change affecting the needs of the school, or
  - (iv) the level of spending by the local education authority on any matter included in accordance with regulation 4(a) of the Education (School Financial Statements) (Prescribed Particulars etc.) Regulations 1995(4) in Part 1 of the authority's statement prepared under section 122(4) of the 1996 Act for the financial year beginning in 1996 exceeding the planned level of spending on that matter included in accordance with Schedule 1 to those Regulations in Part 1 of the authority's statement prepared under section 122(2) of that Act for that year,

the amount so payable should be revised; or

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

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

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

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

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

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

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

### **Schools with wide age ranges**

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

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(4) [S.I. 1995/208](#).

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

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

**32.**—(1) Subject to paragraph (2), where a primary or secondary school is situated in the area of a local education authority which is not the area of the local education authority which maintained it immediately before it became a grant-maintained school, the funding authority may redetermine the amount of maintenance grant payable in respect of the school for the year and revise their determination by adding to or deducting from the amount so determined such sum as, having consulted the local education authority and the governing body of the school, appears to them to be fair and reasonable in all the circumstances having regard in particular to the differences between the scheme of the former maintaining local education authority and the scheme of the local education authority in whose area the school is situated.

(2) Paragraph (1) shall not apply where the circumstances referred to in that paragraph exist only by or in consequence of a structural or a boundary change (or both such changes) within the meaning of section 14 of the Local Government Act 1992<sup>(5)</sup> effected by an order made under section 17 of that Act.

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

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

- (a) the amount of expenditure of a capital nature incurred by the local education authority in respect of relevant schools;
- (b) the proportion of the total amount of expenditure of a capital nature incurred by the local education authority charged to a revenue account of the authority as defined in section 41(2) of the Local Government and Housing Act 1989<sup>(6)</sup>;
- (c) the amount of capital grants paid to the governing body of the school by the funding authority in the financial year in question.

(2) In paragraph (1)—

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

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

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(5) 1992 c. 19.

(6) 1989 c. 42.



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

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

### **Further revisions**

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

### **Transfer of site**

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

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

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

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

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

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

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

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

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

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

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

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