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EDUCATION, ENGLAND

The School Finance (England) Regulations 2008

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The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of powers conferred by sections 45(1B)(a), 45A(b), 45AA(c), 47(d), 47A(4)(e), 48(1) and (2)(f), 49(2) and (2A)(g) and 138(7) of, and paragraph 2B of Schedule 14(h) to, the School Standards and Framework Act 1998(i).

PART 1 INTRODUCTION

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School Finance (England) Regulations 2008 and come into force on 29th February 2008.

(2) These Regulations apply in relation to the financial years beginning on 1st April 2008, 1st April 2009 and 1st April 2010.

(3) These Regulations apply only in relation to England.

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996(j);

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2000 Act” means the Learning and Skills Act 2000(k);

“the 2002 Act” means the Education Act 2002(l);

“the 2005 Act” means the Education Act 2005(m);

“the 2006 Act” means the Education and Inspections Act 2006(n);

“the 2006 Regulations” means the School Finance (England) Regulations 2006(o);

“admission number” means the number of pupils in any relevant age group intended to be admitted in any school year as determined by an admission authority in accordance with section 89A of the 1998 Act(p);

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003(q);

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- (a) Subsection (1B) was inserted by paragraph 2 of Schedule 16 to the 2005 Act.
- (b) Section 45A was inserted by section 41(1) of the 2002 Act, and amended by section 101 of, and paragraph 3 of Schedule 16 to, the 2005 Act.
- (c) Section 45AA was inserted by paragraph 4 of Schedule 16 to the 2005 Act.
- (d) As amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.
- (e) Section 47A was inserted by section 43 of the 2002 Act and amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2005 Act and section 57 of, and paragraph 2 of Schedule 5 to, the 2006 Act.
- (f) Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, and section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act.
- (g) Paragraph 4 of Schedule 5 to the 2006 Act substitutes new subsections (2) and (2A) for former subsections (2) and (3) of section 49.
- (h) Paragraph 5 of Schedule 5 to the 2006 Act substitutes paragraphs 2A and 2B for paragraph 2 of Schedule 14 to the 1998 Act.
- (i) 1998 c.31. For the meaning of “prescribed” and “regulations”, see section 142(1) of the 1998 Act.
- (j) 1996 c.56.
- (k) 2000 c.21.
- (l) 2002 c.32.
- (m) 2005 c.18.
- (n) 2006 c.40.
- (o) S.I. 2006/468, as amended by S.I. 2007/365.
- (p) This is the definition inserted by regulation 2(1) of the Education (Determination of Admission Arrangements) (Amendment) (England) Regulations 2002 (S.I. 2002/2896) into the Education (Determination of Admission Arrangements) (England) Regulations 1999 (S.I. 1999/126).
- (q) 2003 c.26. Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003 (S.I. 2003/3146 as amended by S.I. 2004/534, 2004/3055 and 2007/573).

“central expenditure” means the total amount deducted by a local education authority from their schools budget;

“CERA” means capital expenditure which an authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003;

a “combined service” is a service funded partly from central expenditure, and partly from other budgets of the authority or contributions from other bodies;

“Dedicated Schools Grant” is a grant of that name paid to a local education authority by the Secretary of State under section 14 of the 2002 Act;

“expenditure on the schools specific contingency” is central expenditure deducted for the purpose of ensuring that monies are available to enable increases in a school’s budget share after it has been allocated where it subsequently becomes apparent that—

- (a) a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share,
- (b) an increase in the school’s budget share is due in accordance with the local education authority’s formula,
- (c) a determination or redetermination of the school’s budget share authorised by the schools forum or the Secretary of State has led to such an increase, or
- (d) such an increase is necessary for the purpose of correction of errors, and where such circumstances were unforeseen when initially determining the school’s budget share;

“funding period 1” is the financial year beginning on 1st April 2008;

“funding period 2” is the financial year beginning on 1st April 2009;

“funding period 3” is the financial year beginning on 1st April 2010;

“gifted and talented pupils” means pupils in primary or secondary schools identified as such by a local education authority by virtue of the fact that they are demonstrating, or have the potential to develop, ability in one or more subjects, leadership skills, or organisational skills at a level significantly ahead of other children in their year group;

“key stage 4” means the fourth key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 85 and 85A of the 2002 Act(a);

a “local education authority’s formula” has the meaning in regulation 9;

“LSC” is the Learning and Skills Council for England(b);

a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or a community or foundation special school includes a proposed school which, on implementation of proposals for the establishment of the school, will be such a school, and which has a temporary governing body;

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools includes any expenditure of that class or description as the authority may incur in relation to Academies(c), and to pupils registered at Academies;

“Performance Reward Grant” is a grant of that name paid to a local authority under section 31 of the Local Government Act 2003 to reward the authority for improvements in local services;

“PFI scheme unitary payment” means a charge payable by a local education authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(d);

(a) Section 74(1) of the 2006 Act substitutes section 85 and inserts new section 85A of the 2002 Act.

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

(c) Academies are established under section 482 of the 1996 Act. Section 482 was substituted by section 65 of the 2002 Act.

(d) S.I.1997/319, as amended by S.I.1998/371, 1999/1852 and 2003/515. The Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains savings provisions for regulation 16 of the 1997 Regulations.

“practical and applied learning” means education provided to pupils at key stage 4 in a secondary school or elsewhere which prepares them for employment or for a qualification related to a particular employment sector;

“primary or secondary school” means a primary or secondary school which is a community, foundation, voluntary or maintained nursery school;

“proper practices” means those accounting practices which a local authority are required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment are generally regarded, whether by reference to any generally recognised published code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned^(a);

“prudential borrowing” means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings that will be achieved are equal to or more than the expenditure that will be incurred in borrowing the money;

“PVI providers” means persons other than governing bodies of primary schools, local education authorities or the proprietors of Academies who provide nursery education for three and four year olds for which no charge is made;

“School Standards Grant” is a grant of that name paid to a local education authority by the Secretary of State under section 14 of the 2002 Act;

“school year” has the meaning given to that expression in section 579(1) of the 1996 Act^(b);

a reference to “special educational needs transport costs”, for the purposes of paragraph 36(e) of Schedule 2, is a reference to the costs of home to school transport for pupils with special educational needs in schools maintained by a local education authority where the authority is meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by them are equal to, or greater than, the cost of such transport;

“specific grant” means any grant, other than the Dedicated Schools Grant and any grant made by the LSC under section 7 of the 2000 Act, paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used;

“summer term” means the third term of the school year where a school has three terms, or the fifth and sixth terms where a school has six terms;

a reference to “termination of employment costs”, for the purposes of paragraph 36(b) of Schedule 2, is a reference to expenditure relating to the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school where—

- (a) the dismissal, premature retirement or resignation occurs after 1st April 2008; and
- (b) the revenue savings achieved by any termination of employment are equal to or greater than the costs incurred.

Revocation of previous Regulations

2. The Financing of Maintained Schools (England) 2004^(c), The LEA Budget, Schools Budget and Individual Schools Budget Regulations 2004^(d), and The LEA Budget, Schools Budget and Individual Schools Budget (Amendment) (England) Regulations 2005^(e) are revoked on 1st April 2008.

(a) This definition is taken from section 2 of the Local Government Act 2003 and regulations 25 and 26 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.

(b) This definition was inserted by section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44).

(c) S.I. 2004/3130.

(d) S.I. 2004/3131.

(e) S.I. 2005/526.

PART 2
ACTION TO BE TAKEN BY A LOCAL EDUCATION AUTHORITY
CHAPTER 1
APPROPRIATION OF THE LEA BUDGET

The LEA Budget

3.—(1) The following classes or descriptions of local education authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local education authority's LEA budget, subject to the exceptions in regulation 6—

- (a) those specified in Schedule 1; and
- (b) any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 5 and Schedule 2 (the schools budget).

(2) Expenditure which falls within the classes or descriptions of expenditure specified in regulation 5 or Schedule 2 is not expenditure prescribed for the purposes of section 45A(1) of the 1998 Act.

CHAPTER 2
DETERMINATION OF SCHOOLS BUDGETS, INDIVIDUAL SCHOOLS BUDGETS, AND
BUDGET SHARES FOR FUNDING PERIODS 1, 2 and 3

Initial determination of a local education authority's schools budgets

4. A local education authority must not later than 31st March 2008—

- (a) make an initial determination of their schools budgets for funding periods 1, 2 and 3; and
- (b) give notice of any such determination to the governing bodies of the schools they maintain.

The schools budget

5.—(1) The classes or descriptions of local education authority expenditure specified in subparagraphs (a) to (c) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, subject to paragraph (2) and the exceptions in regulation 6—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools(a), pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local education authority; and
- (c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, insofar as that expenditure does not fall within paragraphs (a) or (b).

(2) Where a local education authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 36(c) of Schedule 2 is only expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination

(a) Non-maintained special schools are approved and regulated by regulations made under section 342 of the 1996 Act. Section 342 was substituted by paragraph 82 of Schedule 30 to the 1998 Act.

of a local education authority's schools budget, provided that any expenditure is incurred in providing an educational benefit to those pupils.

Exceptions

6. A local education authority's LEA budget or schools budget must not include the following classes or descriptions of expenditure—

- (a) capital expenditure, other than
 - (i) CERA,
 - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred
 - (i) on prudential borrowing, or
 - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph 6(a)(ii);
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(a) (arrangements for patrolling school crossings); and
- (d) expenditure met by the local education authority under section 51A of the 1998 Act(b) (community purposes).

Determination of the individual schools budget for funding periods 1, 2 and 3 and limit on increase in central expenditure

7.—(1) Subject to paragraphs (2) to (4), not later than 31st March 2008, a local education authority must deduct from their schools budgets such of the classes or descriptions of planned expenditure set out in Schedule 2 ("the central expenditure") as they propose to deduct, in order to determine their individual schools budgets for funding periods 1, 2, and 3.

(2) In deducting central expenditure under paragraph (1), a local education authority must limit any increase in deductions, from one funding period to the next, by ensuring that it does not exceed the percentage of any increase in the authority's schools budget for the relevant funding period, unless they obtain the approval of their schools forum under regulation 14(1)(b) or the Secretary of State under regulation 14(3) to vary this limit on any such increase.

(3) For the purpose of calculating the limit referred to in paragraph (2) only, the amount of any funding deducted under paragraph 26 of Schedule 2 (funding for PVI providers) must be treated as though it were part of the individual schools budget.

(4) In deducting the central expenditure referred to in paragraph 36 of Schedule 2, a local education authority must not exceed the limit referred to in that paragraph, unless they have obtained the approval of their schools forum under regulation 14(1)(b) or the Secretary of State under regulation 14(3) to do so.

(5) References to planned expenditure in this regulation are references to that expenditure net of—

- (a) all related specific grants;
- (b) all related fees, charges and income; and
- (c) any funding received from the Secretary of State in respect of PFI scheme unitary payments.

(a) 1984 c.27. Section 26 has been amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), and sections 288 and 423 of and Schedule 34 to, the Greater London Authority Act 1999 (c.29), and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

(b) Section 51A was inserted by section 40 of the 2002 Act.

Consultation

8.—(1) A local education authority may make changes to the formulae they have used in the financial years beginning 1st April 2006 and 1st April 2007.

(2) Subject to paragraph (3), a local education authority must consult their schools forum about any proposed changes under paragraph (1), in relation to the factors and criteria taken into account, and the methods, principles and rules adopted.

(3) Paragraph (2) does not apply to changes made relating to matters referred to in regulation 21 (sixth form funding) or 23 (excluded pupils).

Formulae for determination of budget shares

9.—(1) A local education authority must, before the beginning of funding period 1 and after the consultation referred to in regulation 8, decide upon the formulae which they will use to determine and redetermine schools' budget shares in funding periods 1, 2 and 3, having regard to the factors, criteria and requirements set out in Part 3 of these Regulations.

(2) A local education authority may not make changes to their formula for funding period 1 after the beginning of that funding period.

(3) A local education authority may make changes to the formula they will use for funding period 2 or 3 before the beginning of the funding period to which the changes relate where any such changes have been approved by their schools forum or the Secretary of State under regulation 25 (additional arrangements).

(4) Any formulae determined by a local education authority under paragraph (1) may include different factors, criteria and requirements for different funding periods.

(5) A local education authority may not use factors or criteria in their formulae under this Part which make an allowance, in whole or in part, for any amount allocated to a school from any School Standards Grant paid to the authority.

(6) A local education authority must use the formulae determined under paragraph (1), subject to any changes made under paragraph (3) and regulation 25 (Additional arrangements), in all determinations and redeterminations of budget shares in respect of funding periods 1, 2 and 3.

Initial determination of allocation of schools' budget shares for funding periods 1, 2 and 3

10. Not later than 31st March 2008, a local education authority must—

- (a) initially determine the allocation of their individual schools budget for funding periods 1, 2 and 3 as the budget shares of the schools which they maintain for each of those funding periods in accordance with Part 3 of these Regulations; and
- (b) give notice of schools' budget shares for funding periods 2 and 3 to the governing bodies of each of the schools they maintain.

Delegated budgets for new schools

11.—(1) A new school must have a delegated budget from the appropriate date.

(2) Subject to paragraphs (3) and (6), the appropriate date is either—

- (a) the date which is fifteen calendar months before the opening date of the new school; or
- (b) the date upon which a temporary governing body is constituted for that school,

whichever is the later.

(3) On the application of a local education authority, their schools forum may—

- (a) vary the appropriate date to a date proposed by the authority;
- (b) vary the appropriate date to a different date; or
- (c) refuse to vary the appropriate date.

- (4) Where—
- (a) a schools forum
 - (i) vary the appropriate date to a different date, or
 - (ii) refuse to vary the appropriate date; or
 - (b) a local education authority are not required to establish a schools forum for their area^(a), the authority may make an application to the Secretary of State for variation of the appropriate date.
- (5) On the application of a local education authority, the Secretary of State may—
- (a) vary the appropriate date to a date proposed by the authority;
 - (b) vary the appropriate date to a different date; or
 - (c) refuse to vary the appropriate date.
- (6) A local education authority must determine the amount of a new school's delegated budget for the period from the appropriate date to the opening date as an amount which is sufficient to fund the appointment of staff and to enable the purchase of any goods and services necessary in order to admit pupils.
- (7) After the opening date, a school's delegated budget must be determined in accordance with the local education authority's formula for the relevant funding period.

CHAPTER 3

REDETERMINATION OF SCHOOLS BUDGETS, INDIVIDUAL SCHOOLS BUDGETS AND SCHOOLS' BUDGET SHARES FOR FUNDING PERIODS 1, 2 AND 3

Redetermination of schools budgets and individual schools budgets

12.—(1) A local education authority may make a redetermination of their schools budgets and individual schools budgets for funding period 1, 2 or 3 at any time before or during the funding period to which those budgets relate.

- (2) In making any such redetermination, a local education authority—
- (a) may only reduce the amount of their schools budgets where they receive an amount of Dedicated Schools Grant which is lower than the amount on which they based their determinations under regulation 7;
 - (b) may not reduce their individual schools budget for funding period 1, 2 or 3 by making further deductions of central expenditure from their schools budgets unless they have obtained authorisation to do so from their schools forum or the Secretary of State under regulation 14(2) or (4); and
 - (c) must comply with the limits imposed by paragraph 36 of Schedule 2 and regulation 7(2) unless their schools forum or the Secretary of State authorise the variation those limits under regulation 14(2) or (4).

(3) Before the beginning of funding period 1, a local education authority must advise schools of any circumstances they are aware of which will make it likely that a redetermination will be made in respect of funding periods 1, 2 and 3, and the nature of any redetermination likely to be made in particular circumstances.

(4) Where a local education authority makes a redetermination under paragraph (1), they must give notice of that redetermination to the governing bodies of the schools which they maintain within 28 days of making the redetermination.

^(a) Section 47A(2) of the 1998 Act provides that the requirement in section 47A(1) of that Act to establish school forums for their area does not apply to the Common Council of the City of London or the Council of the Isles of Scilly.

Redetermination of allocation of budget shares for funding periods 2 and 3

13. Not later than 31st March 2009 for funding period 2 or 31st March 2010 for funding period 3, a local education authority must redetermine any allocation of schools' budget shares which they have made under regulation 10(a), in accordance with Part 3 of these Regulations.

CHAPTER 4

FURTHER DEDUCTIONS AND VARIATIONS TO LIMITS AUTHORISED BY SCHOOLS FORUMS OR THE SECRETARY OF STATE

Applications to the schools forum and the Secretary of State

14.—(1) Subject to paragraph (2), on the application of a local education authority, their schools forum may authorise—

- (a) the making of further deductions from their schools budget of any central expenditure exceeding the amount of any deductions made previously under regulations 7(1) or 12(1); or
- (b) the varying of any limit imposed by paragraph 36 of Schedule 2, or regulation 7(2).

(2) Where—

- (a) a schools forum does not authorise the making of further deductions or enable the limits referred to in paragraph (1) to be varied; or
- (b) a local education authority is not required to establish a schools forum for their area,

the authority may make an application to the Secretary of State for such authorisation or variation.

(3) On the application of a local education authority under paragraph (2), the Secretary of State may authorise the making of further deductions or variation of the limits referred to in paragraph (1).

(4) Unless the contrary intention appears in any authorisations given by the schools forum or the Secretary of State under previous regulations, such authorisations continue to apply in relation to funding period 1.

(5) Unless the contrary intention appears in any authorisations given by the schools forum or the Secretary of State in relation to funding period 1, such authorisations continue to apply to funding periods 2 and 3, and, unless the contrary intention appears in any authorisation given by the schools forum or the Secretary of State in relation to funding period 2, such authorisations continue to apply to funding period 3.

PART 3

FORMULAE FOR DETERMINATION OF BUDGET SHARES

CHAPTER 1

FACTORS AND CRITERIA TAKEN INTO ACCOUNT

Pupil numbers

15.—(1) Subject to regulation 17 (Special arrangements for maintained nursery schools and pupils in nursery classes) and paragraphs (2) and (5), in determining and redetermining budget shares for primary and secondary schools, a local education authority must take into account in their formulae for funding periods 1, 2 and 3 the number of registered pupils at those schools on the dates specified in paragraph (6), weighted, if the authority consider it appropriate, in accordance with paragraph (4).

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

- (a) in places—

- (i) in primary or secondary schools which the authority recognise as reserved for children with special educational needs, and
- (ii) in boarding accommodation at boarding schools other than special schools

where the authority exercise their discretion to take these places into account under regulation 16(1)(b) or (c);

- (b) in respect of whom grant is payable to the authority by the LSC (sixth form pupils); or
- (c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 35 of Schedule 3.

(3) Where a local education authority exercise their discretion under regulation 16(1) to take into account places, they may also take into account in their formulae the number of registered pupils in special schools or schools with boarding accommodation, or in reserved places at primary or secondary schools, as referred to in that paragraph, on the dates specified in paragraph (6).

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

- (a) age, including weighting according to key stage or year group;
- (b) in the case of pupils aged under five, their exact age when admitted to the school;
- (c) in the case of pupils aged under five, whether they have been admitted to the school in excess of the admission number agreed with the authority;
- (d) in the case of pupils aged under five, hours of attendance;
- (e) whether a pupil has special educational needs;
- (f) whether the pupil is attending a middle school;
- (g) whether the pupil is at key stage 4, and is accessing practical and applied learning;
- (h) whether the pupil, although registered at a school, is also attending a college of further education or a course delivered by any training provider; and
- (i) whether the pupil is in an infant class (in cases where an infant class is not taken into account as an additional factor under paragraph 35 of Schedule 3).

(5) Subject to paragraphs (7) and (8), for the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10, a local education authority must estimate the number of pupils they will take into account under paragraph (1) for that funding period.

(6) The dates for ascertaining pupil numbers are—

- (a) 17th January 2008 in respect of funding period 1;
- (b) 15th January 2009 in respect of funding period 2; and
- (c) 21st January 2010 in respect of funding period 3.

(7) Subject to paragraph (8), where a primary school—

- (a) operates a policy of admitting children into reception classes in the summer term; and
- (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in paragraph (6),

a local education authority may determine a number representing the number of pupils who will be admitted in that summer term, and take such number into account in their formulae for funding period 1, 2 or 3.

(8) In determining the number of pupils they will take into account under paragraph (7), a local education authority—

- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before any of the dates specified in paragraph (6); and
- (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

(9) A local education authority may adjust the number of registered pupils used to determine or redetermine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly, the permanent exclusion of a pupil from the school or the admission of a pupil to the school following his permanent exclusion from another school.

Places

16.—(1) In determining and redetermining budget shares for funding periods 1, 2 and 3, a local education authority may take into account the number of places they wish to fund in—

- (a) special schools;
- (b) primary or secondary schools with places which the authority recognise as reserved for children with special educational needs; and
- (c) schools with boarding accommodation.

(2) In determining and redetermining budget shares for funding periods 1, 2 and 3 a local education authority may take into account the nature of any special educational needs in question when funding places under paragraph (1)(a) or (b).

(3) A local education authority must provide that, if any places are taken into account in accordance with paragraph (1)(a), the number must be no fewer than the number of registered pupils at the school on the relevant date in regulation 15(6).

(4) For the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10(a), a local education authority must estimate the number of places they wish to fund under paragraph (1) for that funding period.

Special arrangements for pupils in maintained nursery schools and nursery classes

17.—(1) For the purpose of initially determining budget shares for maintained nursery schools and other primary schools, a local education authority may take into account in their formulae for funding periods 1, 2, and 3 either—

- (a) the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes on the date specified in regulation 15(6) and their hours of attendance; or
- (b) the number of places they wish to fund in those schools or those classes.

(2) For the purpose of initially determining budget shares for maintained nursery schools for funding periods 2 and 3, a local education authority must estimate the number of pupils or places they wish to fund under paragraph (1).

(3) In redetermining budget shares for maintained nursery schools and other primary schools, a local education authority must take into account in their formulae for funding periods 2 and 3—

- (a) the number of registered pupils in maintained nursery schools and the number of registered pupils in nursery classes on the dates specified in regulation 15(6)(b) and (c); and
- (b) the number of hours each of those registered pupils spends in school per week,

except where paragraph (4) applies, and except in the circumstances referred to in paragraph (5).

(4) Where it appears to a local education authority that it is necessary to fund places, as opposed to numbers of pupils, in order to ensure that a maintained nursery school remains open or, in the case of other primary schools, that they are able to continue to provide nursery classes, a local education authority may take into account in their formulae for funding periods 2 and 3 the number of places they wish to fund in those schools or classes.

(5) Subject to paragraph (6), where—

- (a) a primary school operates a policy of admitting children into nursery classes in the summer term; and

- (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in regulation 15(5)(b) or (c),

a local education authority may determine a number representing the number of pupils who will be admitted in that summer term and the number of hours per week each pupil spends in school, and take such number into account in their formulae for funding periods 1, 2 or 3.

(6) In determining the number of pupils they will take into account under paragraph (5), a local education authority—

- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before either of the dates specified in regulation 15(5)(b) or (c); and
- (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

(7) Where a local education authority take into account in their formulae the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes under paragraph (1)(a) or (3)(a), they may weight pupil numbers according to any or all of the following factors—

- (a) the age of pupils when admitted to the school;
- (b) whether any pupils have been admitted to the school in excess of the admission number agreed with the authority; and
- (c) the special educational needs of any such pupils.

Differential funding

18.—(1) For the purpose of initially determining budget shares in respect of funding periods 1, 2 and 3, a local education authority must use factors or criteria which differentiate between different categories or descriptions of schools insofar as the functions of the governing bodies of those schools justify such differentiation, but may not otherwise do so except as required or expressly permitted by these Regulations.

(2) A local education authority must use factors or criteria which differentiate between a school and other schools of the same category or description if such differentiation is justified by reference to the choice that that school's governing body have made as to the inclusion in their school's budget share of funding in respect of expenditure of the kinds referred to in paragraph 15(a) and (b) (meals), 27 (insurance) or 29 (library services) of Schedule 2.

(3) A local education authority are not required to use factors or criteria in their formulae which differentiate between maintained nursery schools, primary schools, secondary schools, special schools, or schools whose pupils are in different age ranges, but they may do so.

Additional factors or criteria

19.—(1) Subject to regulation 18 (differential funding), a local education authority may, in determining budget shares in respect of funding periods 1, 2 and 3, take into account in their formulae any or all of the factors or criteria set out in Schedule 3.

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

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

(4) The factors and criteria set out in Schedule 3 may not be taken into account by a local education authority on the basis of actual or estimated cost unless otherwise stated in that Schedule.

(5) Where a local education authority make changes to the factors or criteria taken into account in their formula from one funding period to the next, they may make such transitional provision as they consider reasonable.

Minimum funding guarantee

20.—(1) Subject to paragraph (4), in determining and redetermining budget shares for all schools maintained by them in respect of funding periods 1, 2 and 3, a local education authority must ensure—

- (a) in respect of primary and secondary schools (other than maintained nursery schools), that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1-4 of Schedule 4;
- (b) in respect of special schools, that the formulae must provide for an increase in those schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of Schedule 4; and
- (c) in respect of maintained nursery schools either—
 - (i) that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1-4 of Schedule 4, or
 - (ii) that the formula must provide for an increase in schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of that Schedule as if every reference to a special school were a reference to a maintained nursery school.

(2) For the purposes of determining budget shares in respect of funding periods 1, 2 and 3, paragraph (1) does not apply to any school—

- (a) opening during any of these funding periods, except in the circumstances set out in paragraph 4 of Schedule 4; or
- (b) closing during any of these funding periods in circumstances where a local education authority have redetermined that school's budget share during the relevant funding period.

(3) For the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10(a), a local education authority must apply the relevant provisions in Schedule 4 using estimates of—

- (a) the number of registered pupils in schools funded on the basis of pupil numbers in accordance with regulations 15(5) and 17(2); or
- (b) the number of places they wish to fund in accordance with regulation 16(4).

(4) A local education authority may make changes to the operation of this Regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State or their schools forum under regulation 25 (additional arrangements).

Sixth form funding

21.—(1) A local education authority must include in a secondary school's budget share for funding periods 1, 2 and 3 an amount equal to any sum notified to the local education authority by the LSC as being the allocation in respect of that school's sixth form^(a).

(a) The authority's funding in respect of sixth forms is paid by the LSC in the form of a grant under section 7 of the 2000 Act. Section 7 was amended by section 215(1) of, and paragraph 124(1) and (2) of Schedule 21 to, the 2002 Act, and section 117 of, and paragraph 12 of Schedule 18 to, the 2005 Act.

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

(3) A local education authority may, in determining budget shares for schools with sixth forms, reduce the amount payable to each such school under their formulae by a sum representing any element which has been duplicated in the LSC's allocation.

(4) A secondary school's budget share for funding periods 1, 2 and 3 must be redetermined before the end of the relevant funding period where the authority receive a written notification from the LSC of a revised allocation in respect of the sum referred to in paragraph (1).

New, reorganised and closing schools

22.—(1) A local education authority must include factors or criteria in their formulae which enable them to determine, or redetermine, a school's budget share for funding periods 1, 2 and 3 so as to take into account the particular needs of that school in the following cases—

- (a) a proposed school;
- (b) a school, proposals for the establishment of which have not been fully implemented^(a);
- (c) a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act^(b);
- (d) a school which is to be discontinued; and
- (e) a school which is to be the subject of a significant change, as determined by the authority.

(2) In the case of schools falling within sub-paragraph (1)(c), such factors or criteria may not be used for a period of more than seven years after the date of implementation of the relevant alteration.

(3) For the purposes of these Regulations, proposals for the establishment of a school have been fully implemented when the number of pupils admitted to the school in each age group has, in the opinion of the local education authority, reached either—

- (a) the number of pupils indicated, when proposals for the establishment of the school were published, as the number of pupils to be admitted to each age group when the proposals were fully implemented; or
- (b) if no such number was indicated, such number as the authority may determine.

CHAPTER 2

ADJUSTMENTS, CORRECTION OF ERRORS, AND ADDITIONAL ARRANGEMENTS APPROVED BY THE SCHOOLS FORUM OR THE SECRETARY OF STATE

Pupils permanently excluded from, or leaving, primary or secondary schools

23.—(1) Where a pupil is permanently excluded from a school maintained by a local education authority, the authority must redetermine the school's budget share for that funding period in accordance with paragraph (2).

(2) The school's budget share must be reduced by the amount $A \times (B/52)$ where—

A is the amount, in the funding period in which the permanent exclusion takes effect, determined by the authority in accordance with this Part, to be attributable for the full funding period to a registered pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority:

(a) Proposals for the establishment of a school may be published under sections 7, 10 or 11 of the 2006 Act.

(b) Regulations made under this section are the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (2007/1289 as amended by 2007/3646).

for the purposes of this definition, the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula as determined in accordance with these Regulations by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom grant is payable to the authority by the LSC under section 7 of the 2000 Act, the amount attributable to that pupil is £3197 for funding period 1, £3264 for funding period 2 and £3332 for funding period 3); and

B is the number of complete weeks remaining in the funding period calculated from the relevant date:

except that where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date.

(3) Where a pupil is admitted to a school maintained by a local education authority ("the admitting school") who has been permanently excluded from another maintained school in that financial year, the authority must redetermine the admitting school's budget share in accordance with paragraph (4).

(4) The admitting school's budget share must be increased by an amount which may not be less than the amount $D \times (E/F)$ where—

D is the amount by which the authority reduce the budget share of the school from which the pupil was permanently excluded, or would have reduced it had that school been maintained by the authority;

E is the number of complete weeks remaining in the funding period during which the pupil is a registered pupil at the admitting school; and

F is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) For the purposes of this regulation, the relevant date is the sixth school day following the date on which the pupil has been permanently excluded.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act, the school's budget share must be increased by an amount which is no less than $G \times (H/I)$ where—

G is the amount by which the authority has reduced the school's budget share;

H is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and

I is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school for reasons other than permanent exclusion, and is receiving education funded by a local education authority other than at a school which is maintained by that authority.

Correction of errors and changes in non-domestic rates

24.—(1) A local education authority may at any time during funding period 1, 2 or 3 redetermine a school's budget share for a previous funding period, or the current funding period, in order to correct an error in a determination or redetermination under these, or previous Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise, provided the error is of a kind not provided for by any specific error correction provision in the authority's formula.

(2) A local education authority may redetermine a school's budget share for funding period 1, 2 or 3 to take into account any changes in that school's non-domestic rates liability in relation to a current funding period or previous funding period.

(3) Insofar as any redetermination under paragraph (1) would require the amount that would otherwise have been the budget share of a school to be reduced, it may not be reduced to a figure which is lower than that which could have been allocated to that school under the regulations in force during the funding period in which the error occurred.

Additional arrangements approved by the schools forum or the Secretary of State

25.—(1) Subject to paragraph (2), on application by a local education authority to the Secretary of State for any authorisation or authorisations to determine or redetermine budget shares, the Secretary of State may authorise the authority to determine or redetermine budget shares to such extent as he may specify in accordance with arrangements approved by him in place of the arrangements provided for by these Regulations.

(2) The Secretary of State may not authorise a local education authority to determine or redetermine budget shares in the cases referred to in paragraph (3) unless—

- (a) the authority has first made an application to their schools forum for such authorisation which has been refused; or
- (b) the authority is not required to establish a schools forum for their area.

(3) In cases where a local education authority seeks any authorisation, or authorisations, to determine or redetermine budget shares which—

- (a) relate to the operation of regulation 20 and Schedule 4 (minimum funding guarantee) and which, either individually or when taken together in the funding period to which the application relates, will affect no more than 50% of pupils in schools maintained by the authority; or
- (b) relate to a change to the formula determined under regulation 9(1) in respect of funding period 2 or 3,

their schools forum may authorise such determinations or redeterminations.

(4) Unless the contrary intention appears in any such authorisation or arrangements, authorisations given and arrangements approved by the Secretary of State or any schools forum under previous regulations continue to apply in relation to funding period 1.

(5) Unless the contrary intention appears in such authorisation or arrangements, authorisations given and arrangements approved by the Secretary of State or any schools forum in relation to funding period 1 continue to apply to funding periods 2 and 3, and authorisations given and arrangements approved by the Secretary of State or any schools forum in relation to funding period 2 continue to apply to funding period 3.

PART 4

SCHEMES

Required content of schemes

26. A scheme prepared by a local education authority under section 48(1) of the 1998 Act^(a) must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

(a) Section 48(1) has been amended by section 40 and paragraphs 2(1) and (2) of Schedule 3 to the 2002 Act.

Approval by the schools forum or the Secretary of State of proposals to revise schemes

27.—(1) Where a local education authority submit proposals for any revisions to their scheme to their schools forum for approval pursuant to paragraph 2A of Schedule 14 to the 1998 Act^(a), the schools forum may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(2) Where the schools forum approve any revisions to the scheme, they may specify the date upon which any revised scheme is to come into force.

(3) Where—

- (a) the schools forum refuse to approve proposals submitted under paragraph 2A of Schedule 14 to the 1998 Act, or approve any such proposals subject to modifications which are not acceptable to the local education authority; or
- (b) the local education authority are not required to establish a schools forum for their area, the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

- (a) approve any such proposals;
- (b) approve any such proposals subject to modifications; or
- (c) refuse to approve any such proposals.

(5) Where the Secretary of State approves any revisions to the scheme, he may specify the date upon which any revised scheme is to come into force.

(6) No revised scheme is to come into force unless approved by the schools forum or the Secretary of State in accordance with this regulation.

Publication of schemes

28. A local education authority must publish their scheme in such manner as they see fit.

5th February 2008

Jim Knight
Minister of State
Department for Children, Schools and Families

(a) Paragraph 2A was inserted by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.

**CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE
PRESCRIBED FOR THE PURPOSES OF THE LEA BUDGET OF A
LOCAL EDUCATION AUTHORITY**

Expenditure of a class or description referred to in this Schedule includes expenditure on associated administrative costs and overheads.

Special educational provision

1. Expenditure on services provided by educational psychologists.
2. Expenditure in connection with the authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children)(a).
3. Expenditure on monitoring the provision for pupils in schools (whether or not maintained by the authority) for the purposes of disseminating good practice in relation to, and improving the quality of educational provision for, children with special educational needs.
4. Expenditure on collaboration with other statutory and voluntary bodies to provide support for children with special educational needs.
5. Expenditure in connection with—
 - (a) the provision of parent partnership services (that is services provided under section 332A of the 1996 Act to give advice and information to parents of children with special educational needs), or other guidance and information to such parents which, in relation to pupils at a school maintained by the authority, are in addition to the information usually provided by the governing bodies of such schools; or
 - (b) arrangements made by the authority with a view to avoiding or resolving disagreements with the parents of children with special educational needs.
6. Expenditure on carrying out the authority's child protection functions under the Children Act 1989(b), functions under section 175 of the 2002 Act, and other functions relating to child protection.

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- (a) Section 321 was amended by section 140(1) of, and paragraph 76 of Schedule 30 to, the 1998 Act; and section 215(1) of, and paragraph 42 of Schedule 21 to, the 2002 Act. Section 323 was amended by section 42 of, and paragraphs 1 and 11(1) of Part 1 of Schedule 8 to, the Special Educational Needs and Disability Act 2001 (c.10). Section 324 was amended by section 9 of the Special Educational Needs and Disability Act 2001; section 215(1) of, and paragraph 43 of Schedule 21 to, the 2002 Act; and section 140(1) of, and paragraph 77 of Schedule 30 to, the 1998 Act. Section 325 was amended by section 42(1) and (6) of, and paragraphs 1 and 6 of Part 1 of Schedule 8 and Schedule 9 to, the Special Educational Needs and Disability Act 2001. Section 326 was amended by section 10 of and paragraphs 18-20 of Part 2 of Schedule 1 to the Special Educational Needs and Disability Act 2001. Section 326A was inserted by section 5 of the Special Educational Needs and Disability Act 2001 and was amended by section 195 of, and paragraphs 1 and 3 of Schedule 18 to, the 2002 Act. Section 327 was amended by section 140(1) of, and paragraph 78 of Schedule 30 to, the 1998 Act; and section 173 of the 2002 Act. Section 328 was amended by section 42(1) of, and paragraphs 1 and 7 of Part 1 of Schedule 8 to, the Special Educational Needs and Disability Act 2001. Section 329 was amended by section 42(1) and paragraphs 1 and 8 of Part 1 of Schedule 8 to the Special Educational Needs and Disability Act 2001. Section 329A was inserted by section 8 of the Special Educational Needs and Disability Act 2001, and amended by paragraph 44 of Schedule 21 to and part 3 of Schedule 22 to the 2002 Act and section 103(1) of, and paragraph 22 of Schedule 2 to, the Childcare Act 2006 (c.21). Section 330 was repealed by section 140(1) and (3) of, and paragraph 79 of Schedule 30 to and Schedule 31 to, the 1998 Act.
- (b) 1989 c.41.

7. Expenditure incurred in entering into, or subsequently incurred pursuant to, an arrangement under section 31 of the Health Act 1999 or regulations made under section 75 of the National Health Service Act 2006(a).

8. Expenditure in providing special medical support for individual pupils insofar as such expenditure is not met by a Primary Care Trust(b), National Health Service Trust(c), NHS foundation trust(d) or Local Health Board(e).

School improvement

9. Expenditure incurred by a local education authority in respect of action to support the improvement of standards in the authority's schools, in particular—

- (a) expenditure incurred in connection with functions under the following sections of the 2006 Act: sections 63 (power to require governing bodies of schools eligible for intervention to enter into arrangements), 64 (power to appoint additional governors), 65 and Schedule 6 (power to provide for governing bodies to consist of interim executive boards), and 66 (power to suspend right to delegated budget); and
- (b) expenditure on school improvement partners(f).

Access to education

10. Expenditure in relation to the following matters—

- (a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions;
- (b) planning and managing the supply of school places, including the authority's functions in relation to the establishment, alteration or discontinuance of schools pursuant to Part 2 of, and Schedule 2 to, the 2006 Act;
- (c) the authority's functions in relation to the exclusion of pupils from schools, excluding any provision of education to such pupils, but including advice to the parents of such pupils;
- (d) the authority's functions under sections 508A, 508E and 509 (school travel) of the 1996 Act(g); and

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- (a) 2006 c.41. Section 31 was repealed by Schedule 6 of the National Health Service (Consequential Provisions) Act 2006 (c.43).
 - (b) Primary Care Trusts were established under section 16A of the National Health Service Act 1977 (c.49). Section 16A was inserted by section 2 of the Health Act 1999 (c.8), and has been repealed subsequently by Schedule 6 to the National Health Service (Consequential Provisions) Act 2006 (c.43). Section 18 of the National Health Service Act 2006 provides that Primary Care Trusts established by the Secretary of State continue in existence and that the Secretary of State may create or abolish Primary Care Trusts.
 - (c) National Health Service Trusts (NHS Trusts) were created by order made under section 5 of the National Health Service and Community Care Act 1990 (c.19). This section has been repealed subsequently by Schedule 6 to the National Health Service (Consequential Provisions) Act 2006. NHS Trusts are now created by order made under section 25 of the National Health Service Act 2006.
 - (d) NHS foundation trusts were established under the Health and Social Care (Community Health and Standards) Act 2003 (c.43). These provisions were repealed subsequently by Schedule 6 to the National Health Service (Consequential Provisions) Act 2006. NHS foundation trusts are now defined in section 30 of the National Health Service Act 2006 and established under Chapter 5 of that Act.
 - (e) Local Health Boards were established by order made by the National Assembly for Wales under section 16BA of the National Health Service Act 1977 as inserted by section 6(1) of the National Health Service Reform and Health Care Professions Act 2002 (c.17). Section 16BA has been repealed subsequently by Schedule 6 to the National Health Service (Consequential Provisions) Act 2006. Local Health Boards are now established under regulations made under section 13 of the National Health Service (Wales) Act 2006 (c.42).
 - (f) "School improvement partner" has the meaning in section 5(1) of the 2006 Act, namely a person appointed to provide advice to the governing body and head teacher of a maintained school with a view to improving standards at that school.
 - (g) Part 6 of the 2006 Act inserts new sections 508A and 508E. Section 509 was substituted by paragraphs 57 and 33 of Schedule 30 to the 1998 Act.

- (e) the authority's functions under sections 510 and 514 of the 1996 Act (Provision and administration of clothing grants and boarding grants), and pursuant to regulations made under section 518(2) of the 1996 Act(a).

11. Expenditure on the Education Welfare Service(b) and other expenditure arising from the authority's functions under Chapter 2 of Part 6 of the 1996 Act (School attendance).

12. Expenditure on the provision of support for students under regulations made under section 1(1) of the Education Act 1962(c) and under section 22 of the Teaching and Higher Education Act 1998.

13. Expenditure on discretionary grants under section 1(6) or 2 of the Education Act 1962 (Awards for designated and other courses).

14. Expenditure on the payment to persons over compulsory school age of education maintenance allowances(d).

15. Expenditure on the provision of tuition in music, or on other activities which provide opportunities for pupils to enhance their experience of music.

16. Expenditure incurred in enabling pupils to enhance their experience of the visual, creative and performing arts other than music.

17. Expenditure on outdoor education centres, but not including centres wholly or mainly for the provision of organised games, swimming or athletics.

Further education and training for young persons and adults

18. Expenditure on the provision of education and training and of organised leisure time occupation, and other provision under sections 15A and 15B of the 1996 Act(e).

19. Expenditure on the provision by the local education authority under sections 15A and 507A and 507B(f) of the 1996 Act of recreation and social and physical training, and on the authority's provision of services under section 116 of the 2000 Act to encourage and enable the participation by young people in education and training.

Strategic management

20. Expenditure in their capacity as a local education authority in relation to—

- (a) functions of the director of children's services and his personal staff;
- (b) planning for the education service as a whole;

(a) Section 518 was substituted by section 129 of the 1998 Act. Regulations currently in force under section 518 are the Local Education Authority (Payment of School Expenses) Regulations 1999 (S.I. 1999/1727) and the Local Education Authority (Post Compulsory Education Awards) Regulations (S.I. 1999/229 as amended by 2000/2057).

(b) The functions and role of the Education Welfare Service are set out in a DfES Circular entitled "Advice and Guidance to Schools and Local Authorities on Managing Pupil Attendance", which can be found on www.dcsf.schoolattendance/publications/index.cfm.

(c) 1962 c.12. The 1962 Act was repealed by the Teaching and Higher Education Act 1998 (c.30) with transitional savings provisions. The repeal does not affect the continued operation of the provisions that relate to the making of subordinate legislation. Relevant regulations made under section 1(1) of the 1962 Act are: the Education (Mandatory Awards) Regulations 2003 (S.I. 2003/1994), the Education (Mandatory Awards) (Amendment) Regulations 2004 (S.I. 2004/1038), and the Education (Mandatory Awards) (Amendment) (No.2) Regulations 2004 (S.I. 2004/1792). These regulations describe the designated courses and methodology for calculating grants.

(d) Education maintenance allowances are defined in section 108(8)(a) of the 2005 Act as financial assistance under section 14 of the 2002 Act paid to, or in respect of, a person who is over compulsory school age in connection with his undertaking any course of education or training.

(e) Section 15A was inserted by section 140(1) of, and paragraph 63 of Schedule 30 to, the 1998 Act, and has been amended by section 149 of, and paragraphs 1 and 54 of Schedule 9 to the 2000 Act. Section 15B was inserted by section 149 of, and paragraphs 1 and 55 of Schedule 9 to, the 2000 Act.

(f) Sections 507A and B were inserted by section 6(1) of the 2006 Act.

- (c) functions of the authority under Part I of the Local Government Act 1999^(a) (Best Value) and the provision of advice to assist governing bodies in procuring goods and services with a view to securing continuous improvement in the way the functions of those governing bodies are exercised, having regard to a combination of economy, efficiency and effectiveness;
- (d) revenue budget preparation, preparation of information on income and expenditure relating to education for incorporation into the authority's annual statement of accounts, and the external audit of grant claims and returns relating to education;
- (e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter 4 of Part 2 of the 1998 Act and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;
- (f) authorisation and monitoring of—
 - (i) expenditure which is not met from schools' budget shares, and
 - (ii) expenditure in respect of schools which do not have delegated budgets,
 and all financial administration relating thereto;
- (g) the authority's monitoring of compliance with the requirements of their financial scheme prepared under section 48 of the 1998 Act^(b), and any other requirements in relation to the provision of community facilities by governing bodies under section 27 of the 2002 Act;
- (h) internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972^(c);
- (i) the authority's functions under regulations made under section 44 of the 2002 Act^(d);
- (j) recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares and who are paid for services carried out in relation to those of the authority's functions and services which are referred to in other paragraphs of this Schedule;
- (k) investigations which the authority carry out of employees, or potential employees, of the authority, or of governing bodies of schools, or of persons otherwise engaged, or to be engaged, with or without remuneration to work at or for schools;
- (l) functions of the authority in relation to local government superannuation which it is not reasonably practicable for another person to carry out, and functions of the authority in relation to the administration of teachers' pensions;
- (m) retrospective membership of pension schemes and retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body of a school to meet the cost from the school's budget share;
- (n) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school ("the school workforce"), including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such school workforce;

(a) 1999 c. 27.

(b) Section 48 has been amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act, and section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.

(c) 1972 c.70.

(d) The regulations made under this section are the Consistent Financial Reporting (England) Regulations 2003, (S.I. 2003/373, as amended by 2004/393, 2006/437, 2007/599 and 2008/46).

- (o) determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff;
- (p) the authority's functions regarding the appointment or dismissal of employees;
- (q) consultation and functions preparatory to consultation with or by governing bodies, pupils and persons employed at schools or their representatives, or with other interested bodies;
- (r) compliance with the authority's duties under the Health and Safety at Work etc. Act 1974(a) and the relevant statutory provisions as defined in section 53(1) of that Act, insofar as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, the giving of advice to them;
- (s) the investigation and resolution of complaints;
- (t) legal services relating to the statutory functions of the authority;
- (u) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
- (v) the preparation, publication, consultation upon and review of a children and young people's plan under the Children and Young People's Plan (England) Regulations 2005;
- (w) provision of information to or at the request of the Crown and the provision of other information which the authority are under a duty to make available;
- (x) the authority's duties under article 4(2) and (5) of the Race Relations Act 1976 (Statutory Duties) Order 2001(b);
- (y) the remittance of fees payable to the General Teaching Council for England by virtue of section 4(4) and 4(4A) of the Teaching and Higher Education Act 1998(c) and the provision of information required by the Council pursuant to regulations(d) made under section 12 of that Act;
- (z) the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies); and
- (aa) the authority's functions under the Disability Discrimination Act 1995(e) insofar as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, the giving of advice to them.

21. Expenditure in pursuance of a binding agreement, where the other party is a local authority, or the other parties include one or more local authorities, in relation to the operation of a facility provided partly, but not solely, for the use of schools.

22. Expenditure on establishing and maintaining those electronic computer systems, including data storage, which are intended primarily to maintain linkage between local education authorities and their schools.

23. Expenditure on monitoring National Curriculum assessment arrangements required by orders made under section 87 of the 2002 Act.

24. Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act or in

(a) 1974 c.37.

(b) S.I. 2001/3458.

(c) 1998 c.30. Subsection (4A) is inserted by section 148 of, and paragraphs 1 and 4 of Part 1 of Schedule 12 to, the 2002 Act.

(d) The regulations currently in force under this provision are the General Teaching Council for England (Deduction of Fees) Regulations 2001 (S.I. 2001/3993, as amended by S.I.2003/985).

(e) 1995 c.50.

the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act(a).

25. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person except to the extent that these costs are chargeable to schools' budget shares or fall within paragraph 36(b) of Schedule 2.

26. Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998.

27. Expenditure in respect of the functions of an appropriate body under regulations pursuant to section 19(2)(g) of the Teaching and Higher Education Act 1998(b).

28. Expenditure on the appointment of governors, the making of instruments of government, the payment of expenses to which governors are entitled and which are not payable from a school's budget share, and the provision of information to governors.

29. Expenditure on making pension payments, other than in respect of staff employed in schools.

30. Expenditure on insurance, other than for liability arising in connection with schools or school premises.

31. Expenditure in connection with powers and duties performed under Part 2 of the Children and Young Persons Act 1933 (Enforcement of, and power to make byelaws in relation to, restrictions on the employment of children(c)).

SCHEDULE 2

Regulations 5 and 7

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE SCHOOLS BUDGET OF A LOCAL EDUCATION AUTHORITY WHICH MAY BE DEDUCTED FROM IT TO DETERMINE THE INDIVIDUAL SCHOOLS BUDGET

Expenditure of a class or description referred to in this Schedule includes expenditure on associated administrative costs and overheads.

Expenditure to support grants which fall within the definition of the schools budget

1.—(1) Expenditure (other than expenditure incurred in connection with any other paragraph of this Schedule) which the authority is obliged to incur as a condition of a specific grant paid to the authority and which is taken into account in determining the amount of such specific grant.

(2) Any amount which the authority is obliged to make available as a condition of a grant paid under section 14 of the 2002 Act which is taken into account in determining the amount of such grant, decisions regarding the expenditure of which are delegated to the governing body of a maintained school.

(a) Section 390 is amended by section 140(1) of, and paragraph 93 of Schedule 20 to, the 1998 Act.

(b) The regulations currently in force under this provision are the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001 (S.I. 2001/2897, as amended by S.I.2001/3938, S.I. 2002/2063, S.I. 2003/106 and S.I. 2003/2148, S.I. 2005/1740 and S.I. 2007/172).

(c) 1933 (c.12).

Performance Reward Grant

2. Expenditure not falling within any other paragraph of this Schedule or any paragraph of Schedule 1 which the authority propose to meet from a Performance Reward Grant.

Threshold and Performance Pay

3. Expenditure on any threshold and performance pay element of teachers' salaries.

Special educational provision

4. Subject to paragraphs 5 and 6, expenditure in making the provision specified in a pupil's statement of special educational needs except where the pupil is—

- (a) a registered pupil at a special school maintained by the authority; or
- (b) a registered pupil at a primary or secondary school maintained by the authority who occupies one of a number of places at that school which are recognised by the authority as being reserved for children with special educational needs.

5. Where a pupil falls within paragraph 4(a) or (b), and the cost of the provision specified in the pupil's statement of special educational needs is significantly greater than that for the generality of pupils at the special school, or the cost of pupils in places at the primary or secondary school in question, the amount by which the expenditure incurred in making the provision specified in his statement of special educational needs is greater than that incurred in making provision for a pupil who falls within such generality of pupils.

6. Expenditure in making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 4(b) but the places which are recognised by the authority as being reserved for children with special educational needs are for such pupils with visual, hearing, speech or language impairments or other communication disorder.

7. Expenditure in respect of pupils with statements of special educational needs or who are within the scope of School Action Plus as described in the Code of Practice^(a) issued under section 313 of the 1996 Act in cases where it would be unreasonable to expect such expenditure to be met from a school's budget share.

8. Expenditure for purposes connected with the encouragement of—

- (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
- (b) the education of children with special educational needs at primary and secondary schools; and
- (c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs

in cases where the local education authority consider it would be unreasonable for such expenditure to be met from a school's budget share.

9. Expenditure in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit as defined in that section^(b).

(a) The Special Educational Needs Code of Practice 2001 (ISBN 1 84185 5294).

(b) "Pupil referral unit" is defined in sub-section (2B), which was inserted by the Education Act 1996 (Amendment of Section 19) (England) Regulations 2007 (S.I. 2007/1507). Other relevant amendments to the section are made by section 47 of the Education Act 1997 (c.44) and section 101 of the 2006 Act.

10. Expenditure (other than expenditure referred to in Schedule 1 or any other paragraph of this Schedule) incurred on services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools(**a**).

11. Expenditure on the payment of fees in respect of pupils with special educational needs—

- (a) at independent schools or at special schools which are not maintained by a local education authority under section 348 of the 1996 Act; or
- (b) at an institution outside England and Wales under section 320 of the 1996 Act.

12. Expenditure on payments to another local education authority pursuant to section 493 or 494 of the 1996 Act(**b**), or section 207 of the 2002 Act (recoupment between authorities).

Access to education

13. Expenditure on the administration of the system of admissions of pupils to schools (including expenditure incurred in carrying out consultations under section 89(2) of the 1998 Act(**c**), and in establishing, maintaining and consulting representative bodies for the purposes of admissions), and in relation to appeals, provided that, except where the governing body have agreed with the authority that this proviso should not apply to them, or where the authority are satisfied that factors or criteria in their formula already make suitable provision, the authority must—

- (a) allocate to each governing body who are an admission authority, as defined in section 88(1) of the 1998 Act(**d**), an amount determined by the authority as that reasonably required by the governing body to meet expenditure incurred in connection with the system of admissions of pupils to the school and any appeals, taking into account any factors or criteria in their formula which relate to admission arrangements; and
- (b) allow the governing body to determine how such amount should be spent for that purpose.

14. Expenditure incurred in connection with the authority's functions under section 85A(**e**) of the 1998 Act (Establishment and maintenance of, and consultation with, admission forums).

15. Expenditure on milk and meals pursuant to section 512, 512ZA, 512ZB(**f**) or 513 of the 1996 Act falling within the following categories—

- (a) expenditure in respect of meals at any primary or special school where the governing body have elected not to receive funding for meals as part of their school's budget share;
- (b) expenditure in respect of milk at any school; and
- (c) expenditure in respect of milk or meals at any pupil referral unit.

16. Expenditure on the repair and maintenance of a school kitchen where expenditure on meals in relation to the school concerned is deducted from the authority's schools budget pursuant to paragraph 15.

17. Expenditure on determining the eligibility of a pupil for free school meals.

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- (a) The Children and Young People's Plan (England) Regulations 2005 (S.I. 2005/2149 as amended by S.I. 2007/57) impose a requirement upon children's services authorities to prepare and publish plans which will include key actions to be taken. Some of these relate to the education of children with behavioural difficulties.
 - (b) References to "funding period" are substituted for references to "financial year" in section 494 by section 117 of, and paragraph 5 of Schedule 18 to, the 2005 Act.
 - (c) Section 89 is amended by section 51 of, and Schedule 4 to, the 2002 Act and sections 45 and 56 of the 2006 Act.
 - (d) Section 88(1) is amended by section 43 of the 2006 Act, which inserts new sub-sections (1A) and (1B).
 - (e) Section 85A is inserted by section 46 of the 2002 Act.
 - (f) Section 512ZB(4) is amended by section 28(1) of, and paragraph 16 of Schedule 3 to, the Welfare Reform Act 2007 (c.5). The section is to come into force on a date to be appointed.

18. Expenditure pursuant to section 18 of the 1996 Act(a) in making any grant or other payment in respect of fees or expenses (of whatever nature) which are payable in connection with the attendance of pupils at a school which is not maintained by any local education authority.

Staff

19. Expenditure in making payments to, or in providing a temporary replacement for, a woman on maternity leave or to a person on adoption leave.

20. Expenditure in making payments to, or in providing a temporary replacement for, persons—

- (a) carrying out trade union duties or undergoing training under section 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992(b);
- (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c) performing public duties under section 50 of the Employment Rights Act 1996(c);
- (d) undertaking jury service;
- (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977(d);
- (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996(e);
- (g) who are employee representatives for the purposes of Chapter 2 of Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992, as defined in section 196 of that Act or regulation 13(3) of the Transfer of Undertakings (Protection of Employment) Regulations 2006(f);
- (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996(g);
- (i) undertaking duties as members of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996(h);
- (j) suspended from working at a school;
- (k) who are members of the General Teaching Council for England or a committee thereof; or
- (l) who are appointed learning representatives of trade unions, in order for them to analyse training requirements or to provide or promote training opportunities, and to carry out consultative or preparatory work in connection with such functions.

21. Expenditure on Advanced Skills Teachers undertaking outreach work in schools other than that in which they are normally based(i).

22. Expenditure in making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local education authority or the governing body of a school.

23. Expenditure in making payments to, or in providing a temporary replacement for, persons who have been continuously absent from work because of illness for 21 days or more.

(a) Section 18 is substituted by section 128 of the 1998 Act.

(b) 1992 c.52. Section 168A was inserted by section 43 of the Employment Act 2002 (c.22).

(c) 1996 c.18.

(d) S.I. 1977/500, amended by S.I. 1996/1513, S.I. 1999/860, S.I. 1999/3242 and S.I. 2006/594.

(e) S.I. 1996/1513.

(f) S.I. 2006/246.

(g) 1996 c.18.

(h) 1996 c.14.

(i) “Advanced Skills Teacher” is a concept defined in the School Teachers’ Pay and Conditions Document 2007. This document can be found at www.teachernet.gov.uk.

24. Expenditure, not falling within Schedule 1, in relation to the recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares.

25. Expenditure on pay arrears due to staff employed at maintained schools and other staff whose salaries are met from the schools budget, and expenditure on the costs of financing payment of such arrears, where the expenditure is not chargeable to a maintained school's budget share under the terms of the local education authority's scheme.

Other Expenditure

26. Expenditure on the provision of nursery education, except where such provision is made at a maintained school, including expenditure on nursery education by PVI providers funded in accordance with guidance issued by the Secretary of State^(a).

27. Expenditure on insurance in respect of liability arising in connection with schools and school premises, except to the extent that governing bodies have elected to receive funding for insurance as part of their school's budget share.

28. Expenditure on services to schools provided by museums and galleries.

29. Expenditure on library services for primary and special schools, except that such expenditure may not be deducted where—

- (a) funding for library services in respect of a particular school was delegated before April 1999 and remains delegated; or
- (b) the governing body of any primary or special school has elected to receive funding for library services as part of their school's budget share.

Where a local education authority deduct funding under this paragraph, they must notify the governing body of each school not receiving funding for library services in its budget share of the amount attributable to library services for that school. They must also allow the governing bodies of these schools to determine whether the expenditure on library services in respect of their school is to be spent by the authority in providing library services to the school themselves or by the authority in procuring library services from another local authority.

30. Expenditure on licence fees or subscriptions paid on behalf of schools.

31. Expenditure incurred in connection with the authority's functions under section 47A^(b) of the 1998 Act (Establishment and maintenance of, and consultation with, schools forums).

32. Expenditure on allocations to the governing body of a school in financial difficulty, provided that the authority consult the schools forum on their arrangements for the implementation of such support.

33. Expenditure for purposes not falling within any other paragraph of this Schedule, provided that the expenditure does not amount in total to more than 0.1% of the authority's schools budget.

34. CERA incurred for purposes not falling within any other paragraph of this Schedule or Schedule 1.

35. Expenditure on practical and applied learning not met from maintained schools' budget shares.

(a) Guidance on the funding of PVI providers is issued under section 153 of the 2002 Act. Current guidance is in the *Code of Practice for Three and Four Year Olds*. New duties are imposed in relation to England by section 7 of the Childcare Act 2006. Guidance issued under section 7 for the funding of PVI providers will mirror the provisions for the maintained sector in regulation 17 of these Regulations.

(b) Section 47A was inserted by section 43 of the 2002 Act, and has been amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2005 Act and sections 57 and 184 of, and paragraphs 2(1), (3) and (4) of Schedule 5 to and Part 6 of Schedule 18 to, the 2006 Act.

36. Expenditure on—

- (a) prudential borrowing;
- (b) termination of employment costs;
- (c) combined services where the expenditure relates to classes or descriptions of expenditure falling outside those set out in this Schedule;
- (d) the schools' specific contingency; and
- (e) special educational needs transport costs

provided that any deductions under this paragraph are limited to the amount deducted by the authority in respect of such expenditure under paragraph 35 of Schedule 2 to the 2006 Regulations for the previous financial year or under this paragraph for the previous funding period.

SCHEDULE 3

Regulation 19

ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT IN A LOCAL EDUCATION AUTHORITY'S FORMULA UNDER REGULATION 19

1. Special educational needs of pupils determined in a manner that the authority consider appropriate as a means of assessing such needs.
2. Pupils for whom English is not their first language.
3. Turnover of pupils other than as part of the general admissions process at a school.
4. Admission arrangements at a school.
5. The size, condition and characteristics of a school's buildings and grounds relative to those of other schools maintained by the local education authority.
6. A school which has a split site: the funding must be in accordance with criteria published by the authority.
7. Such physical facilities, organisational facilities for the education of pupils, or communications facilities as are found at some schools only.
8. Non-domestic rates payable in respect of the premises of each school (including actual or estimated cost).
9. Use of energy by schools.
10. Rent payable in respect of school premises or payments in respect of the use by a school of facilities not exclusively occupied by that school (including actual or estimated cost).
11. Transport to and from activities outside school premises which form part of the school's curriculum, or transport between the school and other educational facilities attended by pupils (including actual or estimated cost).
12. Hire of facilities outside school premises (including actual or estimated cost).
13. Insurance: the funding must be equal to the amount which would be spent on insurance for the school in question if amounts were not delegated to the governing body for such insurance or, if the authority do not insure, the appropriate proportion of the amount that would have been spent had they insured, to be determined on a basis decided by the authority.

14. Payments in relation to a private finance transaction (including actual or estimated cost).

15. Where a school has been established or has become the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act as a result of the closure of one or more schools(a), a local education authority may include a factor in their formula which provides that—

- (a) an amount may be added to the budget share of the school to reflect all or part of the unspent budget share of the closing school for the funding period in which it closes; or
- (b) an amount may be deducted from the budget share of the school to reflect all or part of any deficit in the budget share of the closing school, provided the amount deducted does not exceed any amount determined by the local education authority under regulation 11(6) as the delegated budget of the new school for the period from the opening date to the appropriate date.

16. Whether a school is to be discontinued in the financial year or the following financial year.

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

18. Salaries at a school, the funding of which must be in accordance with a scale published by the authority (including actual or estimated cost), and which include pay arrears due to staff (also including actual or estimated cost).

19. Safeguarding of salaries in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 122 of the 2002 Act.

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

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

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

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

24. Schools whose budget shares would otherwise be reduced year-on-year by a percentage figure of 3% or more, determined by the authority: the authority must publish that percentage figure and an explanation of how any amounts using such a factor or criteria will be determined including, if applicable, the use to be made of any sliding scale. Such a factor may not take account of the extent to which a school has spent more than or has not spent all of its budget share in any financial year.

25. Contracts to which the governing body of a school are bound by virtue of a provision in the authority's scheme (including actual or estimated cost).

26. Effect of taxation on schools.

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

(a) Provisions relating to establishment, closure of, and prescribed alterations to, maintained schools are in Part 2 of the 2006 Act.

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

29. Incidence of Newly Qualified Teachers(b).

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

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

32. Prior attainment of pupils entering a school.

33. Advanced Skills Teachers employed at a school.

34. Permanent exclusions from a school (including estimates), and incidence of pupils whose names have been deleted from the admissions register of a maintained school as referred to in regulation 24 of these Regulations.

35. Infant classes and places in infant classes not funded under any other provisions.

36. Incidence of any element of teachers' salaries relating to threshold and performance pay (including actual or estimated cost).

37. Payments in respect of gifted and talented pupils.

SCHEDULE 4

Regulation 20

MINIMUM FUNDING GUARANTEE

Primary and Secondary Schools

1. In this paragraph and paragraphs 2 to 4—

- (a) references to the number of pupils exclude those funded by a grant paid to the authority by the LSC under section 7 of the 2000 Act;
- (b) the “relevant number” of pupils for the financial year beginning on 1st April 2007 shall be the number of registered pupils at the school on 18th January 2007, except that where the authority has not exercised its discretion under regulation 15(1)(b) of the 2006 Regulations to take the number of pupils in places which the authority recognises as reserved for children with special educational needs, or in nursery classes, into account in their formula, then the number of those places must be added to the relevant number for the purposes of this Schedule;
- (c) subject to paragraphs 3 and 4, the “relevant number” of pupils for funding periods 1, 2 and 3 shall be the number of pupils at the school on the dates referred to in regulation 15. Except that, where the authority has not exercised discretion under regulation 15(3) or 17(1)(b) or (5) to take into account in their formula the number of pupils in places which the authority recognises as being reserved for children with special educational needs or in nursery classes, the number of those pupils must be added to the relevant number for the purposes of this Schedule;

(a) S.I. 2002/378 amended by S.I. 2004/444.

(b) A “newly qualified teacher” is a teacher in a maintained school who has been a qualified teacher for less than twelve months. Qualified teacher has the meaning in regulation 5 of The Education (School Teachers' Qualifications) (England) Regulations 2003 (S.I. 2003/1662 as amended by S.I. 2007/2782).

- (d) the “adjusted budget share” (which must not be lower than the guaranteed funding level) is a school’s budget share determined in accordance with these Regulations, but not taking into account—
- (i) the effect of regulations 20 (MFG), 21 (sixth form funding), 23 (excluded pupils) and paragraphs 8 (rates), 14 (PFI), 29 (NQTs), and 35 (ICS funding) of Schedule 3(a),
 - (ii) any amounts added in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves the school, including amounts for pupil exclusions above that permitted by regulation 23 (excluded pupils), but not including amounts for the cost of providing free school meals;
- (e) references to a redetermined adjusted budget share for the financial year beginning on 1st April 2007 include the effect of any additional arrangement approved by the schools forum or Secretary of State under regulation 25 of the 2006 Regulations, but exclude the following—
- (i) any amounts included pursuant to regulations 19 (sixth form funding), 23 (excluded pupils), and 24 (correction of errors) of the 2006 Regulations,
 - (ii) any amount included in respect of paragraphs 8 (rates), 14 (PFI), 29 (NQTs) and 35 (ICS) of Schedule 4 to the 2006 Regulations, and
 - (iii) any amounts in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves school, including amounts for pupil exclusions above that permitted by regulation 23 (excluded pupils) of these Regulations but not including amounts for the cost of providing free school meals;
- (f) references to a redetermined adjusted budget share for funding periods 1 and 2 include—
- (i) the effect of any additional arrangements approved by schools forums or the Secretary of State under regulation 25 (additional arrangements) of these Regulations, and
 - (ii) the amount of funding the school received under paragraph 3 of Schedule 2 (threshold and performance pay) of these Regulations where the local education authority intends to include an amount in respect of this in a school’s budget share for funding period 2 or 3
- but exclude the following—
- (iii) any amounts included pursuant to regulation 21 (sixth form funding), 23 (excluded pupils) of these Regulations,
 - (iv) any amount included in respect of paragraphs 8 (rates), 14 (PFI), 29 (NQTs), and 35(ICS) of Schedule 3 to these Regulations, and
 - (v) any amounts included in respect of funding for named pupils which are deducted from a school’s budget share when that pupil leaves school, including amounts above those permitted by regulation 23 (excluded pupils) of these Regulations, but not including amounts for the cost of providing free school meals;
- (g) for the purposes of this Schedule—
- (i) where a school has opened after 1st April 2007 but before the 1st April 2008, its redetermined adjusted budget share for the financial year beginning on 1st April 2007 must be the amount that it would have been had the school opened on 1st April 2007,
 - (ii) where a school opens during funding period 1, its redetermined adjusted budget share for funding period 1 must be the amount that it would have been had the school opened on 1st April 2008,

(a) For the purposes of this Schedule, “MFG” means Minimum Funding Guarantee; “PFI” means Private Finance Initiative; “NQTs” means Newly Qualified Teachers; and “ICS” means Infant Class Sizes.

- (iii) where a school opens during funding period 2, its redetermined adjusted budget share for funding period 2 must be the amount it would have been had the school opened on 1st April 2009

adjusted in accordance with sub-paragraph (e) or (f), whichever is applicable.

2. Subject to paragraphs 3 and 4, the guaranteed funding level is to be calculated as follows—

- (a) for funding period 1—
 - (i) where the relevant number of pupils is the same as the relevant number for the financial year beginning on 1st April 2007, the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils is lower than the relevant number for the financial year beginning on 1st April 2007, the guaranteed funding level must be $A - (B \times C)$,
 - (iii) where the relevant number of pupils is higher than the relevant number for the financial year beginning on 1st April 2007, the guaranteed funding level must be $A + (B \times C)$;
- (b) for funding period 2—
 - (i) where the relevant number of pupils is the same as the relevant number for funding period 1, the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils is lower than the relevant number for funding period 1, the guaranteed funding level must be $A - (B \times C)$,
 - (iii) where the relevant number of pupils is higher than the relevant number for funding period 1, the guaranteed funding level must be $A + (B \times C)$;
- (c) for funding period 3—
 - (i) where the relevant number of pupils is the same as the relevant number for funding period 2, the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils is lower than the relevant number for funding period 2, the guaranteed funding level must be $A - (B \times C)$,
 - (iii) where the relevant number of pupils is higher than the relevant number for funding period 2, the guaranteed funding level must be $A + (B \times C)$

where—

A is, in respect of funding period 1, the redetermined adjusted budget share for the financial year beginning on 1st April 2007 multiplied by 1.021 in respect of primary schools and secondary schools, in respect of funding period 2, the redetermined adjusted budget share for funding period 1 multiplied by 1.021 in respect of primary schools and secondary schools, and, in respect of funding period 3, the redetermined adjusted budget share for funding period 2 multiplied by 1.021 in respect of primary schools and secondary schools;

B is, in respect of funding period 1, the difference between the relevant number of pupils for the financial year beginning on 1st April 2007 and funding period 1, in respect of funding period 2, the difference between the relevant number of pupils for funding period 1 and funding period 2, and, in respect of funding period 3, the difference between the relevant number of pupils for funding period 2 and funding period 3;

C is, in respect of funding period 1, the mean value of funding per pupil in the school's redetermined adjusted budget share for the financial year beginning on 1st April 2007 (calculated using pupil numbers on 18th January 2007) multiplied by 1.021 x 0.80 in respect of primary schools and by 1.021 x 0.875 in respect of secondary schools; in respect of funding period 2, the mean value of funding per pupil in the school's redetermined adjusted budget share for funding period 1 (calculated using pupil numbers on 17th January 2008) multiplied by 1.021 x 0.80 in respect of primary schools and by 1.021 x 0.875 in respect of secondary schools; and in respect of funding period 3, the mean value of funding per pupil in the school's adjusted budget share for

funding period 2 (calculated using pupil numbers on 15th January 2009) multiplied by 1.021 x 0.80 in respect of primary schools and by 1.021 x 0.875 in respect of secondary schools.

3. Except where paragraph 4 applies, where the relevant number of pupils for the financial year beginning on 1st April 2007, funding period 1, funding period 2, or funding period 3 is 75 or fewer, that school's guaranteed funding level for the funding period, or periods as the case may be, during which the number is 75 or fewer, must be calculated as follows:

- (a) for funding period 1—
 - (i) where the relevant number of pupils in funding period 1 is the same as the relevant number for the financial year beginning on 1st April 2007 the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils in funding period 1 is lower than the relevant number of pupils for the financial year beginning on 1st April 2007 the guaranteed funding level must be $A - (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools,
 - (iii) where the relevant number of pupils in funding period 1 is higher than the relevant number of pupils for the financial year beginning on 1st April 2007 the guaranteed funding level must be $A + (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools;
- (b) for funding period 2—
 - (i) where the relevant number of pupils in funding period 2 is the same as the relevant number for funding period 1, the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils in funding period 2 is lower than the relevant number of pupils for funding period 1, the guaranteed funding level must be $A - (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools,
 - (iii) where the relevant number of pupils in funding period 2 is higher than the relevant number of pupils for funding period 1, the guaranteed funding level must be $A + (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools;
- (c) for funding period 3—
 - (i) where the relevant number of pupils in funding period 3 is the same as the relevant number for funding period 2, the guaranteed funding level must be A,
 - (ii) where the relevant number of pupils in funding period 3 is lower than the relevant number of pupils for funding period 2, the guaranteed funding level must be $A - (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools,
 - (iii) where the relevant number of pupils in funding period 3 is higher than the relevant number of pupils for funding period 2, the guaranteed funding level must be $A + (B \times D/E \times 1.021)$ in respect of primary schools and secondary schools;

where—

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

D is the total funding within the redetermined adjusted budget share determined on the basis of pupil numbers for, in respect of funding period 1, the financial year beginning on 1st April 2007, in respect of funding period 2, funding period 1 and, in respect of funding period 3, funding period 2; and

E is, in respect of funding period 1, the relevant number of pupils for the financial year beginning 1st April 2007' in respect of funding period 2, the relevant number of pupils for funding period 1, and, in respect of funding period 3, the relevant number of pupils for funding period 2.

For the purposes of this paragraph, "the relevant number" means, in respect of funding period 1, either the number of pupils registered at the school on 18th January 2007 or the number of pupils registered at the school on 17th January 2008; in respect of funding period 2, either the number of

pupils registered at the school on 17th January 2008 or the number of pupils registered at the school on 15th January 2009; and, in respect of funding period 3, either the number of registered pupils at the school on 15th January 2009, or the number of pupils registered at the school on 21st January 2010.

4. Where a school opens:

- (a) in funding period 1, and is a replacement for two or more schools being discontinued in funding period 1, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school's redetermined adjusted budget share for the financial year beginning on 1st April 2007 is to be determined using the sum of the relevant number of pupils in the discontinued schools for that financial year as the relevant number for the purposes of paragraph 1(b);
- (b) in funding period 2, and is a replacement for two or more schools being discontinued in funding period 2, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school's redetermined adjusted budget share for funding period 1 is to be determined using the sum of the relevant number of pupils in the discontinued schools for that funding period as the relevant number for the purposes of paragraph 1(c);
- (c) in funding period 3, and is a replacement for two or more schools being discontinued in funding period 3, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school's redetermined adjusted budget share for funding period 2 is to be determined using the sum of the relevant number of pupils in the discontinued schools for that funding period as the relevant number for the purposes of paragraph 1(c).

Special Schools

5.—(1) A local education authority must provide in their formula that any amount allocated in accordance with regulation 16(1)(a) in respect of a place at a special school—

- (a) for funding period 1 must be at least 2.1% higher than the amount initially determined in relation to the financial year beginning on 1st April 2007 in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 15(1)(a) of the 2006 Regulations;
- (b) for funding period 2, must be at least 2.1% higher than the amount initially determined in relation to funding period 1 in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 16(1)(a) of these Regulations; and
- (c) for funding period 3, must be at least 2.1% higher than the amount initially determined in relation to funding period 2 in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 16(1)(a) of these Regulations.

(2) (a) That portion of the redetermined budget share of a special school for funding period 1 calculated otherwise than in accordance with regulation 16 (but not including adjustments due under regulation 23 (excluded pupils)) must be at least 2.1% higher than that portion of the initially determined budget share for the financial year beginning on 1st April 2007 calculated otherwise than in accordance with regulation 15 of the 2006 Regulations but not including regulations 21, 22 (prior year adjustments) and 23 (excluded pupils) of those Regulations; and

- (b) that portion of the initially determined budget share of a special school for funding period 2 or 3 calculated otherwise than in accordance with regulation 16 (but not including adjustments due under regulation 23) must be at least 2.1% higher than that portion of the initially determined budget share for funding period 1 or 2, as the case may be, calculated otherwise than in accordance with regulation 16 of these Regulations but not including adjustments due under regulation 23.

CONTENTS OF SCHEMES

The matters referred to in regulation 26, being matters connected with the financing of schools maintained by a local education authority, required to be dealt with in the local education authority's scheme are as follows:

1. The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares, including a mechanism for the deduction of excess surplus balances from budget shares.

2. Amounts which may be charged against schools' budget shares.

3. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.

4. The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.

5. Terms on which services and facilities are provided by the authority for schools maintained by them.

6. The payment of interest by or to the authority.

7. The times at which amounts equal in total to the school's budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.

8. The virement between budget heads within the delegated budget.

9. Circumstances in which a local education authority may delegate to the governing body the power to spend any part of the authority's LEA budget or schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act^(a).

10. The use of delegated budgets and of sums made available to a governing body by the local education authority which do not form part of delegated budgets.

11. Borrowing by governing bodies.

12. The banking arrangements that may be made by governing bodies.

13. A statement as to the personal liability of governors in respect of schools' budget shares having regard to section 50(7) of the 1998 Act.

14. A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act^(b).

15. The keeping of a register of any business interests of the governors and the head teacher.

16. The provision of information by and to the governing body.

17. The maintenance of inventories of assets.

(a) Section 49(4) is amended by section 215 of, and paragraph 100 of Schedule 21 to the 2002 Act.

(b) Section 519 is amended by section 140 of, and paragraph 139 of Schedule 30 to, the 1998 Act. Regulations made under this section are the Education (Governors' Allowances) (England) Regulations 2003 (S.I. 2003/523).

- 18.** Plans of a governing body's expenditure.
- 19.** A statement as to the taxation of sums paid or received by a governing body.
- 20.** Insurance.
- 21.** The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc. Act 1974.
- 22.** The provision of legal advice to a governing body.
- 23.** Funding for child protection issues.
- 24.** School meals.
- 25.** How complaints by persons working at a school or by school governors about financial management or financial propriety at the school will be dealt with and to whom such complaints should be made.
- 26.** Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the 2002 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the financial arrangements of local education authorities in relation to the funding of maintained schools for the financial years 2008-9 (funding period 1), 2009-10 (funding period 2), and 2010-11 (funding period 3).

The Financing of Maintained Schools (England) Regulations 2004, The LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004 and The LEA Budget, Schools Budget and Individual Schools Budget (Amendment) (England) Regulations 2005 are revoked.

These Regulations define the LEA Budget (regulation 3 and Schedule 1), the schools budget (regulation 5 and Schedule 2), and central expenditure (regulation 7 and Schedule 2). They provide the basis upon which a local education authority may determine schools' budget shares, and impose requirements in relation to schemes of delegation.

The most significant changes from the 2006 Regulations are: a new regulation on arrangements for pupils in maintained nursery schools and nursery classes (regulation 17); the replacement of the Schedule relating to Maximum Increase in Central Expenditure by a simpler provision (regulation 7); and the removal of sixth form funding from the calculation of the MFG (Schedule 4).

New regulation 17 provides that, in initially determining budget shares for funding periods 1, 2 and 3, local education authorities may count either pupil numbers and hours of attendance or places in maintained nursery schools and nursery classes in other primary schools. When redetermining budget shares for funding periods 2 and 3, they must take into account the number of pupils on specified dates unless particular circumstances apply. Where pupil numbers are counted, they may be weighted in accordance with: the age of pupils when admitted to the school; whether pupils have been admitted in excess of the agreed admissions number; and special educational needs.

The Schedule on Maximum Increase in Central Expenditure in the 2006 Regulations is replaced by a requirement in regulation 7 that a local education authority must limit any increase in central expenditure to the total amount of any increase in the individual schools budget plus any increase in expenditure on provision of nursery education by PVI providers, unless the schools forum agree to lift this limit.

Other changes are: new definitions of "gifted and talented pupils", "practical and applied learning" and "PVI providers", and changes to the definitions of "combined services", "schools specific contingency" and "termination of employment costs" in regulation 1(4); an amendment to the definition of the schools budget in regulation 5(1)(c) so that it now includes expenditure connected with a local education authority's functions relating to the provision of primary and secondary education; amendments to regulation 6 which make clear that pay arrears due to staff whose salaries are met from the schools budget and any costs of financing the payment of such arrears can be met from the schools budget even if monies funding payment of such arrears are appropriated from capital expenditure; a new requirement for local education authorities to advise schools of any likely redeterminations for funding periods 1, 2 and 3 before the beginning of funding period 1, and to notify schools of redeterminations within 28 days of making them (regulation 12); changes to the weightings and the dates relating to pupil numbers (regulation 15), and removal of references to pupils in maintained nursery schools and nursery classes in other primary schools from regulations 15 and 16; removal of the regulations relating to prior year adjustments; changes to the amounts attributable to excluded pupils and provision for a redetermination to be made to a school's budget share in any circumstances where a pupil leaves the school and is provided with alternative education funded by a local education authority (regulation 23); and a change to the limit on the number of pupils affecting the ability of the schools forum to approve additional arrangements from 20% to 50% (regulation 25).

Minor drafting changes to Schedules 1 and 2 include: removal of references to and School Organisation Committees; a change to the heading of Schedule 2 to make clear that the classes and descriptions of planned expenditure in the Schedule are prescribed for the purposes of the schools budget, and may be deducted to determine the individual schools budget; removal of references to the Threshold and Performance Pay Grant; inclusion of a reference to pay arrears for staff funded from the schools budget to make clear that arrears (as well as salaries) may be deducted under the Schedule (paragraph 25); changes to the wording of paragraph 29 of Schedule 2 and paragraph 15 of Schedule 3; and minor changes in the calculation methodology of the Minimum Funding Guarantee (Schedule 4) as the Schedule now relates to three funding periods, as opposed to two.

STATUTORY INSTRUMENTS

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