STATUTORY INSTRUMENTS

2012 No. 335

EDUCATION, ENGLAND

The School Finance (England) Regulations 2012

Made - - - -	*8th February 2012*
Laid before Parliament -	*16th February 2012*
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The Secretary of State for Education makes the following Regulations in exercise of powers conferred by sections 45A(**a**), 45AA(**b**), 47(**c**), 47ZA(**d**), 47A(4)(**e**), 48(1) and (2)(**f**), 49(2) and (2A)(**g**) and 138(7) of, and paragraph 2B(**h**) of Schedule 14 to, the School Standards and Framework Act 1998(**i**) and section 24(3) of the Education Act 2002(**j**).

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School Finance (England) Regulations 2012 and come into force on 15th March 2012.

(2) These Regulations apply in relation to the financial year beginning on 1st April 2012.

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

(4) In these Regulations—

"the 1996 Act" means the Education Act 1996(**k**);

"the 1998 Act" means the School Standards and Framework Act 1998;

"the 2000 Act" means the Learning and Skills Act 2000(**l**);

"the 2002 Act" means the Education Act 2002;

"the 2005 Act" means the Education Act 2005(**m**);

"the 2006 Act" means the Education and Inspections Act 2006(**n**);

"the 2009 Act" means the Apprenticeships, Skills, Children and Learning Act 2009(**o**);

"the 2011 Regulations" means the School Finance (England) Regulations 2011(**p**);

"admission number" means the number of pupils in any relevant age group intended to be admitted in any school year as determined or, where the context requires, proposed to be determined by an admission authority in accordance with section 88D of the 1998 Act;

"advanced skills teacher" is defined in section 2 of the School Teachers' Pay and Conditions Document 2011 and Guidance on School Teachers' Pay and Conditions(**q**);

(**a**) 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.
(**b**) Inserted by section 101 of, and paragraph 4 of Schedule 16 to, the 2005 Act.
(**c**) Amended by section 101 of, and paragraph 6 of Schedule 16 to, the 2005 Act.
(**d**) Inserted by section 202 of the Apprenticeships, Skills, Children and Learning Act 2009 (c22).
(**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 2002 Act, section 57 of, paragraph 2 of Schedule 5 to, the 2006 Act, section 165 of the Education and Skills Act 2008 (c.25) and section 194 of the Apprenticeships, Skills, Children and Learning Act 2009.
(**f**) Section 48 was 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, section 57 of, and paragraph 3 of Schedule 5 to, the 2006 Act.
(**g**) Subsections (2) and (2A) were substituted for subsections and (3), as originally enacted, by section 57 of, and paragraph 4 of Schedule 5 to, the 2006 Act.
(**h**) Paragraphs 2A and 2B of Schedule 14 were substituted for paragraph 2, as originally enacted, by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.
(**i**) 1998 c.31. For the meaning of "prescribed" and "regulations", see section 142(1) of the 1998 Act.
(**j**) 2002 c.32. For the meaning of "prescribed" and "regulations", see section 212 of the 2002 Act.
(**k**) 1996 c.56.
(**l**) 2000 c.21.
(**m**) 2005 c.18.
(**n**) 2006 c.40.
(**o**) 2009 c.22.
(**p**) S.I. 2011/371, as amended by S.I.2011/778.
(**q**) This document is referred to in S.I. 2011/1917 and can be found at www.education.gov.uk.

"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(**a**);

"CRC" means the CRC Energy Efficiency Scheme operated by the Environment Agency;

"central expenditure" means the total amount deducted by a local authority from their schools budget in accordance with regulation 7;

"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;

"children in need" means children in respect of whom the local authority in whose area they reside must provide a range and level of services appropriate to their needs under section 17 of the Children Act 1989(**b**);

"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 authority by the Secretary of State under section 14 of the 2002 Act;

a reference to a determination or redetermination of a budget share or amount to be allocated is for the funding period, unless otherwise stated;

"early years provision" has the meaning assigned to it in section 20 of the Childcare Act 2006(**c**);

"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 have 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 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 to correct errors,

and where such circumstances were unforeseen when initially determining the school's budget share;

"funding period" means the financial year beginning on 1st April 2012;

"gifted and talented pupils" means pupils in primary or secondary schools identified as such by a local 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;

"institution within the further education sector" has the meaning given in section 91(3) of the Further and Higher Education Act 1992(**d**);

"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(**e**);

"local authority's formula" has the meaning in regulation 9;

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

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(**a**) 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).
(**b**) 1989 c.41.
(**c**) 2006 c.21.
(**d**) 1992 c.13.
(**e**) Sections 85 and 85A were substituted for section 85, as originally enacted, by section 74(1) of the 2006 Act.

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 such expenditure of that class or description as the authority may incur in relation to Academies, and to pupils registered at Academies;

"non-domestic rate" has the meaning given in section 54 of the Local Government Finance Act 1988(**a**);

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

"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;

"prescribed early years provision" means early years provision prescribed for the purposes of section 7(1) of the Childcare Act 2006;

"previous funding period" means the financial year beginning on 1st April 2011;

"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(**c**);

"provider", in relation to prescribed early years provision, may be a governing body of a school or a relevant early years provider;

"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;

"pupil premium" means the amount allocated by a local authority from the pupil premium grant to a school in respect of each registered pupil at that school who is entitled to it under the terms and conditions of the grant;

"pupil premium grant" is a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

"relevant early years provider" means a provider of prescribed early years provision, other than the governing body of a maintained school;

"relevant early years provision" means prescribed early years provision provided by a relevant early years provider;

"school year" has the meaning given in section 579(1) of the 1996 Act(**d**);

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 authority where the authority are 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;

(**a**) 1988 c.41.

(**b**) S.I. 1997/319. These Regulations have lapsed but article 11 of the Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains a savings provision for regulation 16 of the 1997 Regulations.

(**c**) This definition is taken from section 21 of the Local Government Act 2003 and regulation 31 of the Local Government (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

(**d**) Section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44) inserted this definition.

"sixth form grant" means a grant of that name paid to a local authority by the YPLA under section 61 of the 2009 Act or the Secretary of State under section 14 of the 2002 Act in respect of sixth form pupils, on condition that it is passed on to a particular school;

"specific grant" means any grant (other than the Dedicated Schools Grant or any sixth form grant) 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;

"unavoidable costs" means costs which must be incurred by virtue of a statutory requirement;

"YPLA" is the Young People's Learning Agency for England(**a**).

(5) In these Regulations, a reference to "a mainstreamed grant" means a specific grant which was merged into the Dedicated Schools Grant for the financial year commencing 1st April 2011 but was paid to local authorities by the Secretary of State as a separate grant under section 14 of the 2002 Act, in addition to the Dedicated Schools Grant, for the financial year commencing 1st April 2010 and includes any of the following grants—

(a) School Standards Grant,

(b) School Standards Grant (Personalisation),

(c) School Development Grant (Standards Fund only),

(d) School Lunch Grant,

(e) Ethnic Minority Achievement Grant (EMAG),

(f) 1-2-1 Tuition Grant,

(g) Extended Schools – Sustainability Grant,

(h) Extended Schools – Subsidy Grant,

(i) Targeted Support for the Primary National Strategy allocated to schools (consisting of Universal and Targeted elements, Every Child elements, Leading Teachers element, Early Years Foundation Stage element and Modern Foreign Languages element),

(j) Targeted Support for the Secondary National Strategy allocated to schools (consisting of Universal and Targeted elements and Leading Teachers element),

(k) Diploma Formula Grant,

(l) London Pay Addition Grant.

Revocation of previous Regulations

2. The School Finance (England) Regulations 2008(**b**) and the School Finance (Amendment) (England) Regulations 2010(**c**) are revoked on 1st April 2012.

(**a**) The YPLA was abolished by section 66 of the Education Act 2011 (c.21). Section 66 is due to be commenced on 1st April 2012.
(**b**) S.I. 2008/228.
(**c**) S.I. 2010/210.

PART 2

Action to be Taken by a Local Authority

CHAPTER 1

Appropriation of the Non-Schools Education Budget

The Non-Schools Education Budget

3. The following classes or descriptions of local authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's non-schools education 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).

CHAPTER 2

Determination of Schools Budgets, Individual Schools Budgets, and Budget Shares

Initial determination of a local authority's schools budget

4. A local authority must not later than 31st March 2012—

(a) make an initial determination of their schools budget; and

(b) give notice of that determination to the governing bodies of the schools they maintain.

The schools budget

5.—(1) The classes or descriptions of local authority expenditure specified in sub-paragraphs (a) to (d) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local 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, 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 authority;

(c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraph (a) or (b); and

(d) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraph (a), (b) or (c).

(2) Where a local 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 of a local authority's schools budget where that expenditure is incurred in providing an educational benefit to those pupils.

Exceptions

6. A local authority's non-schools education 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,

(ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph 6(a)(ii); and

(c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(**a**) (arrangements for patrolling school crossings).

Determination of the individual schools budget for the funding period and limit on increase in central expenditure

7.—(1) Subject to paragraphs (2) to (4), not later than 31st March 2012, a local authority must deduct from their schools budget 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 budget.

(2) In deducting the central expenditure under paragraph (1), a local authority must ensure that—

(a) where the authority's schools budget increases from the previous funding period to the funding period, the percentage of any increase in the central expenditure does not exceed the percentage of the increase in the schools budget,

(b) where the authority's schools budget decreases from the previous funding period to the funding period, the central expenditure decreases, and the percentage of the decrease is not less than the percentage of the decrease in the schools budget,

unless they obtain authorisation to exceed these limits from their schools forum under regulation 13(1)(a) or the Secretary of State under regulation 13(3).

(3) In deducting the central expenditure referred to in paragraph 36 of Schedule 2, a local authority must not exceed the limit referred to in that paragraph, unless they obtain authorisation to do so from their schools forum under regulation 13(1)(c) or the Secretary of State under regulation 13(3).

(4) Where a local authority carries forward a deficit in the central expenditure from the previous funding period to the funding period, which reduces the amount of the schools budget available, the funding of this deficit from the schools budget must be authorised by their schools forum under regulation 13(1)(d) or the Secretary of State under regulation 13(3).

(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.

Consultation

8.—(1) A local authority may make changes to the formulae they have used in the financial year beginning 1st April 2011.

(2) Subject to paragraph (3), a local 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.

(**a**) 1984 c.27. Section 26 was amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), 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).

(3) Paragraph (2) does not apply to changes made relating to matters referred to in regulation 20 (sixth form funding) or 23 (excluded pupils).

Formulae for determination of budget shares etc

9.—(1) A local authority must, before the beginning of the funding period and after consulting their schools forum about the matter, decide upon the formula which they will use to determine and redetermine the budget shares for schools maintained by them (other than nursery schools).

(2) Subject to paragraph (3), a local authority must use the formula determined under paragraph (1) in all determinations and redeterminations of school budget shares in respect of the funding period.

(3) A local authority must, before the beginning of the funding period and after consulting their schools forum about the matter, decide upon the formula they will use to determine and redetermine—

(a) the budget shares for nursery schools maintained by them;

(b) the amounts to be allocated in respect of nursery classes in schools maintained by them;

(c) the amounts to be allocated to relevant early years providers in their area.

(4) A local authority may not make changes to their formulae after the funding period has commenced.

Determination of allocation of budget shares etc for the funding period

10.—(1) Not later than 31st March 2012, a local authority must determine—

(a) the budget share for each of the schools maintained by them (other than nursery schools), using the formula referred to in regulation 9(1); and

(b) the budget share for each of the nursery schools maintained by them, the amount to be allocated in respect of each nursery class in schools maintained by them and the amount to be allocated to each relevant early years provider in their area, using the formula referred to in regulation 9(3),

in accordance with Part 3 of these Regulations.

(2) Not later than 31st March 2012, a local authority must give notice of each budget share or amount determined under paragraph (1) to the governing body of the school or the relevant early years provider concerned.

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 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 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 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 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 authority's formula.

CHAPTER 3

Redetermination of Schools Budgets, Individual Schools Budgets and Schools' Budget Shares

Redetermination of schools budgets and individual schools budgets

12.—(1) Subject to paragraph (2), a local authority may redetermine their schools budget and individual schools budget at any time before or during the funding period.

(2) In making any redetermination under paragraph (1), a local authority—

(a) may only reduce the amount of their schools budget where they receive an amount of Dedicated Schools Grant which is lower than the amount on which they based their determination under regulation 7;

(b) must not reduce their individual schools budget by making further deductions of central expenditure from their schools budget unless they obtain authorisation to do so from their schools forum under regulation 13(1)(b) or the Secretary of State under regulation 13(3);

(c) must comply with the limits referred to in paragraph 36 of Schedule 2 and imposed by regulation 7(2) unless they obtain authorisation to vary those limits from their schools forum under regulation 13(1)(c) or the Secretary of State under regulation 13(3).

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

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

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

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

(a) the making of further deductions from their schools budget of any central expenditure under regulation 7(1), in excess of the limit imposed by regulation 7(2);

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

(b) the reduction of their individual schools budget by making further deductions of central expenditure from their schools budget under regulation 12(1), pursuant to regulation 12(2)(b);

(c) the varying of any limit referred to in paragraph 36 of Schedule 2; or

(d) the funding of any deficit in their central expenditure from the schools budget under regulation 7(4).

(2) Where—

(a) a schools forum does not authorise any of the matters referred to in paragraph (1); or

(b) a local authority are not required to establish a schools forum for their area,

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

(3) On the application of a local authority under paragraph (2), the Secretary of State may authorise the matters referred to in paragraph (1).

PART 3

Formulae for Determination of Budget Shares etc

CHAPTER 1

Factors and Criteria Taken into Account

Pupil numbers

14.—(1) Subject to regulation 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision) and paragraph (2), in determining and redetermining budget shares for primary and secondary schools, a local authority must ascertain and take into account in their formula the number of registered pupils at those schools on the date specified in paragraph (5), 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 have 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 15(1)(b) or (c);

(b) in respect of whom a sixth form grant is payable; or

(c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 33 of Schedule 3.

(3) Where a local authority exercise their discretion under regulation 15(1) to take into account places, they may also take into account in their formula 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 date specified in paragraph (5).

(4) A local 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, hours of attendance;

(d) whether a pupil has special educational needs;

(e) whether the pupil is attending a middle school;

(f) whether the pupil is at key stage 4, and is accessing practical and applied learning;

(g) whether the pupil, although registered at a school, is also attending an institution within the further education sector or a course delivered by any training provider;

(h) 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 33 of Schedule 3);

(i) whether the pupil is registered at more than one maintained school.

(5) The date for ascertaining pupil numbers is 19th January 2012.

(6) A local 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 permanent exclusion from another school.

Places

15.—(1) In determining and redetermining budget shares, a local 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 have reserved for children with special educational needs; and

(c) schools with boarding accommodation.

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

(3) If a local authority take into account any places 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 14(5).

Special arrangements for pupils in maintained nursery schools and nursery classes and for children receiving relevant early years provision

16.—(1) Subject to paragraphs (5) and (6), in determining—

(a) budget shares for nursery schools maintained by them,

(b) amounts to be allocated in respect of nursery classes in schools maintained by them and

(c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, as the case may be, using as a basis for the calculation the most recent data available about the actual numbers of registered pupils or children.

(2) A local authority must review the budget share for each maintained nursery school and the amount allocated in respect of each nursery class when further information about the hours of attendance becomes available, taking into account—

(a) in the case where the local authority decide to fund only prescribed early years provision—

(i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive prescribed early years provision during the period (using as a basis for the calculation the actual hours of such attendance in each of at least three sample weeks); or

(ii) the actual total number of hours of such attendance for the period;

(b) in the case where the local authority decide to fund early years provision in excess of that which is prescribed—

(i) the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class who will receive early years provision during the period (using as a basis for the calculation the actual hours of such attendance in each of at least three sample weeks); or

(ii) the actual total number of hours of such attendance for the period; and

redetermine that budget share or amount allocated, as the case may be.

(3) A local authority must review the amount allocated to each relevant early years provider, when further information about hours of attendance becomes available, taking into account—

(a) the predicted total number of hours of attendance of children who will receive prescribed early years provision from the relevant early years provider during the period (using as a basis for the calculation the actual hours of such attendance in at least three sample weeks); or

(b) the actual total numbers of hours of such attendance for the period; and

redetermine the amount allocated.

(4) Where a local authority make any redetermination pursuant to paragraph (2) or (3) they must give notice to the governing body of the school or the relevant early years provider concerned of the redetermination and the date on which it will be implemented, within 28 days of the redetermination.

(5) When determining budget shares for maintained nursery schools, amounts to be allocated in respect of nursery classes and amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of registered pupils in the nursery school or nursery class or of children receiving prescribed early years provision from the relevant early years provider, according to the special educational needs of any such pupils or children.

(6) When determining amounts to be allocated to relevant early years providers in their area, a local authority may weight the predicted total number of hours of attendance of children receiving prescribed early years provision from the relevant early years provider, according to whether any children have been admitted to the relevant early years provider in excess of the number agreed with the authority.

(7) When determining—

(a) budget shares for maintained nursery schools,

(b) amounts to be allocated in respect of nursery classes maintained by them and

(c) amounts to be allocated to relevant early years providers,

a local authority may take into account in their formula the number of places they wish to fund in the school, class or provider (instead of the predicted total number of hours of attendance), where those places have been reserved by the authority for children with special educational needs or children in need.

(8) When determining budget shares for schools maintained by them which provide nursery classes, a local authority may reduce the amount payable to each such school under the formula referred to in regulation 9(1) by a sum representing the amount to be allocated in respect of the nursery class in that school under the formula referred to in regulation 9(3).

Differential funding

17.—(1) For the purpose of determining budget shares, a local authority must use factors or criteria which differentiate between different categories or descriptions of school in so far 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 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 made by that school's governing body as to the inclusion in their school's budget share of

funding in respect of expenditure of the kinds referred to in paragraphs 13 (admissions), 14(a) and (b) (meals), 27 (insurance) and 29 (library services) of Schedule 2.

(3) A local authority may use factors or criteria in their formula which differentiate between maintained nursery schools, primary schools, secondary schools and special schools, or between schools whose pupils are in different age ranges.

(4) For the purpose of determining or redetermining—

(a) budget shares for maintained nursery schools,

(b) amounts to be allocated in respect of nursery classes in schools maintained by them and

(c) amounts to be allocated to relevant early years providers in their area,

a local authority may use factors or criteria which differentiate between different categories or descriptions of school or provider on the basis of unavoidable costs.

Additional factors or criteria

18.—(1) Subject to paragraph (2) and regulation 17 (differential funding), in determining budget shares, a local authority may take into account in their formula any or all of the factors or criteria set out in Part 1 of Schedule 3.

(2) In determining budget shares for nursery schools maintained by them, amounts to be allocated in respect of nursery classes in schools maintained by them and amounts to be allocated to relevant early years providers in their area, a local authority may take into account in their formula—

(a) any of the factors or criteria set out in Part 1 of Schedule 3, other than those set out in paragraphs 23 and 33; and

(b) any or all of the factors or criteria set out in Part 2 of Schedule 3.

(3) In determining—

(a) budget shares for maintained nursery schools,

(b) amounts to be allocated in respect of nursery classes in schools maintained by them and

(c) amounts to be allocated to relevant early years providers in their area,

a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at the nursery school or in the nursery class or among children receiving relevant early years provision from the provider, if they have no factor elsewhere in their formula which is based on such incidence.

(4) In determining budget shares for primary and secondary schools, a local authority must take into account in their formula a factor or factors based on the incidence of social deprivation among pupils registered at each school if they have no factor elsewhere in their formula which is based on such incidence.

(5) A factor included in a local authority's formula pursuant to paragraph 17 of Schedule 3 (school milk, meals and refreshment) is not, for the purposes of paragraphs (3) and (4), a factor based on the incidence of social deprivation among pupils registered at schools or children receiving relevant early years provision.

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

(7) Where a local authority make changes to the factors or criteria taken into account in any of their formulae from the previous funding period for the funding period, they may make such transitional provision as they consider reasonable.

Minimum funding guarantee

19.—(1) Subject to paragraph (3), in determining and redetermining budget shares for schools maintained by them, a local authority must ensure—

(a) in respect of primary and secondary schools, that an amount equal to the guaranteed funding level is included, calculated in accordance with paragraphs 1–4 of Schedule 4;

(b) in respect of special schools, that the formula must provide for a minimum amount of funding, calculated in accordance with paragraph 5 of Schedule 4.

(2) For the purposes of determining budget shares, paragraph (1) does not apply to any school—

(a) opening during the funding period, except in the circumstances set out in paragraph 4 of Schedule 4;

(b) closing during the funding period in circumstances where a local authority have redetermined that school's budget share during that period.

(3) A local 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

20.—(1) A local authority must include in a secondary school's budget share an amount equal to any sum notified to the local authority by the YPLA or the Secretary of State as being the allocation in respect of that school's sixth form grant.

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

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

(4) A local authority must redetermine the budget share of a secondary school before the end of the funding period where the authority receive a written notification from the YPLA or the Secretary of State of a revised allocation in respect of the sum referred to in paragraph (1).

New, reorganised and closing schools

21.—(1) A local authority must include factors or criteria in their formula which enable them to determine, or redetermine, a school's budget share so as to take into account the particular needs of that school in the cases of—

(a) a proposed school;

(b) a school, proposals for the establishment of which have not been fully implemented;

(c) a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act;

(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 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 prescribed 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 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 would be fully implemented; or

(b) if no such number was indicated, such number as the authority may determine.

Federated schools

22.—(1) Subject to paragraph (2), where two or more schools are federated under section 24 of the 2002 Act, the local authority may treat them as a single school for the purposes of these

Regulations and, accordingly, allocate a single budget share to the governing body of the federation.

(2) Where the local authority decide to allocate a single budget share to the governing body of a federation under paragraph (1) and the amount of that share ('X') would be less than would have been allocated to the governing body had the authority allocated a budget share for each school within the federation ('Y'), the authority must adjust X by adding to it an amount which equates to the difference between Y minus X.

(3) Where one or more schools are to leave a federation which has been allocated a single budget share under paragraph (1), the local authority must—

(a) determine the budget share for each of the leaving schools; and

(b) redetermine the budget share for the federation,

in accordance with Part 3 of these Regulations.

CHAPTER 2

Adjustments, Correction of Errors, and Additional Arrangements Authorised by Schools Forums or the Secretary of State

Pupils permanently excluded from, or leaving, maintained schools

23.—(1) Where a pupil is permanently excluded from a school maintained by a local authority ("the excluding school") the authority must redetermine the excluding school's budget share in accordance with paragraph (2).

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

(a) A is the amount determined by the authority in accordance with this Part, that would be attributable 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 for the full funding period; and

(b) 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 who has been permanently excluded from a school maintained by a local authority is admitted to another school maintained by a local authority ("the admitting school") in the funding period, 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 x (E / F) where—

(a) D is the amount by which the authority reduced the budget share of the excluding school, or would have reduced the budget share had that school been maintained by the authority;

(b) 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

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

(5) 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 x (H / I) where—

(a) G is the amount by which the authority reduced the school's budget share under paragraph (2);

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

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

(6) 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 authority other than at a school which is maintained by that authority.

(7) For the purposes of paragraph (2)(a), the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula, 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 a sixth form grant is payable, the amount attributable to that pupil is £3,135 for the funding period).

(8) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority ("the excluding school") the local authority must redetermine the excluding school's budget share in accordance with paragraph (9).

(9) The excluding school's budget share must be reduced by J x (K/52) where—

(a) J is the amount of the pupil premium allocated to the excluding school for the funding period in respect of that child;

(b) K 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, K is the number of complete weeks remaining in that school year calculated from the relevant date.

(10) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority and admitted to another school maintained by a local authority ("the admitting school") in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (11).

(11) The admitting school's budget share must be increased by an amount which may not be less than L x (M/N) where—

(a) L is the amount by which the authority reduced the budget share of the excluding school or would have reduced the budget share had that school been maintained by the authority;

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

(c) N is the number of complete weeks remaining in the funding period calculated from the relevant date.

(12) Where a permanently excluded pupil in respect of whom a pupil premium is payable 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 O x (P / Q) where—

(a) O is the amount by which the authority reduced the school's budget share under paragraph (9);

(b) P is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and

(c) Q is the number of complete weeks remaining in the funding period calculated from the relevant date.

(13) Paragraphs (8) and (9) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(14) 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.

Correction of errors and changes in non-domestic rates

24.—(1) A local authority may at any time during the funding period redetermine a school's budget share for the funding period or any earlier funding period in order to correct an error in a determination or redetermination under these or any 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 authority may redetermine a school's budget share to take into account any changes in that school's non-domestic rate liability in relation to the funding period or any earlier funding period.

(3) In so far 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 Secretary of State or the schools forum

25.—(1) Subject to paragraph (2), on application by a local 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 the Secretary of State 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 authority to determine or redetermine budget shares in the cases referred to in paragraph (3) unless—

(a) the authority have first made an application to their schools forum for such authorisation which has been refused; or

(b) the authority are not required to establish a schools forum for their area.

(3) In determining or redetermining budget shares for schools which they maintain, a local authority may, when calculating the guaranteed funding level in accordance with paragraphs 1-4 of Schedule 4—

(a) replace the figure of 0.985 referred to in paragraphs 2, 3 and 5 of Schedule 4 with a higher figure,

(b) exclude from the redetermined adjusted budget share for the previous funding period any amounts included in the budget share in respect of any of the following factors or criteria—

(i) advanced skills teachers employed at the school,

(ii) the funding of places in primary or secondary schools which the authority have reserved for children with special educational needs,

(iii) any factor specific to a site or school used only in exceptional circumstances, but the circumstances which attracted that factor no longer apply to the school,

(iv) an amount which replicates the cash value or formulaic calculation of any sum paid to the school in the form of a Diploma Formula Grant in an earlier funding period,

(v) any factor or criterion which enables the authority to take into account the particular needs of a proposed school, a school proposals for the establishment of which have not been fully implemented, a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act, a school which is to be discontinued or a school which is to be the subject of a significant change as determined by the authority,

where authorised to do so by their schools forum.

(4) In determining or redetermining budget shares for nursery schools which they maintain or the amounts to be allocated in respect of nursery classes in schools which they maintain, a local authority may disregard regulation 19, where authorised to do so by their schools forum.

(5) Subject to the approval of the schools forum, any authorisations given by the Secretary of State under the 2011 Regulations for the previous funding period may continue to apply in relation to the funding period.

(6) Unless the contrary intention appears in any authorisations given by the schools forum or the Secretary of State or any arrangements approved by the Secretary of State under any previous regulations, such authorisations or arrangements, as the case may be, continue to apply in relation to the funding period, provided the method of calculating the relevant factors or criteria has not changed.

PART 4

Schemes

Required content of schemes

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

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

27.—(1) Where a local authority submit a copy of their proposals to revise their scheme to their schools forum for approval pursuant to paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, 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 the proposals to revise the scheme, they may specify the date upon which the revised scheme is to come into force.

(3) Where—

(a) the schools forum refuse to approve proposals submitted under paragraph 2A(3)(b) of Schedule 14 to the 1998 Act, or approve any such proposals subject to modifications which are not acceptable to the local authority; or

(b) the local 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) When approving proposals to revise the scheme, the Secretary of State may specify the date upon which the 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.—(1) A local authority—

(a) must publish their scheme on a website which is accessible to the general public; and

(b) may publish it elsewhere, in such manner as they see fit.

(2) Whenever a local authority revise the whole or part of their scheme they must publish the scheme as revised on a website which is accessible to the general public by the date that the revisions are due to come into force, together with a statement that the revised scheme comes into force on that date.

Jonathan Hill
Parliamentary Under Secretary of State
Department for Education

8th February 2012

SCHEDULE 1

Regulation 3

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE NON-SCHOOLS EDUCATION BUDGET OF A LOCAL 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).

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, functions under section 175 of the 2002 Act, and other functions relating to child protection.

7. Expenditure incurred in entering into, or subsequently incurred pursuant to, an arrangement under section 31 of the Health Act 1999(**a**) or regulations made under section 75 of the National Health Service Act 2006(**b**) (arrangements between NHS bodies and local authorities).

8. Expenditure on the provision of special medical support for individual pupils in so far as such expenditure is not met by a Primary Care Trust, National Health Service Trust, NHS foundation trust or Local Health Board.

School improvement

9. Expenditure incurred by a local authority in respect of action to support the improvement of standards in the authority's schools, in particular expenditure incurred in connection with functions under the following sections of the 2006 Act—

(a) section 60 (performance standards and safety warning notice),

(b) section 60A (teachers' pay and conditions warning notice),

(c) section 63 (power of local authority to require governing bodies of schools eligible for intervention to enter into arrangements),

(d) section 64 (power of local authority to appoint additional governors),

(e) section 65 (power of local authority to provide for governing bodies to consist of interim executive members) and Schedule 6; and

(f) section 66 (power of local authority to suspend right to delegated budget).

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 excluded 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; and

(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.

11. 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 and under section 22 of the Teaching and Higher Education Act 1998.

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

(**a**) 1999 c.8. Section 31 was repealed by section 6 of, and Schedule 4 to, the National Health Service (Consequential Provisions) Act 2006 (c.43) but section 4 of, and paragraph 1 of Schedule 2 to, that Act contains a savings provision which means that arrangements made under section 31 of the 1999 Act continue to have effect as if made under section 75 of the National Health Service Act 2006.

(**b**) 2006 c. 41.

(**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

14. Expenditure on the payment of 16-19 Bursaries(**a**).

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.

Additional education and training for children, young persons and adults

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

19. Expenditure on the provision by the local authority under sections 507A and 507B of the 1996 Act of recreation, social and physical training, educational leisure-time activities and recreational leisure-time activities.

Strategic management

20. Expenditure on education functions related to—

(a) functions of the director of children's services and the personal staff of the director;

(b) planning for the education service as a whole;

(c) functions of the authority under Part I of the Local Government Act 1999(**b**) (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 IV of Part 2 of the 1998 Act (financing of maintained schools) 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 related financial administration;

(g) the formulation and review of the methods of allocation of resources to schools and other bodies;

(h) the authority's monitoring of compliance with the requirements of their financial scheme prepared under section 48 of the 1998 Act, and any other requirements in relation to the provision of community facilities by governing bodies under section 27 of the 2002 Act;

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legislation. Relevant regulations made under section 1(1) of the 1962 Act are the Education (Mandatory Awards) Regulations 2003 (S.I. 2003/1994), as amended by S.I. 2004/1038 and 2004/1792). These Regulations describe the designated courses and methodology for calculating grants.

(**a**) A 16-19 Bursary is financial assistance under section 14 of the 2002 Act paid to, or in respect of, a person who is aged 16 to 19 in connection with his undertaking any course or training.

(**b**) 1999 c. 27.

(i) 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(**a**);

(j) the authority's functions under regulations made under section 44 of the 2002 Act(**b**);

(k) 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;

(l) 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;

(m) 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;

(n) 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;

(o) 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, including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such staff;

(p) determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff;

(q) the authority's functions regarding the appointment or dismissal of employees;

(r) 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;

(s) compliance with the authority's duties under the Health and Safety at Work etc Act 1974(**c**) and the relevant statutory provisions as defined in section 53(1) of that Act, in so far 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;

(t) the investigation and resolution of complaints;

(u) legal services relating to the statutory functions of the authority;

(v) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;

(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 functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies); and

(y) the authority's functions under the discrimination provisions of the Equality Act 2010(**d**) in so far 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.

(**a**) 1972 c. 70.
(**b**) The Consistent Financial Reporting (England) Regulations 2003 (S.I. 2003/373, as amended by S.I. 2004/393, 2006/437, 2007/599 and 2008/46.
(**c**) 1974 c.37.
(**d**) 2010 c.15.

Other functions

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

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.

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(**b**) (enforcement of, and power to make byelaws in relation to, restrictions on the employment of children).

SCHEDULE 2

Regulations 5 and 7

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE PRESCRIBED FOR THE PURPOSES OF THE SCHOOLS BUDGET OF A LOCAL 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 unless otherwise stated.

(**a**) Section 390 was amended by section 140(1) of, and paragraph 93 of Schedule 20 to, the 1998 Act.
(**b**) 1933 c.12.

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 that 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 that grant, decisions regarding the expenditure of which are delegated to the governing body of a maintained school.

Threshold and performance pay

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

Special educational provision

3. Subject to paragraphs 4 and 5, 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 the authority have reserved for children with special educational needs.

4. Where a pupil falls within paragraph 3(a) or (b) and—

(a) 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

(b) the cost of pupils in places at the primary or secondary school in question is significantly greater than that for the generality of pupils at the primary or secondary school,

the amount by which the expenditure incurred in making the provision specified in the pupil's statement of special educational needs is greater than that incurred in making provision for a pupil who falls within such generality of pupils.

5. Expenditure on making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 3(b) but the places reserved for pupils with special educational needs are for pupils with visual, hearing, speech or language impairments or other communication disorder.

6. 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 or in cases where it is not met from the general annual grant paid to an Academy by the YPLA or the Secretary of State.

7. Expenditure on support services for pupils who have a statement of special educational needs and for pupils with special educational needs who do not have such a statement.

8. Expenditure for the purposes of encouraging—

(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

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

(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 authority consider it would be unreasonable for such expenditure to be met from a school's budget share.

9. Expenditure incurred 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(**a**).

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.

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 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 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 operation of the system of admissions of pupils to schools (including expenditure incurred in carrying out consultations under section 88C(2) of the 1998 Act(**c**)) 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—

(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 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 on milk and meals pursuant to section 512, 512ZA, 512ZB(**e**) 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.

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

(**a**) The definition is in sub-section (2B), which was inserted by the Education Act 1996 (Amendment of Section 19) (England) Regulations 2007 (S.I. 2007/1507).

(**b**) Section 493 was amended by section 208 of the 2002 Act. Section 494 was amended by section 140(1) of, and paragraph 128 of Schedule 30 to, the 1998 Act and section 117 of, and paragraph 5 of Schedule 18 to, the 2005 Act. Both sections were amended by article 5(1) of, and paragraph 7 of Schedule 2 to the Local Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158).

(**c**) Section 88C(2) was 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) was inserted by section 151(1) and (4) of the Education and Skills Act 2008 (c.25).

(**e**) Sections 512, 512ZA and 512ZB were substituted for section 512 as originally enacted, by section 201 of the 2002 Act. Section 512ZB(4) was amended by section 28(1) of, and paragraph 16 of Schedule 3 to, the Welfare Reform Act 2007 (c.5), sections 9(3)(b) and 58(1) and Part 1 of Schedule 7 to the Welfare Reform Act 2009 (c.24) (not yet in force) and section 26 of the Child Poverty Act 2010 (c.9).

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

17. 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 authority.

18. Remission of boarding fees payable in connection with the attendance of pupils at maintained schools and Academies.

Staff

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

20. Expenditure on making payments to, or in providing a temporary replacement for, any person—

(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 is a safety representatives under the Safety Representatives and Safety Committees Regulations 1977(**d**);

(f) who is a representative of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996(**e**);

(g) who is an employee representative 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;

(i) undertaking duties as a member of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996(**g**);

(j) suspended from working at a school; or

(k) who is appointed a learning representative of a trade union, in order for that person 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 a school other than that in which they are normally based.

22. Expenditure on 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 authority or the governing body of a school.

23. Expenditure on 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 was amended by article 5(1) of, and paragraph 7 of Schedule 2 to, S.I. 2010/1158.
(**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 section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 1996/1513, 1999/860, 1999/2024, 1999/3242, 2005/1541, 2006/594 and 2008/960.
(**e**) S.I. 1996/1513, amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 1999/3242 and 2005/1541.
(**f**) S.I. 2006/246, amended by S.I. 2010/93.
(**g**) 1996 c.14.

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 authority's scheme.

Other expenditure

26. Expenditure on early years provision, excluding expenditure—

(a) on such provision at a maintained school; and

(b) on relevant early years provision.

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.—(1) Subject to paragraph (2), expenditure on library services for primary and special schools, provided that the local authority—

(a) notify the governing body of each school which does not receive funding for library services in its budget share of the amount attributable to library services for that school; and

(b) allow the governing bodies of those schools to determine whether the expenditure on library services in respect of their school is to be spent by—

(i) the authority in themselves providing library services to the school; or

(ii) the authority procuring library services from another local authority.

(2) Expenditure of the description referred to in paragraph (1) 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 have elected to receive funding for library services as part of their school's budget share.

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 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.

36. Expenditure on—

(a) prudential borrowing;

(b) termination of employment costs, where the schools forum has approved the charging of these costs to the schools budget for the funding period in which they were incurred and the revenue savings achieved by the termination of employment to which they relate are equal to or greater than the costs incurred;

(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 37 of Schedule 2 to the 2011 Regulations for the previous funding period.

37. Expenditure on contingencies arising from any adjustment of the formula for providers of prescribed early years provision.

38. Expenditure on the purchase of CRC allowances.

39. Expenditure for the purposes of—

(a) improving the performance of under-performing pupils from ethnic minority groups; and

(b) meeting the specific needs of bilingual pupils,

where the authority consider that it would be more appropriate for them to make this provision.

40. Expenditure on the writing-off of deficits of schools which are discontinued, excluding any associated administrative costs and overheads.

SCHEDULE 3

Regulation 18

ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT IN A LOCAL AUTHORITY'S FORMULA UNDER REGULATION 18

PART 1

1. Special educational needs of pupils determined in a manner that the authority consider appropriate as a means of assessing those 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 authority.

6. Where a school has a split site the funding must be in accordance with criteria published by the authority.

7. Such physical facilities, organisational facilities 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 initiative (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 local 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 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. Where a school is to be discontinued during the financial year or the following financial year.

17. School milk, meals and other refreshment: the authority may not attribute a negative value to any element of this factor.

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 document referred to in an order under section 122 of the 2002 Act (school teachers' pay and conditions).

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

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

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

23. Where schools 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.

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

25. Effect of taxation on schools.

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

27. 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**).

28. Incidence of qualified teachers(**b**) who have been qualified for fewer than twelve months ("NQTs").

29. 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.

30. Incidence of nursery classes and places which the authority have reserved for children with special educational needs.

31. Prior attainment of pupils entering a school.

32. Advanced Skills Teachers employed at a school.

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

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

35. Payments in respect of gifted and talented pupils.

36. Any amount which replicates part of or all of the cash value or formulaic calculation of any sum paid to a school from a specific grant in an earlier funding period, where this specific grant was a mainstreamed grant.

37. Where a school is federated with one or more other schools under section 24 of the 2002 Act.

38. In this Part, any reference to—

(a) "pupils" includes children receiving early years provision;

(b) "school" includes a relevant early years provider;

(c) "school premises" includes premises used by a relevant early years provider, whether or not the early years provider is a school.

PART 2

Applicable only to budget shares for, and amounts to be allocated to, providers of prescribed early years provision

39. The need to improve the quality of provision by particular providers or types of provider.

40. The degree of flexibility in the hours of attendance that a provider makes available.

41. The need to secure or sustain a sufficiency of prescribed early years provision within the authority's area or any sub-area within that area; and in this paragraph "sub-area" means—

(a) an electoral division or ward of the authority; or

(**a**) S.I. 2002/378, amended by S.I. 2004/444 and 2010/190.

(**b**) Qualified teacher has the meaning in regulation 5 of the Education (School Teachers' Qualifications) (England) Regulations 2003 (S.I. 2003/1662, amended by section 74 of the 2005 Act, S.I. 2007/2782 and 2009/3156).

(b) such other appropriate geographical division into which the authority have notionally divided their area.

SCHEDULE 4

Regulation 19

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 sixth form grant;

(b) the "relevant number" of pupils for the previous funding period is the number of registered pupils at the school on 20th January 2011;

(c) subject to paragraphs 3 and 4, the "relevant number" of pupils for the funding period is the number of pupils at the school on 19th January 2012;

(d) references to a redetermined adjusted budget share for the previous funding period include the effect of any additional arrangement approved by the schools forum or the Secretary of State under regulation 25 of the 2011 Regulations, but exclude the following—

(i) any amounts included pursuant to regulations 20 (sixth form funding), 23 (excluded pupils) and 24 (correction of errors) of the 2011 Regulations,

(ii) any amount included in respect of paragraphs 8 (rates), 14 (PFI), 28 (NQTs) and 33 (ICS) of Schedule 3 to the 2011 Regulations, and

(iii) any amounts in respect of funding for named pupils which are deducted from a school's budget share when those pupils leave the school, excluding amounts for the cost of providing free school meals;

(e) references to a redetermined adjusted budget share include the effect of any additional arrangements approved by the schools forum or the Secretary of State under regulation 25 (additional arrangements), but exclude the following—

(i) any amounts included pursuant to regulation 20 (sixth form funding) and 23 (excluded pupils),

(ii) any amounts included in respect of paragraphs 8 (rates), 14 (PFI), 28 (NQTs) and 33(ICS) of Schedule 3; and

(iii) any amounts in respect of funding for named pupils which are deducted from a school's budget share when those pupils leave the school, excluding amounts for the cost of providing free school meals;

(f) for the purposes of this Schedule—

(i) where a school has opened during the previous funding period, its redetermined adjusted budget share for the previous funding period is the amount that it would have been had the school opened on 1st April 2011,

(ii) where a school opens during the funding period, its redetermined adjusted budget share for the funding period is the amount that it would have been had the school opened on 1st April 2012,

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

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

(a) where the relevant number of pupils is the same as the relevant number for the previous funding period, the guaranteed funding level is A,

(b) where the relevant number of pupils is lower than the relevant number for the previous funding period, the guaranteed funding level is A - (B x C),

(c) where the relevant number of pupils is higher than the relevant number for the previous funding period, the guaranteed funding level is A + (B x C);

where—

A is, in respect of the funding period, the redetermined adjusted budget share for the previous funding period multiplied by 0.985 in respect of primary schools and secondary schools,

B is, in respect of the funding period, the difference between the relevant number of pupils for the previous funding period and the funding period,

C is, in respect of the funding period, the mean value of funding per pupil in the school's redetermined adjusted budget share for the previous funding period (calculated using pupil numbers on 20th January 2011) multiplied by 0.985 x 0.80 in respect of primary schools and by 0.985 x 0.875 in respect of secondary schools.

3.—(1) Except where paragraph 4 applies, where the relevant number of pupils for the previous funding period or the funding period is 75 or fewer, that school's guaranteed funding level for the funding period must be calculated as follows—

(a) where the relevant number of pupils in the funding period is the same as the relevant number for the previous funding period, the guaranteed funding level is A,

(b) where the relevant number of pupils in the funding period is lower than the relevant number of pupils for the previous funding period, the guaranteed funding level is A - (B x D/E x 0.985) in respect of primary schools and secondary schools,

(c) where the relevant number of pupils in the funding period is higher than the relevant number of pupils for the previous funding period, the guaranteed funding level is A + (B x D/E x 0.985) 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 the funding period, the previous funding period; and

E is, in respect of the funding period, the relevant number of pupils for the previous funding period.

(2) For the purposes of this paragraph, "the relevant number of pupils" means, in respect of the funding period, the number of pupils registered at the school on 19th January 2012 and, in respect of the previous funding period, the number of pupils registered at the school on 20th January 2011.

4. Where a school opens during the funding period, and is a replacement for two or more schools being discontinued during the funding period, 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 previous funding period is to be determined using the sum of the relevant number of pupils in the discontinued schools for the previous funding period as the relevant number for the purposes of paragraph 1(b).

Special schools

5.—(1) A local authority must provide in their formula that any amount allocated in accordance with regulation 15(1)(a) in respect of a place at a special school for the funding period must be at least 0.985 multiplied by the amount initially determined in relation to the previous funding period, in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 15(1)(a) of the 2011 Regulations.

(2) That portion of the redetermined budget share of a special school for the funding period calculated otherwise than in accordance with regulation 15 (but not including adjustments due under regulation 23 (excluded pupils)) must be at least 0.985 multiplied by that portion of the

initially determined budget share for the previous funding period calculated otherwise than in accordance with regulation 15 of the 2011 Regulations (excluding adjustments due under regulation 23 (excluded pupils) of those Regulations).

6. For the purposes of this Schedule, "PFI" means Private Finance Initiative and "ICS" means Infant Class Sizes.

SCHEDULE 5

Regulation 26

CONTENTS OF SCHEMES

The matters referred to in regulation 26, being matters connected with the financing of schools maintained by a local authority, required to be dealt with in the local 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.

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 authority may delegate to the governing body the power to spend any part of the authority's non-schools education 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 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.

(**a**) Section 49(4) was amended by section 215 of, and paragraph 100 of Schedule 21 to, the 2002 Act.
(**b**) Section 519 was amended by section 140 of, and paragraph 139 of Schedule 2 to, the 1998 Act.

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

17. The maintenance of inventories of assets.

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. 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.

25. 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 authorities in relation to the funding of maintained schools and providers of prescribed early years provision in England, for the financial year 2012-2013.

The School Finance (England) Regulations 2008 and the School Finance (Amendment) (England) Regulations 2010 are revoked. The School Finance (England) Regulations 2011, as amended, remain in force.

These Regulations define the non-schools education budget (regulation 3 and Schedule 1), the schools budget (regulation 5 and Schedule 2), the central expenditure and the individual schools budget (regulation 7 and Schedule 2). They require local authorities to determine budget shares for schools maintained by them and the amounts to be allocated in respect of nursery classes in schools maintained by them and relevant early years providers in their area in accordance with the appropriate formula (regulations 9 and 10), impose a minimum funding guarantee (regulation 19 and Schedule 4) and impose requirements in relation to local authorities' schemes (regulation 26 and Schedule 5).

The most significant changes from the 2011 Regulations are as follows.

Where a pupil in respect of whom a pupil premium is payable is permanently excluded from one school and admitted to another school, provision is made for the budget shares of both schools to be adjusted by an amount which equates to the appropriate portion of that premium.

Provision is made to allow for the remission of boarding fees for pupils registered at Academies to be charged to the schools budget.

There are changes to the calculation of the minimum funding guarantee (regulation 25 and Schedule 4) and to the circumstances in which the guarantee may be varied or disapplied (regulation 25(3)).

An impact assessment has not been prepared for these Regulations because no impact on the private or voluntary sector is foreseen.

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