

2006 No. 468

EDUCATION, ENGLAND

The School Finance (England) Regulations 2006

Made - - - - - 23rd February 2006

Coming into force in accordance with regulation 1(1)



2006 No. 468

EDUCATION, ENGLAND

The School Finance (England) Regulations 2006

Made - - - - - 23rd February 2006

Coming into force in accordance with regulation 1(1)

ARRANGEMENT OF REGULATIONS

PART 1

INTRODUCTION

1. Citation, commencement, application and interpretation
2. Revocation of previous Regulations

PART 2

ACTION TO BE TAKEN BY A LOCAL EDUCATION AUTHORITY

CHAPTER 1

APPROPRIATION OF THE LEA BUDGET

3. LEA Budget

CHAPTER 2

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

4. Initial determination of a local education authority's schools budgets
5. Schools Budget
6. Exceptions
7. Determination of the individual schools budget for funding periods 1 and 2
8. Consultation
9. Formula for determination of budget shares
10. Initial determination of allocation of schools' budget shares for funding periods 1 and 2

CHAPTER 3

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

11. Redetermination of schools budgets and individual schools budgets

12. Redetermination of allocation of budget shares for funding period 2

CHAPTER 4

SCHOOLS FORUM AND SECRETARY OF STATE POWERS

13. Applications to the schools forum and the Secretary of State

PART 3

FORMULAE FOR DETERMINATION OF BUDGET SHARES

CHAPTER 1

FACTORS AND CRITERIA TAKEN INTO ACCOUNT

14. Pupil numbers
15. Places
16. Differential funding
17. Additional factors or criteria
18. Minimum funding guarantee
19. Sixth form funding
20. New, reorganised and closing schools

CHAPTER 2

ADJUSTMENTS

21. Budget share adjustments in relation to the financial year beginning on 1st April 2005: Pupil numbers
22. Budget share adjustments in relation to the financial year beginning on 1st April 2005: Non-pupil number factors
23. Pupils permanently excluded from, or leaving, maintained schools

CHAPTER 3

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

24. Correction of errors and changes in non-domestic rates
25. Additional arrangements approved by the schools forum or the Secretary of State

PART 4

SCHEMES

26. Required content of schemes
27. Publication of schemes

SCHEDULES

- 1 Classes or Descriptions of planned expenditure prescribed for the purposes of the LEA Budget of a Local Education Authority
- 2 Classes or Descriptions of planned expenditure which may be deducted from the schools budget of a Local Education Authority
- 3 Maximum increase in central expenditure

- 4 Additional factors or criteria which may be taken into account in a Local Education Authority's Formula under Regulation 17
- 5 Minimum funding guarantee
- 6 Contents of Schemes

In exercise of the powers conferred on the Secretary of State by sections 45A(a), 45AA(b), 47(c), 48(1) and (2) and 138(7) of, and paragraph 1(7)(b) of Schedule 14 to, the School Standards and Framework Act 1998(d), the Secretary of State for Education and Skills makes the following Regulations:

In accordance with section 138(5)(c) and (d) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament(e).

PART 1

INTRODUCTION

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School Finance (England) Regulations 2006 and shall come into force two days after the day on which they are made.

(2) These Regulations apply in relation to the financial years beginning on 1st April 2006 and 1st April 2007.

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

(4) In these Regulations—

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

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

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

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

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

“the 2003 (No. 2) Regulations” means the Financing of Maintained Schools (England) (No. 2) Regulations 2003(j);

“the 2004 Regulations” means the Financing of Maintained Schools (England) Regulations 2004(k);

“the Budget Regulations” means the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004(l); and

The “Amended Budget Regulations” means the LEA Budget, Schools Budget and Individual Schools Budget (Amendment) (England) Regulations 2005(m);

(a) Section 45A of the School Standards and Framework Act 1998 was inserted by section 41(1) of the 2002 Act, and amended by paragraph 3 of Schedule 16 to the 2005 Act.

(b) Section 45AA of the 1998 Act was inserted by paragraph 4 of Schedule 16 to the Education Act 2005.

(c) As amended by Schedule 16 to the 2005 Act.

(d) 1998 c. 31. Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, and section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of “prescribed” and “regulations” see section 142(1).

(e) Sub-paragraphs (c) and (d) of section 138(5) were inserted by paragraph 8 of Schedule 16 to the 2005 Act.

(f) 1996 c. 56.

(g) 2000 c. 21.

(h) 2002 c. 32.

(i) 2005 c. 18.

(j) S.I. 2003/3247.

(k) S.I. 2004/3130.

(l) S.I. 2004/3131.

(m) S.I. 2005/526.

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

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

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

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

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

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

“expenditure on the school specific contingency” is expenditure—

- (a) it would not be reasonable to expect a governing body to meet from the school’s budget share;
- (b) on increases to a school’s budget share to which the school is entitled by virtue of the authority’s formula or the determination of budget shares under the authority of the schools forum or the Secretary of State; and
- (c) on the correction of errors;

“funding period 1” is the financial year beginning on 1st April 2006;

“funding period 2” is the financial year beginning on 1st April 2007;

“key stage 4” means the fourth key stage of the National Curriculum for England comprising core and foundation subjects, and other elements as described in section 85 of the 2002 Act, as amended by any Order made by the Secretary of State under subsection (6)(d) of that section;

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

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

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

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

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

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

-
- (a) This is the definition inserted by regulation 2(1) of the Education (Variation of Admission Arrangements) (Amendment) (England) Regulations 2002 (S.I. 2002/2896) into the Education (Variation of Admission Arrangements) (England) Regulations 1999 (S.I. 1999/126).
 - (b) 2003 (c. 26). Regulations made under this section are the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003 (S.I. 2003/3146), as amended by S.I. 2004/534 and 2004/3055.
 - (c) 2003 c. 26.
 - (d) The Learning and Skills Council for England was established under section 1 of the 2000 Act.
 - (e) Academies are established under section 482 of the 1996 Act. Section 482 was substituted by section 65 of the 2002 Act.
 - (f) S.I. 1997/319, as amended by S.I. 1998/371, 1999/1852 and 2003/515. The Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains savings provisions for regulation 16 of the 1997 Regulations.

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

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

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

“School Improvement Partner” means a person employed by, or engaged to work for, a local education authority in accordance with the programme of that name;

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

“school year” means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July, in accordance with the Education (School Day and School Year) (England) Regulations 1999(b);

“SEN transport costs”, for the purposes of paragraph 35(e) of Schedule 2, means the costs of home to school transport for pupils with special educational needs in schools maintained by the authority, where the revenue savings that will be achieved by placing such children in a school maintained by the authority are equal to, or greater than, the cost of such transport;

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

“summer term” means the third term of the school year;

“Threshold and Performance Pay Grant” means a sum of money paid under that name to a local education authority by the Secretary of State under section 14 of the 2002 Act;

“termination of employment costs”, for the purposes of paragraph 35(b) of Schedule 2, means expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school where—

- (a) the dismissal, premature retirement or resignation occurs after the beginning of funding period 1, and
- (b) the revenue savings that will be achieved are equal to or greater than the costs incurred;

“vocational education” means education provided to pupils aged 14–16 years at school or elsewhere which prepares them for a qualification for a particular profession, trade or employment, or which provides the necessary training and skills for such a profession or employment.

(a) Section 2 of the Local Government Act 2003 (c. 32) and regulations 25 and 26 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) as amended by S.I. 2004/534.
(b) S.I. 1999/3181.

Revocation of previous Regulations

2. The 2003 (No. 2) Regulations, the Budget Regulations, and the Amended Budget Regulations are revoked on 1st April 2006.

PART 2

ACTION TO BE TAKEN BY A LOCAL EDUCATION AUTHORITY

CHAPTER 1

APPROPRIATION OF THE LEA BUDGET

LEA Budget

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

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

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

CHAPTER 2

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

Initial determination of a local education authority's schools budgets

4. A local education authority must not later than 31st March 2006—
- (a) make an initial determination of their schools budgets for funding periods 1 and 2, and
 - (b) give notice of any such determination to the governing bodies of the schools they maintain.

Schools Budget

5.—(1) The classes or descriptions of local education authority expenditure specified in subparagraphs (a) and (b) are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, subject to 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; and
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools(a), pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local education authority.

(2) Where a local education authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 35(c) of Schedule 2 is expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, provided that any expenditure incurred is commensurate with the educational benefit to those pupils.

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

Exceptions

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

- (a) capital expenditure other than CERA;
- (b) expenditure on capital financing other than expenditure incurred on prudential borrowing;
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(a) (arrangements for patrolling school crossings); and
- (d) expenditure met by the local education authority under section 51A of the 1998 Act (community purposes).

Determination of the individual schools budget for funding periods 1 and 2

7.—(1) Subject to paragraphs (2) and (3), not later than 31st March 2006, a local education authority may deduct from their schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 2 (the “central expenditure”), in order to arrive at their individual schools budgets for funding periods 1 and 2.

(2) Any deductions made under paragraph (1) must be made in accordance with the provisions of Schedule 3 (Maximum Increase in Central Expenditure), unless the authority has obtained the approval of their schools forum or the Secretary of State under regulation 13 to vary the limit imposed by that Schedule.

(3) In deducting any of the classes or descriptions of planned expenditure referred to in paragraph 35 of Schedule 2, a local education authority must not exceed the limit or exclude the condition referred to in that paragraph, unless they have obtained the approval of their schools forum or the Secretary of State under regulation 13 to vary that limit, or exclude that condition.

(4) 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) In initially determining schools' budget shares for funding periods 1 and 2, a local education authority may make changes to the formula they have used in the financial year beginning 1st April 2005.

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

(3) Paragraph (2) shall not apply to changes made pursuant to regulation 19 (sixth form funding) or 23 (permanently excluded pupils).

Formula for determination of budget shares

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

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

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

(3) A local education authority may make changes to the formula they will use for funding period 2 after the beginning of funding period 1, provided any such change—

- (a) is made before the beginning of funding period 2, and
- (b) is approved by their schools forum or the Secretary of State under regulation 25 (additional arrangements).

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

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

(6) Except as provided by paragraph (3), and regulation 25 (additional arrangements), a local education authority must use the formulae determined under paragraph (1) in all determinations and redeterminations of budget shares in respect of funding periods 1 and 2.

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

- 10.** Not later than 31st March 2006, a local education authority must—
- (a) initially determine the allocation of all their individual schools budget as the budget shares of the schools which they maintain for funding periods 1 and 2 in accordance with Part 3 of these Regulations, and
 - (b) give notice of each school's budget share for funding period 2 to the governing bodies of the schools which they maintain.

CHAPTER 3

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

Redetermination of schools budgets and individual schools budgets

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

(2) In making any such redetermination, the authority may only reduce the amount of their schools budgets where they receive an amount of Dedicated Schools Grant which is lower than the amount on which they based their initial determinations under regulation 7.

(3) A local education authority may not make deductions of any classes or descriptions of planned expenditure set out in Schedule 2 from their schools budgets which exceed the amount of any deductions they have made under regulation 7, unless they have obtained authorisation to make any such deduction from their schools forum or the Secretary of State under regulation 13.

- (4) A local education authority may not—
- (a) exceed the limit or exclude the condition imposed by paragraph 35 of Schedule 2, or
 - (b) exceed the limit imposed by Schedule 3

unless their schools forum or the Secretary of State enable those limits to be varied or that condition to be excluded under regulation 13.

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

Redetermination of allocation of budget shares for funding period 2

12. Not later than 31st March 2007, a local education authority must redetermine any allocation of schools' budget shares under regulation 10(a) for funding period 2 in accordance with Part 3 of these Regulations.

CHAPTER 4

SCHOOLS FORUM AND SECRETARY OF STATE POWERS

Applications to the schools forum and the Secretary of State

13.—(1) Subject to paragraph (2), a local education authority may apply to their schools forum to—

- (a) authorise the making of deductions from their schools budget of any class or description of expenditure referred to in Schedule 2 where such deductions would exceed the amount of any deductions made previously under regulations 7(1) or 11(3), or
- (b) enable the limit or the condition imposed by paragraph 35 of Schedule 2, or the limit imposed by Schedule 3, to be varied or excluded.

(2) Upon receipt of an application by a local education authority under paragraph (1), their schools forum may authorise the making of further deductions, vary the limit or exclude the condition referred to in paragraph 35 of Schedule 2, or vary the limit in Schedule 3.

(3) Where—

- (a) a schools forum does not authorise the making of deductions, variation of limits, or exclusion of conditions referred to in paragraph (1), or
- (b) a local education authority is not required to establish a schools forum for their area^(a),

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

PART 3

FORMULAE FOR DETERMINATION OF BUDGET SHARES

CHAPTER 1

FACTORS AND CRITERIA TAKEN INTO ACCOUNT

Pupil numbers

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

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

- (a) in places—
 - (i) in maintained nursery schools,
 - (ii) in other primary or secondary schools which the authority recognise as reserved for children with special educational needs,
 - (iii) in nursery classes, and
 - (iv) in boarding accommodation at boarding schools other than special schoolswhere the authority exercise their discretion to take these places into account under regulation 15(1)(b);
- (b) in respect of whom grant is payable to the authority by the LSC; or
- (c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 35 of Schedule 4.

(a) Section 47A(2) of the 1998 Act provides that the requirement in section 47A(1) of that Act to establish a school forum for their area does not apply to the Common Council of the City of London or the Council of the Isles of Scilly. Section 47A was inserted by section 43 of the 2002 Act and has been amended by section 101 of, and paragraph 7 of Schedule 16 to, the 2005 Act.

(3) Where a local education 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 at the schools, or in the reserved places at primary or secondary schools, referred to in that paragraph, on the dates specified in paragraph (6).

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

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

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

(6) The dates for ascertaining pupil numbers are—

- (a) 19th January 2006 in respect of funding period 1, and
- (b) 18th January 2007 in respect of funding period 2.

(7) Subject to paragraph (8), where—

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

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

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

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

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

Places

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

- (a) in special schools, or
- (b) in—
 - (i) maintained nursery schools,
 - (ii) primary or secondary schools with places which the authority recognise as reserved for children with special educational needs,

- (iii) nursery classes, or
- (iv) schools with boarding accommodation.

(2) In determining and redetermining budget shares for funding periods 1 and 2, a local education authority may take into account the nature of any special educational needs in question when funding places at special schools or places reserved for children with special educational needs in primary and secondary schools.

(3) A local education authority must provide that, if any places are taken into account in accordance with paragraph (1)(a), the number must be no fewer than the number of registered pupils at the school on the relevant date in regulation 14(6).

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

Differential funding

16.—(1) For the purpose of initially determining budget shares in respect of funding periods 1 and 2, a local education authority must use factors or criteria which differentiate between different categories or descriptions of schools 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 education authority must use factors or criteria which differentiate between a school and other schools of the same category or description if such differentiation is justified by reference to the choice that that school's governing body have made as to the inclusion in their school's budget share of funding in respect of expenditure of the kinds referred to in paragraph 15(a) and (b) (meals), 26 (insurance) or 28 (library services) of Schedule 2.

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

Additional factors or criteria

17.—(1) Subject to regulation 16 (differential funding), a local education authority may, in determining budget shares in respect of funding periods 1 and 2, take into account in their formulae any or all of the factors or criteria set out in Schedule 4.

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

(3) A factor included in an authority's formula pursuant to paragraph 17 of Schedule 4 (school milk, meals and refreshment) is not, for the purpose of paragraph (2), a factor based on the incidence of social deprivation among pupils registered at a school.

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

(5) Where a local education authority take new factors or criteria into account in their formula or delete factors from their formula or determine a formula substantially or wholly different from the previous year, they may make such transitional provision as they consider reasonable.

Minimum funding guarantee

18.—(1) Subject to regulation 25 (additional arrangements), in determining and redetermining budget shares for all schools maintained by them in respect of funding periods 1 and 2, a local education authority must ensure—

- (a) in respect of primary (other than maintained nursery schools) and secondary schools, that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1–4 of Schedule 5;

- (b) in respect of special schools, that the formula must provide for an increase in those schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of Schedule 5; and
- (c) in respect of maintained nursery schools either—
 - (i) that an amount equal to the guaranteed funding level is included for each of those funding periods, calculated in accordance with paragraphs 1–4 of Schedule 5, or
 - (ii) that the formula must provide for an increase in those schools' budget shares for each of those funding periods, calculated in accordance with paragraph 5 of that Schedule as if every reference to a special school were a reference to a maintained nursery school, save that the figure of 4% must be used instead of the figure of 3.4% where it occurs in paragraph 5 of that Schedule.

(2) For the purposes of determining budget shares in respect of funding periods 1 and 2, paragraph (1) does not apply to any school opening during either funding period save in the circumstances set out in paragraph 4 of Schedule 5.

(3) For the purpose of determining budget shares for funding period 2 under regulation 10, a local education authority must apply the relevant provisions in Schedule 5 using estimates of—

- (a) the number of registered pupils in schools funded on the basis of pupil numbers in accordance with regulation 14(5), or
- (b) the number of places they will fund in accordance with regulation 15(4).

Sixth form funding

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

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

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

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

New, reorganised and closing schools

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

- (a) a proposed school;
- (b) a school, proposals for the establishment of which have not been fully implemented(b);
- (c) a school which is the subject of a prescribed alteration(c);
- (d) a school which is to be discontinued;
- (e) a school which is to be the subject of a significant change, as determined by the authority.

(2) In the case of schools falling within sub-paragraph (1)(a), the authority must, in any funding period preceding the funding period in which the school first admits pupils, determine the amount of the budget as an amount which is sufficient to fund the appointment of staff, and purchase any services and goods necessary to enable the school to admit pupils.

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

(b) Proposals for the establishment of a school may be published under section 28 or 31 of, paragraph 5 of Schedule 7 to, the 1998 Act, section 113A of and Schedule 7A to the 2000 Act or section 70 of the 2002 Act. Section 113A and Schedule 7A were inserted by section 72 of, and Schedule 9 to, the 2002 Act. Section 70 of the 2002 Act is prospectively repealed by section 123 of, and Schedule 19 to, the 2005 Act.

(c) A prescribed alteration is an alteration prescribed by regulations made under section 28(1)(b) or (2)(b) of the 1998 Act.

(3) In the case of schools falling within sub-paragraph (1)(c), such factors or criteria may only be used within seven years of the date of implementation of the relevant change to the school.

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

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

CHAPTER 2

ADJUSTMENTS

Budget share adjustments in relation to the financial year beginning on 1st April 2005: Pupil numbers

21.—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2005 was determined pursuant to regulation 8(1) or (3) of the 2004 Regulations other than in cases where pupil numbers were weighted according to special educational needs.

(2) To the extent that a school's budget share for the financial year beginning on 1st April 2005 was—

- (a) determined by reference to an estimate of the number of registered pupils at the school; and
- (b) differences between the estimated number of pupils on the dates determined by the authority in accordance with regulation 9 of the 2004 Regulations, and the actual number of pupils at the school on those dates were not taken into account in a redetermination of the school's budget share for that financial year,

the local education authority must determine that school's budget share for funding period 1 so as to take into account those differences.

Budget share adjustments in relation to the financial year beginning on 1st April 2005: Non-pupil number factors

22.—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2005 was determined other than pursuant to regulation 8(1) or (3) of the 2004 Regulations or was determined in accordance with pupil numbers weighted according to special educational needs.

(2) Where—

- (a) there has been a change in the data on the basis of which that determination was made; and
- (b) that change was not taken into account in a redetermination of the school's budget share for the financial year beginning on 1st April 2005,

the local education authority may determine that school's budget share for funding period 1 so as to take into account those changes.

Pupils permanently excluded from, or leaving, maintained schools

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

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

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

for the purposes of this definition, the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula as determined in accordance with these Regulations by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers (except that, where the registered pupil in question is a pupil in respect of whom grant is payable to the authority by the LSC under section 7 of the 2000 Act, the amount attributable to that pupil must be £3,019 for funding period 1 and £3,131 for funding period 2); and

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

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

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

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

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

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

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

(5) For the purposes of this regulation, the relevant date has the meaning prescribed in regulations made under section 494 of the 1996 Act(a).

(6) Paragraphs (1) and (2) also apply where pupils have been deleted from the admissions register of a maintained school—

(a) to attend an educational or training establishment other than a maintained school or an independent school, or

(b) to access an education programme provided by a registered charity through the internet.

CHAPTER 3

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

Correction of errors and changes in non-domestic rates

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

(a) Section 494(5) of the 1996 Act, which was substituted by paragraph 128 of Schedule 30 to the 1998 Act, provides that regulations may prescribe when a permanent exclusion is to be regarded as taking effect. The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999 (S.I. 1999/495) provide that a permanent exclusion takes place on the "relevant date" as defined in those regulations, and amendments to them in the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 (S.I. 2004/402). On and after 22nd March 2004, the "relevant date" is the date that an appeal panel constituted under regulations made under section 52 of the 2002 Act decides not to direct reinstatement; or if there is no appeal, on the day after the last date on which an appeal may be made, or on the day (if earlier) that the parent (or pupil who has attained the age of 18) notifies the local education authority that he does not intend to appeal.

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

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

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

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

(2) Subject to paragraphs (3) and (4), a schools forum may authorise a local education authority to determine or redetermine budget shares in accordance with arrangements approved by them in place of the arrangements provided for by these Regulations, where such determination or redetermination relates to—

- (a) the operation of regulation 18; or
- (b) any change to the formula determined under regulation 9(1) in respect of funding period 2 before the beginning of that funding period.

(3) A schools forum may not authorise or approve any arrangements under paragraph (2)(a) that will affect more than 20 per cent of schools maintained by the authority in the funding period to which the authorisation relates.

(4) A schools forum may not authorise or approve any arrangements under paragraph (2)(a), the effect of which would be either—

- (a) to remove the sum notified to the local education authority by the LSC as being the allocation in respect of sixth form funding for secondary schools maintained by the authority from the schools budget, or
- (b) to remove sixth form pupils from the calculation of the guaranteed funding level (calculated under Schedule 5).

(5) Where—

- (a) a schools forum does not authorise a local education authority's determination or redetermination of budget shares under paragraph (2), or
 - (b) a local education authority is not required to establish a schools forum for their area,
- any determination or redetermination by the authority may be authorised by the Secretary of State.

(6) Authorisations given and arrangements approved by the Secretary of State under previous regulations must, unless the contrary intention appears in such authorisation or arrangements, continue to apply in relation to funding period 1.

(7) Authorisations given and arrangements approved by the Secretary of State or the schools forum in relation to funding period 1 must, unless the contrary intention appears in such authorisation or arrangements, continue to apply to funding period 2.

PART 4

SCHEMES

Required content of schemes

26. A scheme prepared by a local education authority under section 48(1) of the 1998 Act^(a) must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 6.

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

Publication of schemes

27.—(1) A local education authority must publish their scheme in such manner as they see fit.

(2) For the purposes of paragraph 1(7)(b) of Schedule 14 to the 1998 Act (prescribed occasions on which publication of schemes is required), a scheme must be published by the local education authority on the coming into force of any revision of it.

23rd February 2006

Jacqui Smith
Minister of State
Department for Education and Skills

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

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

Special educational provision

1. Expenditure on services provided by educational psychologists.
2. Expenditure in connection with the authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children).
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 (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(a), 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(b).
8. Expenditure in providing special medical support for individual pupils in so far as such expenditure is not met by a Primary Care Trust(c), National Health Service Trust(d), NHS foundation trust(e) or Local Health Board(f).

School improvement

9. Expenditure incurred by the authority in respect of action to support the improvement of standards in the authority's schools, including, in particular—
 - (a) expenditure incurred in connection with entering into a contract pursuant to a direction under section 63 of the 2002 Act (contracts to obtain services of an advisory nature in respect of schools with serious weaknesses or schools requiring special measures);

(a) 1989 c. 41.

(b) 1999 c. 8.

(c) Primary Care Trusts were established under section 16A of the National Health Service Act 1977 (c. 49). Section 16A was inserted by section 2 of the Health Act 1999.

(d) National Health Service Trusts are created by order made under section 5 of the National Health Service and Community Care Act 1990 (c. 19). Section 5 has been amended by section 2 of, and paragraph 69 of Schedule 1 to, the Health Authorities Act 1995, sections 13 and 65 of, and Schedule 5 to, the Health Act 1999, and section 41 of, and paragraph 65 of Schedule 2 to, the National Health Service (Primary care) Act 1997.

(e) NHS foundation trusts are established under the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(f) Local Health Boards are established by order made by the National Assembly for Wales under section 16BA of the National Health Service Act 1977 (c. 49), as inserted by section 6(1) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

- (b) expenditure incurred in connection with the exercise of their functions under sections 14 to 17 of the 1998 Act (powers of intervention, appointment of additional governors and suspension of delegated budget in schools causing concern)(a);
- (c) expenditure on the appointment and remuneration of interim executive members under section 16A of the 1998 Act(b); and
- (d) expenditure on the employment of School Improvement Partners.

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—
 - (i) in relation to the preparation of any part of the authority’s Children and Young People’s Plan relating to school organisation(c), and
 - (ii) in relation to the establishment, alteration or discontinuance of schools pursuant to Chapter II of Part II of the 1998 Act, section 70 of the 2002 Act, or section 113A of, and Schedule 7A to, the 2000 Act;
 - (c) the authority’s functions in relation to the exclusion of pupils from schools, excluding the making of any provision of education to such pupils, but including advice to the parents of an excluded pupil;
 - (d) school organisation committees;
 - (e) the authority’s functions under section 509 and 509AA to 509AC(d) of the 1996 Act (home-to-school and home-to-college transport); and
 - (f) 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(e).
- 11.** Expenditure on the Education Welfare Service(f) and other expenditure arising from the authority’s functions under Chapter II of Part VI of the 1996 Act (school attendance).
- 12.** Expenditure on the provision of support for students under section 1(1) of the Education Act 1962(g) and under section 22 of the Teaching and Higher Education Act 1998(h).
- 13.** Expenditure on discretionary grants under section 1(6) or 2 of the Education Act 1962 (awards for designated and other courses).
- 14.** Expenditure on the payment to persons over compulsory school age of educational maintenance allowances(i).
- 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.

-
- (a) Section 14 has been amended by sections 56(3), 57(1), 215(1) of, and paragraph 1 of Schedule 5 to, and paragraph 92 of Schedule 21 to, the 2002 Act, and by section 61 of, and paragraphs 14(1)-(3) of Schedule 9 to, the 2005 Act. Section 15 has been amended by section 149 of, and paragraphs 1 and 78 of Schedule 9 to, the 2000 Act, by section 55(1)-(2) of the 2002 Act, and by section 61 of, and paragraphs 15(1)-(4) of Schedule 9 to, the 2005 Act. Section 16 has been amended by sections 56(3), 215(1)-(2) of, paragraphs 2(1)-(8) of Schedule 21 to, and paragraphs 2(1) and (3) of Schedule 22 part 3 to the 2002 Act, and by section 61 of, and paragraphs 16(1), (2)(a) and (b) and (3) of Schedule 9 to, the 2005 Act. Section 16A was inserted by section 57(2) of the 2002 Act, and amended by section 61 of, and paragraphs 17(a) and (b) of Schedule 9 to, the 2005 Act. Section 17 has been amended by section 56(3) of, and paragraphs 3(1)-(3) of Schedule 5 to, the 2002 Act, and paragraphs 18(a) and (b) of Schedule 9, to the 2005 Act.
 - (b) Section 16A was inserted by section 57 of the 2002 Act.
 - (c) The Children and Young People’s Plan (England) Regulations 2005 (S.I. 2005/2149) impose a requirement to prepare and publish plans which will include key actions to be taken. Some of these may relate to school organisation.
 - (d) Sections 509AA, 509AB and 509AC were inserted by section 199 of, and Schedule 19 to, the 2002 Act.
 - (e) Section 518 was substituted by section 129 of the 1998 Act.
 - (f) The functions of the Education Welfare Service and their role in reducing the levels of unauthorised absences from school are set out in DFEE Circular 11/99.
 - (g) 1962 c. 12.
 - (h) 1998 c. 30.
 - (i) Education Maintenance Allowances are funded under section 14 of the 2002 Act. They are paid pursuant to a scheme administered by the LSC on behalf of the Secretary of State.

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

Further education and training for young persons and adults

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

19. Expenditure on the provision by the local education authority under sections 15A and 508(b) of the 1996 Act of recreation and social and physical training, and on the authority's provision of services under section 116 of the 2000 Act to encourage and enable the participation by young people in education and training.

Strategic management

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

- (a) functions of the Chief Education Officer or director of children's services and his personal staff;
- (b) planning for the education service as a whole;
- (c) functions of the authority under Part I of the Local Government Act 1999(c) (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; the 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 II of the 1998 Act and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;
- (f) authorisation and monitoring of—
 - (i) expenditure which is not met from schools' budget shares; and
 - (ii) expenditure in respect of schools which do not have delegated budgets,

and all financial administration relating thereto;

- (g) the authority's monitoring of compliance with the requirements of their financial scheme prepared under section 48 of the 1998 Act(d), and any other requirements in relation to the provision of community facilities by governing bodies under section 27 of the 2002 Act;
- (h) internal audit and other tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972(e);
- (i) the authority's functions under regulations made under section 44 of the 2002 Act(f);
- (j) recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares and who are paid for services carried out in relation to those of the authority's functions and services which are referred to in other paragraphs of this Schedule;
- (k) investigations which the authority carry out of employees, or potential employees, of the authority, or of governing bodies of schools, or of persons otherwise engaged, or to be engaged, with or without remuneration to work at or for schools;
- (l) functions of the authority in relation to local government superannuation which it is not reasonably practicable for another person to carry out, and functions of the authority in relation to the administration of teachers' pensions;
- (m) retrospective membership of pension schemes and retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body of a school to meet the cost from the school's budget share;
- (n) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school ("the school workforce"), including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such school workforce;

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

(b) Section 508 has been amended by section 137(1)-(4) of the 2000 Act.

(c) 1999 c. 27.

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

(e) 1972 c. 70.

(f) The regulations currently in force under this provision are The Consistent Financial Reporting (England) (Amendment) Regulations 2004 (S.I. 2004/393).

- (o) determination of conditions of service for non-teaching staff, and advice to schools on the grading of such staff;
- (p) the authority's functions regarding the appointment or dismissal of employees;
- (q) consultation and functions preparatory to consultation with or by governing bodies, pupils and persons employed at schools or their representatives, or with other interested bodies;
- (r) compliance with the authority's duties under the Health and Safety at Work etc. Act 1974(a) and the relevant statutory provisions as defined in section 53(1) of that Act, 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;
- (s) the investigation and resolution of complaints;
- (t) legal services relating to the statutory functions of the authority;
- (u) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
- (v) the preparation, publication, consultation upon and review of a children and young people's plan under the Children and Young People's Plan (England) Regulations 2005 and the provision of (but not the expenditure authorised by), an early years development and childcare partnership under section 119 of the 1998 Act(b);
- (w) provision of information to or at the request of the Crown and the provision of other information which the authority are under a duty to make available;
- (x) the authority's duties under article 4(2) and (5) of the Race Relations Act 1976 (Statutory Duties) Order 2001(c);
- (y) the remittance of fees payable to the General Teaching Council for England by virtue of section 4(4) of the Teaching and Higher Education Act 1998 and the provision of information required by the Council pursuant to regulations(d) made under section 12 of that Act;
- (z) the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising authorities of companies formed by governing bodies); and
- (aa) the authority's functions under the Disability Discrimination Act 1995(e) 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.

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 the authority and its schools.

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

24. Expenditure in connection with the authority's functions in relation to the standing advisory council on religious education constituted by the authority under section 390 of the 1996 Act or in 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 35(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(f).

(a) 1974 c. 37.

(b) Section 119 was amended by section 150 of the 2002 Act and section 64 of and Schedule 5 to the Children Act 2004 (2004 c. 31).

(c) S.I. 2001/3458.

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

(e) 1995 c. 50.

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

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

SCHEDULE 2

Regulation 7

CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE WHICH MAY BE DEDUCTED FROM THE SCHOOLS BUDGET OF A LOCAL EDUCATION AUTHORITY

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

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

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

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

Performance Reward Grant

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

Threshold and Performance Pay

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

Special educational provision

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

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

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

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

7. Expenditure in respect of specialist support provided to assist the governing bodies of schools in meeting the particular needs 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 (such expenditure that it would be inappropriate to expect to be met from the school's budget share).

8. Expenditure for purposes connected with the encouragement of—
- (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
 - (b) the education of children with special educational needs at primary and secondary schools; and

(a) The Special Educational Needs Code of Practice (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 (being expenditure that the authority deem inappropriate to be met from the school's budget share).

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

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

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

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

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

Access to education

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

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

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

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

- (a) expenditure in respect of meals at any primary or special school which is not a former grant-maintained or grant-maintained special school, unless the governing body have elected to receive funding for meals as part of their school's budget share;
- (b) expenditure in respect of meals at any former grant-maintained primary or special school where the governing body have elected not to receive funding for meals as part of their school's budget share;
- (c) expenditure in respect of milk at any school which is not a former grant-maintained or grant-maintained special school;
- (d) expenditure in respect of milk at any former grant-maintained or grant-maintained special school where the provision of that milk attracts a subsidy from the European Union; and
- (e) expenditure in respect of milk or meals at any pupil referral unit.

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

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

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

Staff

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

(a) The Children and Young People's Plan (England) Regulations 2005 (S.I. 2005/2149) impose a requirement upon children's services authorities to prepare and publish plans which will include key actions to be taken. Some of these may relate to the education of children with behavioural difficulties.

- 20.** Expenditure in making payments to, or in providing a temporary replacement for, persons—
- (a) carrying out trade union duties or undergoing training under section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992(a);
 - (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(b);
 - (d) undertaking jury service;
 - (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977(c);
 - (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996(d);
 - (g) who are employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992, as defined in section 196 of that Act or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as defined in regulation 11A of those Regulations(e);
 - (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996;
 - (i) undertaking duties as members of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996(f);
 - (j) suspended from working at a school;
 - (k) who are members of the General Teaching Council for England or a committee thereof; or
 - (l) who are appointed learning representatives of trade unions, in order for them to analyse training requirements or to provide or promote training opportunities, and to carry out consultative or preparatory work in connection with such functions.
- 21.** Expenditure on Advanced Skills Teachers undertaking outreach work in schools other than that in which they are normally based(g).
- 22.** Expenditure in making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local education authority or the governing body of a school.
- 23.** Expenditure in making payments to, or in providing a temporary replacement for, persons who have been continuously absent from work because of illness for 21 days or more.
- 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.

Other Expenditure

- 25.** Expenditure in connection with the provision of nursery education, except where such provision is made at a maintained school.
- 26.** 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 schools' budget shares.
- 27.** Expenditure on services to schools provided by museums and galleries.
- 28.** Expenditure on library services for primary and special schools, other than for schools which received funding for library services as part of their budget shares for the financial year beginning on 1st April 1999 to the extent that their governing bodies have elected to receive funding for those same library services as part of their schools' budget shares for the financial year beginning on 1st April 2006, and provided that the authority—
- (a) notify the governing body of each school, which does not receive funding for library services in its budget share, of the share of the amount retained by the authority in respect of library services which is attributable to that school; and

(a) 1992 c. 52.

(b) 1996 c. 18.

(c) S.I. 1977/500, amended by S.I. 1996/1513 and 1999/860.

(d) S.I. 1996/1513.

(e) S.I. 1981/1794; regulation 11A was inserted by S.I. 1995/2587 and amended by S.I. 1999/1925.

(f) 1996 c. 14.

(g) "Advanced Skills Teacher" is a concept defined in the School Teachers' Pay and Conditions Document 2005 which can be found at http://www.teachernet.gov.uk/management/payandperformance/pay/2005/School_Teachers'_Pay_and_Conditions_Document_2005/. That document was given effect by the Education (School Teachers' Pay and Conditions) (No. 3) Order (S.I. 2005/2212), made under section 122 of the 2002 Act.

- (b) allow the governing body to determine whether expenditure retained by the authority in respect of their school is to be spent by the authority in providing library services to the school themselves or in procuring that library services are provided to the school by another local authority.
29. Expenditure on licence fees or subscriptions paid on behalf of schools.
30. Expenditure incurred in connection with the authority's functions under section 47A(a) of the 1998 Act (the establishment and maintenance of, and consultation with, schools forums).
31. 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.
32. 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 per cent. of the authority's schools budget.
33. CERA incurred for purposes not falling within any other paragraph of this Schedule or Schedule 1.
34. Expenditure on vocational education of pupils at key stage 4 of the National Curriculum not met from maintained schools' budget shares.
35. Expenditure on—
- (a) prudential borrowing;
 - (b) termination of employment costs;
 - (c) combined services where the expenditure relates to classes or descriptions of expenditure falling outside those set out in this Schedule;
 - (d) the schools' specific contingency; and
 - (e) SEN transport costs
- provided that any deductions under this paragraph are limited to the amount deducted by the authority in respect of such expenditure for the financial year beginning on 1st April 2005 under Schedule 3 to the Budget Regulations.

SCHEDULE 3

Regulation 7

MAXIMUM INCREASE IN CENTRAL EXPENDITURE

CHAPTER 1

FUNDING PERIOD 1

1. Subject to paragraphs 2 and 3, the central expenditure for funding period 1 must not exceed $A \times (B/C)$ where—
- (a) A is the lower of either—
 - (i) the total amount initially deducted from the authority's schools budget for the financial year beginning on the 1st April 2005, or
 - (ii) the total amount that could have been deducted from the authority's schools budget under the Budget Regulations as if those regulations had not been amended**(b)**,
excepting any amount deducted in accordance with paragraphs 1 to 4 (Expenditure to support grants, Excellence in Cities, Performance Reward and Threshold and Performance Pay Grants), 32 (Expenditure without which the education of pupils would be seriously prejudiced) and 34 (Expenditure authorised by the Secretary of State and for correction of errors) of Schedule 3 to the Budget Regulations;
 - (b) B is the total amount of the individual schools budget for funding period 1 as initially determined in accordance with regulation 7 of these Regulations;
 - (c) C is—
 - (i) the total amount of the individual schools budget for the financial year beginning on 1st April 2005 allocated in accordance with regulation 4 of the 2004 Regulations, except for any amount retained under regulation 5(2) for the purpose of redeterminations or correction of errors, plus

(a) Section 47A was inserted by section 43 of the 2002 Act, and has been amended by section 101 and paragraph 7 of Schedule 16 to the 2005 Act.

(b) The Budget Regulations were amended by the LEA Budget, Schools Budget and Individual Schools Budget (Amendment) (England) Regulations 2005 (S.I. 2005/526).

- (ii) where the authority have not deducted expenditure under paragraph 3 of Schedule 2 to these Regulations in respect of funding period 1, any expenditure deducted under paragraph 4 of Schedule 3 to the 2004 Regulations, to the extent that this was devolved to schools;

save that any grant paid by the LSC to the authority under section 7 of the 2000 Act must be excluded from all the calculations.

2. Where any maintained school in the authority's area is due to be discontinued and re-open as an Academy in funding period 1, an amount equal to $D \times (E/12)$ must be deducted from C, where—

- (a) D is the number of months during funding period 1 in which the school is not to be maintained by the authority; and
- (b) E is the total budget share of that school for the financial year beginning on 1st April 2005.

3. In calculating the limit on central expenditure imposed by paragraph 1, expenditure deducted in accordance with the following paragraphs of Schedule 2 to these Regulations—

- (a) paragraphs 1 and 2 (expenditure to support grants and Performance Reward Grant);
- (b) paragraph 25 (nursery education) to the extent that this exceeds expenditure deducted in accordance with paragraph 26 (nursery education) of Schedule 3 to the Budget Regulations; and
- (c) paragraph 35(d) (expenditure on the schools' specific contingency)

must be disregarded.

CHAPTER 2

FUNDING PERIOD 2

4. Subject to paragraphs 5 and 6, the central expenditure for funding period 2 must not exceed $F \times (G/H)$ where—

- (a) F is the lower of either—
 - (i) the total amount deducted from the authority's schools budget for funding period 1, or
 - (ii) the total amount that could have been deducted from the authority's schools budget under these regulations before variation of any limit was authorised by the Schools Forum or Secretary of State under regulation 13 of these Regulations,

excepting any amount deducted in accordance with paragraph 1 (Expenditure to support grants), and paragraph 2 (Performance Reward Grant) of Schedule 2 to these Regulations;

- (b) G is the total amount of the individual schools budget for funding period 2 as initially determined in accordance with regulation 7 of these Regulations,
- (c) H is—
 - (i) the total amount of the individual schools budget for funding period 1 as initially determined in accordance with regulation 7 of these Regulations, plus
 - (ii) where the authority have not deducted expenditure under paragraph 3 of Schedule 2 to these Regulations in respect of funding period 2, any expenditure deducted under that paragraph in respect of funding period 1, to the extent that this expenditure has been devolved to schools;

save that any grant paid by the LSC to the authority under section 7 of the 2000 Act must be excluded from all of these calculations.

5. Where any maintained school in the authority's area is due to be discontinued and re-open as an Academy in funding period 2 an amount equal to $J \times (K/12)$ must be deducted from H, where—

- (a) J is the number of months during funding period 2 in which the school is not to be maintained by the authority; and
- (b) K is the total budget share of that school for funding period 1.

6. In calculating the limit on central expenditure imposed by paragraph 4, expenditure deducted in accordance with the following paragraphs of Schedule 2 to these Regulations—

- (a) paragraphs 1 and 2 (expenditure to support grants and Performance Reward Grant); and
- (b) paragraph 25 (nursery education) in respect of funding period 2, to the extent that this exceeds expenditure deducted in accordance with that paragraph in respect of funding period 1

must be disregarded.

**ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO
ACCOUNT IN A LOCAL EDUCATION AUTHORITY'S FORMULA UNDER
REGULATION 17**

1. Special educational needs of pupils determined in a manner that the authority consider appropriate as a means of assessing such needs.
2. Pupils for whom English is not their first language.
3. Turnover of pupils other than as part of the general admissions process at a school.
4. Admission arrangements at a school.
5. The size, condition and characteristics of a school's buildings and grounds relative to those of other schools maintained by the authority.
6. A school which has a split site: the funding must be in accordance with criteria published by the authority.
7. Such physical facilities, organisational facilities for the education of pupils, or communications facilities, as are found at some schools only.
8. 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 the school premises which form part of the school's curriculum or transport between the school and other educational facilities attended by pupils (including actual or estimated cost).
12. Hire of facilities outside school premises (including actual or estimated cost).
13. Insurance: the funding must be equal to the amount which would be spent on insurance for the school in question if amounts were not delegated to the governing body for such insurance or, if the authority do not insure, the appropriate proportion of the amount that would have been spent had they insured, to be determined on a basis decided by the authority.
14. Payments in relation to a private finance transaction^(a) (including actual or estimated cost).
15. Amounts payable to a school which is, as the result of the discontinuance of one or more maintained schools, either established or, pursuant to Chapter 2 of Part 2 of the 1998 Act, the subject of prescribed alterations, to reflect the extent to which a school which has been discontinued has spent more than or has not spent all of its budget share in any financial year. Any such factor or criterion must provide that any amount deducted must not exceed the amount which the school receives during the financial year as part of its budget share by virtue of being a new school.
16. Whether a school is to be discontinued in the financial year or the following financial year.
17. School milk, meals and other refreshment: the authority may not treat any element of this expenditure as having a negative value.
18. Salaries at a school (including actual or estimated cost): the funding must be in accordance with a scale published by the authority.
19. Safeguarding of salaries in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 122 of the 2002 Act.
20. Social priority allowances paid in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order section 122 under the 2002 Act (including actual or estimated cost).
21. The differential in recruitment and retention costs in different areas in which schools are located.
22. The need for single payments to be allocated to nursery, primary, secondary or special schools, or any combination of such schools, regardless of size.
23. The need for payments to be allocated to schools, of a size and satisfying other conditions, specified by the authority.

(a) As defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (S.I. 1997/319).

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

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

26. Effect of taxation on schools.

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

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

29. Incidence of Newly Qualified Teachers(b).

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

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

32. Prior attainment of pupils entering a school.

33. Advanced Skills Teachers employed at a school.

34. Permanent exclusions from a school (including estimates), and incidence of pupils whose names have been deleted from the admissions register of a maintained school as referred to in regulation 23 of these Regulations.

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

36. Incidence of teacher salaries previously paid under the Threshold and Performance Pay Grant (including actual or estimated cost).

SCHEDULE 5

Regulation 18

MINIMUM FUNDING GUARANTEE

Primary and Secondary Schools

1. In this paragraph and paragraphs 2 to 4—

- (a) the “relevant number” of pupils for the financial year beginning on 1st April 2005 shall be the number of registered pupils at the school, including pupils for whom grant is payable by the LSC, on 20th January 2005, save that where the authority has not exercised its discretion under regulation 8(3)(b) of the 2004 Regulations to take the number of pupils in places which the authority recognises as reserved for children with special educational needs, or in nursery classes, into account in their formula, then the number of those places must be added to the relevant number for the purposes of this Schedule;
- (b) subject to paragraph 4, the “relevant number” of pupils for funding periods 1 and 2 shall be the number of pupils at the school, including pupils in respect of whom grant is payable by the LSC, on the dates referred to in regulation 14, save that, where the authority has not exercised discretion under regulation 14(3) to take into account in their formula the number of pupils in places which the authority recognises as being reserved for children with special educational needs or in nursery classes, then the number of those places must be added to the relevant number for the purposes of this Schedule;

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

(b) A “newly qualified teacher” is a teacher in a maintained school who has been a qualified teacher for less than 12 months. Qualified teacher has the meaning in regulation 5 of The Education (School Teachers' Qualifications) (England) Regulations 2003 (S.I. 2003/1662).

(c) Where, as a result of compliance with the Education (Infant Class Sizes) (England) Regulations 1998 (S.I. 1998/1973) there are fewer than 30 children in an infant class, a local education authority may fund places which would not fall to be funded under any other provisions in these regulations by taking this into account as an additional factor under regulation 17.

- (c) the “adjusted budget share” is a school’s budget share determined in accordance with these Regulations, but not taking into account—
- (i) the effect of regulations 18 (Minimum Funding Guarantee), 21, 22 (prior year adjustments), 23 (excluded pupils) and paragraphs 8 (rates), 14 (PFI), 29 (NQTs), and 35 (ICS funding) of Schedule 4,
 - (ii) any amounts added in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves the school, including amounts for pupil exclusions above that permitted by regulation 23 (excluded pupils), but not including amounts for the cost of providing free school meals;
- (d) references to a redetermined adjusted budget share for the financial year beginning on 1st April 2005 include—
- (i) the effect of any additional arrangement approved by the Secretary of State under regulation 28 of the 2004 Regulations,
 - (ii) any amount in respect of regulation 21 of the 2004 Regulations,
 - (iii) any amount in respect of regulations 21 and 22 (prior year adjustments) of these regulations,
 - (iv) the amount of funding the school received under paragraph 4 of Schedule 3 to the Budget Regulations (Threshold and Performance Pay Grants) where the local education authority intends to include an amount in respect of this in the school’s budget share for funding period 1,
- but exclude the following—
- (v) any amounts included pursuant to regulations 12 (ICS), 18 (prior year adjustments: pupil numbers), 19 (prior year adjustments: non-pupil numbers), 22 (excluded pupils), 23, 24 and 25 (Additional provisions) of the 2004 Regulations,
 - (vi) any amount included in respect of paragraphs 8 (rates), 14 (PFI) and 29 (NQTs) of Schedule 1 to the 2004 Regulations, and
 - (vii) any amounts in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves school, including amounts for pupil exclusions above that permitted by regulation 23 (excluded pupils) of these regulations but not including amounts for the cost of providing free school meals;
- (e) references to a redetermined adjusted budget share for funding period 1 include—
- (i) the effect of any additional arrangements approved by schools forums or the Secretary of State under regulation 25 (additional arrangements) of these Regulations,
- but exclude the following—
- (ii) any amounts included pursuant to regulation 23 (excluded pupils) of these Regulations,
 - (iii) any amount included in respect of paragraphs 8 (rates), 14 (PFI), 29 (NQTs), and 36 (ICS) of Schedule 4 to these Regulations, and
 - (iv) any amounts included in respect of funding for named pupils which is deducted from a school’s budget share when that pupil leaves school, including amounts above those permitted by regulation 23 (excluded pupils) of these regulations but not including amounts for the cost of providing free school meals;
- (f) for the purposes of this Schedule—
- (i) where a school has opened after 1st April 2005 but before the 1st April 2006, its redetermined adjusted budget share for the financial year beginning on 1st April 2005 shall be the amount that it would have been had the school opened on 1st April 2005, and
 - (ii) where a school has opened during funding period 1, its redetermined adjusted budget share for funding period 1 shall be the amount that it would have been had the school opened on 1st April of funding period 1, adjusted in accordance with sub-paragraph (d) or (e), whichever is applicable.
2. Subject to paragraphs 3 and 4, the guaranteed funding level must be calculated as follows—
- (a) where the relevant number of pupils is the same as, in respect of funding period 1, the relevant number for the financial year beginning on 1st April 2005 or, in respect of funding period 2, the relevant number for funding period 1, the guaranteed funding level must be A;

- (b) where the relevant number of pupils is lower than, in respect of funding period 1, the relevant number for the financial year beginning on 1st April 2005 or, in respect of funding period 2, the relevant number for funding period 1, the guaranteed funding level must be $A - (B \times C)$;
- (c) where the relevant number of pupils is higher than, in respect of funding period 1, the relevant number for the financial year beginning on 1st April 2005 or, in respect of funding period 2, the relevant number for funding period 1, the guaranteed funding level must be $(D/E) \times F$

where—

A is, in respect of funding period 1, the redetermined adjusted budget share for the financial year beginning on 1st April 2005 multiplied by 1.04 in respect of primary schools and 1.034 in respect of secondary schools and, in respect of funding period 2, the redetermined adjusted budget share for funding period 1 multiplied by 1.037 in respect of primary schools and secondary schools;

B is, in respect of funding period 1, the difference between the relevant number of pupils for the financial year beginning on 1st April 2005 and funding period 1, and, in respect of funding period 2, the difference between the relevant number of pupils for funding period 1 and funding period 2;

C is, in respect of funding period 1, the mean value of funding per pupil in the school's redetermined adjusted budget share for the financial year beginning on 1st April 2005 (calculated using pupil numbers on the 20th January 2005) multiplied by 1.04 x 0.80 in respect of primary schools and by 1.034 x 0.875 in respect of secondary schools, and in respect of funding period 2, the mean value of funding per pupil in the school's redetermined adjusted budget share for funding period 1 (calculated using pupil numbers on the 19th January 2006) multiplied by 1.037 x 0.8 in respect of primary schools and by 1.037 x 0.875 in respect of secondary schools;

D is, in respect of funding period 1, the redetermined adjusted budget share for the financial year beginning on 1st April 2005, and, in respect of funding period 2, the redetermined adjusted budget share for funding period 1;

E is, in respect of funding period 1, the relevant number of pupils for the financial year beginning on 1st April 2005, and, in respect of funding period 2, the relevant number of pupils for funding period 1; and

F is, in respect of funding period 1, the relevant number of pupils for the financial year beginning on 1st April 2005, multiplied by 1.04 in respect of primary schools and 1.034 in respect of secondary schools, and, in respect of funding period 2, the relevant number of pupils for funding period 1 multiplied by 1.037 in respect of primary schools and secondary schools.

3. Save where paragraph 4 applies, where the relevant number of pupils for the financial year beginning on 1st April 2005, funding period 1 or funding period 2 is 75 or fewer, that school's guaranteed funding level must be calculated as follows:

(a) for funding period 1—

- (i) where the relevant number of pupils in funding period 1 is the same as the relevant number for the financial year beginning on 1st April 2005 the guaranteed funding level must be A,
- (ii) where the relevant number of pupils in funding period 1 is lower than the relevant number of pupils for the financial year beginning on 1st April 2005 the guaranteed funding level must be, in respect of primary schools $A - (B \times G/H \times 1.04)$, and in respect of secondary schools $A - (B \times G/H \times 1.034)$,
- (iii) where the relevant number of pupils in funding period 1 is higher than the relevant number of pupils for the financial year beginning on 1st April 2005 the guaranteed funding level must be, in respect of primary schools $A + (B \times G/H \times 1.04)$, and in respect of secondary schools $A + (B \times G/H \times 1.034)$;

(b) for funding period 2—

- (i) where the relevant number of pupils in funding period 2 is the same as the relevant number for funding period 1 the guaranteed funding level must be A,
- (ii) where the relevant number of pupils in funding period 2 is lower than the relevant number of pupils for funding period 1 the guaranteed funding level must be $A - (B \times G/H \times 1.037)$ in respect of primary schools and secondary schools,
- (iii) where the relevant number of pupils in funding period 2 is higher than the relevant number of pupils for funding period 1 the guaranteed funding level must be $A + (B \times G/H \times 1.037)$ in respect of primary schools and secondary schools

where—

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

G is the total funding within the redetermined adjusted budget share for, in respect of funding period 1, the financial year beginning on 1st April 2005 and, in respect of funding period 2, the redetermined adjusted budget share for funding period 1, determined on the basis of pupil numbers, and

H is the relevant number of pupils for, in respect of funding period 1, the financial year beginning on 1st April 2005, and, in respect of funding period 2, funding period 1.

4. Where a school opens:
 - (a) in funding period 1, and is a replacement for two or more schools being discontinued in funding period 1, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school's redetermined adjusted budget share for the financial year beginning on 1st April 2005 shall be determined using the sum of the relevant number of pupils in the discontinued schools for that financial year as the relevant number for the purposes of paragraph 1(b); or
 - (b) in funding period 2, and is a replacement for two or more schools being discontinued in funding period 2, its guaranteed funding level must be calculated in accordance with paragraph 2, save that the figure in respect of the new school's redetermined adjusted budget share for funding period 1 shall be determined using the sum of the relevant number of pupils in the discontinued schools for that funding period as the relevant number for the purposes of paragraph 1(b).

Special Schools

5.—(1) A local education 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—

- (a) for funding period 1 must be at least 3.4 per cent higher than the amount initially determined in relation to the financial year beginning on 1st April 2005 in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 11(1)(a) of the 2004 Regulations; and
 - (b) for funding period 2, must be at least 3.7 per cent higher than the amount initially determined in relation to funding period 1 in respect of a place appropriate to a pupil with the same characteristics at that school under regulation 15(1)(a) of these Regulations.
- (2) (a) That portion of the redetermined budget share of a special school for funding period 1 calculated otherwise than in accordance with regulation 15 (but not including adjustments due under regulation 23 (excluded pupils)) must be at least 3.4 per cent higher than that portion of the initially determined budget share for the financial year beginning on 1st April 2005 calculated otherwise than in accordance with regulation 11 of the 2004 Regulations but not including regulations 18, 19 (prior year adjustments) and 22 (excluded pupils) of those Regulations; and
 - (b) that portion of the initially determined budget share of a special school for funding period 2 calculated otherwise than in accordance with regulation 15 (but not including adjustments due under regulation 23) must be at least 3.7 per cent higher than that portion of the initially determined budget share for funding period 1 calculated in accordance with regulation 15 of these Regulations but not including adjustments due under regulation 23.

SCHEDULE 6

Regulation 26

CONTENTS OF SCHEMES

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

1. The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares.
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 the authority may delegate to the governing body the power to spend any part of the authority's LEA budget or schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act.
10. The use of delegated budgets and of sums made available to the governing body by the 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.
15. The keeping of a register of any business interests of the governors and the head teacher.
16. The provision of information by and to the governing body.
17. The maintenance of inventories of assets.
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 the governing body.
23. Funding for child protection issues.
24. School meals.
25. To whom in the authority complaints should be made by persons working at the school or by school governors about financial management or financial propriety at the school and how such complaints will be dealt with.
26. Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the Education Act 2002.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make, in a single instrument, provision for the financial arrangements of local education authorities (“LEAs”) in relation to the funding of schools over the financial years 2006–07 and 2007–08. Such provision is presently made, in relation to 2005–06, by The Financing of Maintained Schools (England) Regulations 2004 and The LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004 (revoked by this instrument).

These Regulations define the LEA Budget (regulation 3), the schools budget (regulation 5), central expenditure (regulation 7 and Schedule 2), and the individual schools budget (regulation 7), and provide the basis upon which a local education authority may determine schools’ budget shares. They also require, in regulation 26 and Schedule 6, a local education authority in a scheme prepared by them to set out specified matters connected with the financing of schools which they maintain. The budget definitions, formerly in the Budget Regulations, remain largely unchanged.

The most significant changes from the 2004 Regulations relate to local education authorities’ obligations, in regulations 4 and 10, to notify the governing bodies of maintained schools not later than 31st March 2006 of the schools budgets and their school’s budget shares for the financial years 2006–07 and 2007–08 (now referred to as funding periods 1 and 2). Limits are imposed on the deduction of certain expenditure from the schools budgets for funding periods 1 and 2 by regulation 7 and Schedule 2, and there are new powers for schools forums to vary those limits in regulation 13. In so doing, the schools forum will be authorising deduction of particular amounts. Schools forums may also approve changes to a local education authority’s formula in specified circumstances, and subject to conditions (regulations 9 and 25). Where a schools forum will not vary any limit, or approve changes to the formula, the authority may apply to the Secretary of State (regulations 13 and 25).

The Secretary of State has a new power to authorise deductions from, and vary limits on deductions from, the schools budget (regulation 13), and retains the power to approve any redetermination of budget shares to such extent as she may specify (regulation 25).

