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STATUTORY INSTRUMENTS

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**2002 No. 377**

**EDUCATION, ENGLAND**

**The Financing of Maintained  
Schools (England) Regulations 2002**

*Made* - - - - 21st February 2002  
*Laid before Parliament* 22nd February 2002  
*Coming into force* - - 15th March 2002

In exercise of the powers conferred on the Secretary of State by sections 46, 47, 48(1) and (2) and 138(7) of, and paragraph 1(7) of Schedule 14 to, the School Standards and Framework Act 1998<sup>(1)</sup> the Secretary of State for Education and Skills hereby makes the following Regulations:

**PART I**

**INTRODUCTION**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Financing of Maintained Schools (England) Regulations 2002 and shall come into force on 15th March 2002.

(2) These Regulations shall apply for the purposes of the financing of maintained schools in England in the financial year beginning on 1st April 2002.

(3) In these Regulations—

“the 1996 Act” means the Education Act 1996<sup>(2)</sup>;

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

“the 1999 Regulations” means the Financing of Maintained Schools Regulations 1999<sup>(3)</sup>;

“the 2000 Regulations” means the Financing of Maintained Schools (England) Regulations 2000<sup>(4)</sup>;

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(1) 1998 c. 31. 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).

(2) 1996 c. 56.

(3) S.I. 1999/101.

(4) S.I. 2000/478.

“the 2001 Regulations” means the Financing of Maintained Schools (England) Regulations 2001<sup>(5)</sup>.

(4) In these Regulations “maintained school” means a community, foundation or voluntary school or a community or foundation special school.

(5) In these Regulations a reference to proposals for the establishment of a school is a reference to a proposal for the establishment of the school under section 35, 41 or 339(1) of the 1996 Act or section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act.

(6) In these Regulations, except in Part IV where the definition in regulation 28 applies, a reference (however framed) to 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.

(7) In these Regulations a reference to a governing body includes the temporary governing body of a proposed school falling within paragraph (6).

(8) In these Regulations a reference to a primary or secondary school means a primary or secondary school which is a community, foundation or voluntary school.

(9) In these Regulations a reference (however framed) to schools maintained by a local education authority does not include schools which are not maintained schools as defined in paragraph (4).

(10) In these Regulations a reference to the permanent exclusion of a pupil is a reference to his permanent exclusion as defined from time to time for the purposes of section 494 of the 1996 Act<sup>(6)</sup>.

(11) In these Regulations references to net expenditure or to a net local schools budget—

- (a) are references to that expenditure or that local schools budget net of related fees, charges, specific grant or other income received by the local education authority;
- (b) except that there is not to be deducted in order to arrive at the net local schools budget, any specific grant which is used to support expenditure through the individual schools budget or which is a specific grant only to the extent that it has to be used for supporting any or all of the authority’s expenditure through the local schools budget.

(12) In these Regulations a reference to a former grant-maintained or grant-maintained special school is a reference to a school which was such a school within the meaning of the 1996 Act immediately before 1st April 1999.

(13) In these Regulations a reference to the LSC is a reference to the Learning and Skills Council for England<sup>(7)</sup>.

(14) Unless the context otherwise requires, words or expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

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budget share	Section 47(1) of the 1998 Act
delegated budget	Section 49(7) of the 1998 Act
expenditure	regulation 3(2) of these Regulations (for the purposes of Part II of these Regulations)
financial year	Section 579(1) of the 1996 Act
formula	regulation 10 of these Regulations
individual schools budget	Section 46(2) of the 1998 Act

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(5) [S.I. 2001/475](#).

(6) Section 494 was substituted by paragraph 128 of Schedule 30 to the 1998 Act.

(7) The Learning and Skills Council for England was established under section 1 of the Learning and Skills Act 2000 (c. 21).

key stage	Section 355(1) of the 1996 Act
local schools budget	Section 46(1) of the 1998 Act
maintained school	regulation 1(4) of these Regulations
maintenance grant	sections 244(1) and 250(1) of the 1996 Act
nursery school	Section 6(1) of the 1996 Act
permanent exclusion	regulation 1(10) of these Regulations
scheme	section 48(5) of the 1998 Act
school maintained by a local education authority	regulation 1(9) of these Regulations
school year	section 579(1) of the 1996 Act <sup>(8)</sup>
special educational needs	section 312(1) of the 1996 Act.

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(15) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation, Part or Schedule is a reference to the regulation or Part of, or Schedule to, these Regulations so numbered and a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

### **Revocation of the 2000 Regulations and operation of the 2001 Regulations**

2.—(1) The 2000 Regulations and the Financing of Maintained Schools (England) (No.2) Regulations 2000<sup>(9)</sup> shall be revoked on 1st April 2002.

(2) A school's budget share for the financial year beginning on 1st April 2001 may only be redetermined in the financial year beginning on 1st April 2002 in accordance with the provisions of the 2001 Regulations or the Financing of Maintained Schools (England) (Amendment) Regulations 2001<sup>(10)</sup> if such redetermination makes provision for—

- (a) pupils permanently excluded or admitted following a permanent exclusion; or
- (b) the correction of errors, whether in calculation or data, under any of the provisions of those Regulations.

## **PART II**

### **LOCAL AND INDIVIDUAL SCHOOLS BUDGET**

#### **Local schools budget**

3.—(1) The classes or descriptions of local education authority expenditure specified in subparagraphs (a) and (b) below are hereby prescribed for the purposes of section 46(1) of the 1998 Act and the determination of a local education authority's local schools budget subject to the exceptions in regulation 4—

- (a) expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education; and

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<sup>(8)</sup> Inserted by the Education Act 1997 (c. 44), Schedule 7, paragraph 43.

<sup>(9)</sup> S.I. 2000/1090.

<sup>(10)</sup> S.I. 2001/907.

- (b) expenditure on items listed in paragraph 27(a), (b), (d) and (r) to (t) of Schedule 1 in so far as such expenditure does not fall within sub-paragraph (a) above.
- (2) For the purposes of this Part expenditure does not include expenditure defrayed by fees and charges collected by the governing body of a maintained school which are—
  - (a) specifically required or permitted to be collected by any provision of the Education Acts; or
  - (b) in respect of the use of school premises or equipment.

### Exceptions

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

- (a) expenditure in connection with nursery schools;
- (b) expenditure in connection with any provision made for children who have not attained the age of five except where such provision is made at a maintained school or the expenditure is by way of fees paid under section 320 or 348 of the 1996 Act (special provision for children with special educational needs);
- (c) expenditure on payments to another local education authority pursuant to section 492, 493 or 494 of the 1996 Act (recoupment between authorities);
- (d) expenditure which the authority propose to capitalise in their accounts in accordance with proper practices being those accounting practices—
  - (i) which the authority are required to follow by virtue of any enactment, or
  - (ii) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned, but in the event of any conflict in any respect between the practices falling within sub-paragraph (i) above and those falling within sub-paragraph (ii) above, only those falling within sub-paragraph (i) above are to be regarded as proper practices<sup>(11)</sup>;
- (e) expenditure expected to be offset by income received from Her Majesty's Chief Inspector of Schools in England or Her Majesty's Chief Inspector of Schools in Wales;
- (f) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(12)</sup> (arrangements for patrolling school crossings); and
- (g) expenditure on the payment of allowances under section 518 of the 1996 Act to pupils over compulsory school age to the extent that it is expected to be offset by specific grant paid by the Secretary of State or the LSC.

### Individual schools budget

5. A local education authority may deduct from their local schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 1, in whole or in part, in order to arrive at their individual schools budget for the financial year.

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(11) These are the proper practices as referred to in section 66(4) of the Local Government and Housing Act 1989 (c. 42) and, at the date that these Regulations are made, they include the Code of Practice on Local Authority Accounting in Great Britain 2000, as updated (ISBN 0 85299 897 X).

(12) 1984 c. 27, amended by the Local Government Act 1985 (c. 51), Schedule 5, paragraph 4(10).

## **PART III**

### **SCHOOLS' BUDGET SHARES: MAIN PROVISIONS**

#### **Determination of budget shares**

6. This Part and Parts IV and V apply for the purposes of determining the amount which a local education authority may determine as a maintained school's budget share for the financial year beginning on 1st April 2002.

#### **Allocation of individual schools budget**

7. A local education authority shall allocate in the financial year beginning on 1st April 2002 in accordance with this Part and Parts IV and V all of their individual schools budget for that financial year as the budget shares of schools which they maintain.

#### **Timing of determination of budget shares**

8.—(1) The amount of a school's budget share for the financial year beginning on 1st April 2002 shall be initially determined by the local education authority before the beginning of that financial year.

(2) A local education authority may decide not to initially allocate all of their individual schools budget in accordance with this Part in the form of budget shares at the beginning of the financial year and instead to retain an amount for the purpose of redeterminations or the correction of errors but such amount must be used for that purpose or distributed to schools as required by regulation 22(4) before the end of the financial year.

#### **Consultation**

9.—(1) Subject to paragraph (2), a local education authority shall consult the governing body and head teacher of every school which they maintain about any proposed changes in relation to the factors and criteria that were taken into account, or the methods, principles and rules that were adopted, in their formula under the 2001 Regulations in the financial year beginning on 1st April 2001 (including any new factors, criteria, methods, principles or rules).

(2) Paragraph (1) shall not apply to changes made pursuant to regulation 8(2), 11(7), 14(2), 17, 21, 22(4) or 23 or by Part IV.

(3) Consultation under this regulation shall take place in sufficient time to allow the outcome to be taken into account in the determination of the authority's formula and in the initial determination of schools' budget shares before the beginning of the financial year.

(4) The requirement to consult in paragraph (1) can be satisfied by consultation which takes place during the financial year beginning on 1st April 2001 before the coming into force of these Regulations.

(5) A local education authority shall inform all those who were consulted of the outcome of the consultation.

#### **Formula for determination of budget shares**

10.—(1) A local education authority shall determine before the beginning of the financial year beginning on 1st April 2002, and after the consultation referred to in regulation 9, the formula which they will use to determine schools' budget shares in that financial year having regard to the factors, criteria and requirements set out in this Part and in Part IV.

(2) A local education authority shall have regard to the desirability of such a formula being simple, objective, measurable and predictable in effect, and clearly expressed.

(3) A local education authority may not use factors or criteria in their formula under this Part which make an allowance, in whole or in part, for—

- (a) any amount included in the school's budget share by virtue of Part IV; or
- (b) any education standards grants, received by the authority pursuant to section 484 of the 1996 Act, paid in respect of capital projects, of an amount determined by the Secretary of State by reference to a formula, and decisions about the spending of which the authority are required to delegate to the governing bodies of schools.

(4) Subject to regulation 32 (additional arrangements approved by the Secretary of State), a local education authority shall use the formula determined under paragraph (1) in all determinations and redeterminations of budget shares in respect of the financial year.

### **Pupil numbers**

**11.**—(1) In determining budget shares for primary and secondary schools, a local education authority shall take into account in their formula the number of registered pupils at those schools on such date or dates as may be determined by the authority in accordance with regulation 12, weighted if the authority consider it appropriate in accordance with paragraph (5).

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

- (a) pupils in places which the authority recognise as reserved for children with special educational needs or (except where the local education authority chooses not to exercise their discretion under regulation 14(1) in respect of children in nursery classes) for children in nursery classes; or
- (b) in relation to the funding of boarding accommodation only, pupils in boarding accommodation at boarding schools other than special schools; or
- (c) pupils in respect of whom grant is payable to the authority by the LSC under section 7 of the Learning and Skills Act 2000.

(3) An authority may in determining budget shares for special schools, or for primary or secondary schools with places which the authority recognise as reserved for children with special educational needs or for children in nursery classes, take into account in their formula the number of registered pupils at those special schools or the number of pupils in those reserved places at primary or secondary schools on such date or dates as may be determined by the authority, weighted if the authority consider it appropriate in accordance with paragraph (5).

(4) If the authority estimate the number of registered pupils at a school they must consult the head teacher of the school.

(5) 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 a 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 planned admission limits agreed with the authority;
- (e) in the case of pupils aged under five, hours of attendance;
- (f) special educational needs.

(6) 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.

(7) Subject to paragraph (8), a local education authority shall provide in their formula that the average amount per pupil allocated in accordance with regulation 11(1) or (3) in respect of pupils who are—

- (a) in key stage 1 or 2;
- (b) in key stage 3 or 4,

shall in each case be at least 2.5 per cent. higher than the average amount per pupil initially determined in each of those cases under the corresponding provisions of the 2001 Regulations.

(8) Paragraph (7) shall not apply in relation to any amount allocated in accordance with paragraph (3) weighted in accordance with paragraph (5)(f) (special educational needs).

### **Dates for ascertaining pupil numbers**

**12.**—(1) Where the authority determine only one date for the purposes of regulation 11(1) that must be a date which falls—

- (a) before 1st April 2002; and
- (b) in the school year in which 1st April 2002 falls.

(2) Where the authority determine more than one date for the purposes of regulation 11(1) then—

- (a) one of those dates must satisfy paragraph (1) above;
- (b) of the other date or dates—
  - (i) no date may be earlier than the beginning of the school year in which 1st April 2002 falls;
  - (ii) the authority may determine a date or dates which are in the future and estimate the number of registered pupils at the school on that date or those dates.

(3) Paragraphs (1) and (2) (restrictions on choice of dates for the purposes of regulation 11(1)) shall not apply in relation to pupils in nursery or reception classes whom the authority take into account under regulation 11(1) (pupils in nursery classes not occupying places which the authority recognise as reserved for such pupils or any pupils in reception classes).

### **Pupil numbers: Dual registration**

**13.** Where a pupil is, in accordance with regulations made under section 434 of the 1996 Act(**13**), a registered pupil at more than one school then that pupil shall be treated as being a full-time pupil at each such school unless the authority expressly provide otherwise in their formula.

### **Places**

**14.**—(1) In determining budget shares for—

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

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**(13)** The relevant regulations, as at the date that these Regulations are made, are the Education (Pupil Registration) Regulations 1995 (S.I. 1995/2089) which remain in force by virtue of paragraph 1 of Schedule 39 to the 1996 Act. Amending instruments are S.I. 1997/2624 and S.I. 2001/2802.

the local education authority may take into account in their formula the number of places which they wish to fund at those special schools, the number of places of the kind described above at those primary or secondary schools or the amount of boarding accommodation which they wish to fund and in the case of sub-paragraphs (a) and (b) above may take account of the special educational needs in question.

(2) A local education authority shall provide in their formula that any amount allocated in accordance with—

(a) paragraph (1)(a); or

(b) in so far as it relates to special educational needs, paragraph (1)(b),

in respect of a place at a school shall be at least 2.5 per cent. higher than the amount initially determined in relation to the financial year beginning on 1st April 2001 in respect of a place appropriate to a pupil with the same characteristics at that school under the corresponding provisions of the 2001 Regulations.

### **Differential funding**

**15.—**(1) A local education authority shall 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 shall 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 paragraphs 20(a) and (b), 34 or 41 of Schedule 1 to these Regulations.

(3) A local education authority are not required to use factors or criteria in their formula which differentiate between—

(a) primary and secondary schools, and special schools;

(b) schools whose pupils are in different age ranges,

but they may do so.

(4) If a local education authority choose to use a particular factor or criteria to delegate funding to all or some of the schools which they maintain, and a school which it is proposed to discontinue during the financial year did not receive funding in accordance with that factor or criteria in the financial year beginning on 1st April 2001, then this regulation shall not require the local education authority to delegate such funding to that school in accordance with that factor or criteria but they may do so.

### **Additional factors or criteria**

**16.—**(1) Subject to regulation 15 (differential funding), a local education authority may, in determining budget shares for schools which they maintain, take into account in their formula, as they consider appropriate, any or all of the factors or criteria set out in Schedule 2.

(2) A local education authority shall, in determining budget shares for primary and secondary schools which they maintain, take into account in their formula a factor based on the incidence of social deprivation among pupils registered at those schools.

### **Sixth form funding**

**17.—**(1) Subject to paragraph 3, a secondary school's budget share for the financial year beginning on 1st April 2002 shall include 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 contained within grant payable to the local education authority under section 7 of the Learning and Skills Act 2000.

(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, use factors or criteria which have the effect of reducing the amounts to be allocated under paragraph (1) in one or both of the following ways:

- (a) by deducting a sum representing that element which duplicates amounts payable to the school (using factors other than those permitted or required by regulation 11) under the formula used by the authority to determine schools' budget shares;
- (b) by reducing the amount referred to in paragraph (1) by an amount not exceeding two-thirds of the difference between that amount and the Real Terms Guarantee amount for the school as notified by the LSC, where the latter amount is lower than the former amount.

(4) In this regulation, "Real Terms Guarantee amount" means the amount notified to the local education authority by the LSC as being the finalised real terms guarantee level for the financial year beginning on 1st April 2002 for the school concerned.

#### **Budget share adjustments in relation to the financial year beginning on 1st April 2001: Pupil numbers**

**18.**—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2001 was determined pursuant to regulation 11(1) or (3) of the 2001 Regulations other than in cases where pupil numbers were weighted according to special educational needs.

(2) Subject to paragraph (3), to the extent that a school's budget share for the financial year beginning on 1st April 2001 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 those dates 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 shall determine that school's budget share for the financial year beginning on 1st April 2002 so as to take into account those differences.

(3) A local education authority may determine a school's budget share so as to make such adjustments which are appropriate to take into account, wholly or partly, any increases in pupil numbers during the course of the financial year beginning on 1st April 2001.

(4) In so far as a determination under this regulation would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be reduced, it may not be reduced by an amount greater than the amount by which the school's budget share for the financial year beginning on 1st April 2001 determined in accordance with regulation 20 (transitional funding) of the 2001 Regulations could have been reduced.

(5) In so far as a determination under this regulation would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of the school in the financial year beginning on 1st April 2001 under regulation 20 (transitional funding) of the 2001 Regulations.

### **Budget share adjustments in relation to the financial year beginning on 1st April 2001: Non-pupil number factors**

19.—(1) This regulation applies to the extent that a school's budget share for the financial year beginning on 1st April 2001 was determined other than pursuant to regulation 11(1) or (3) of the 2001 Regulations or was so 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 2001,

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

(3) In so far as a determination under this regulation would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be reduced, it may not be reduced by an amount greater than the amount by which the school's budget share for the financial year beginning on 1st April 2001 determined in accordance with regulation 20 (transitional funding) of the 2001 Regulations could have been reduced.

(4) In so far as a determination under this regulation would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of the school in the financial year beginning on 1st April 2001 under regulation 20 (transitional funding) of the 2001 Regulations.

### **New and reorganised schools**

20.—(1) In the case of—

- (a) a proposed school referred to in regulation 1(6);
- (b) a school proposals for the establishment of which have not been fully implemented;
- (c) a school which is the subject of a significant change of character, a significant enlargement of its premises or a transfer to a new site under the 1996 Act; or
- (d) a school which is the subject of a prescribed alteration within the meaning of the 1998 Act,

the local education authority shall include factors or criteria in their formula which enable them to determine the school's budget share so as to take into account the particular needs of the school or proposed school; and in particular may, in any financial year preceding the financial year in which a school first admits pupils, determine the amount of the budget share as zero.

(2) 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) that 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.

### **Transitional funding**

21.—(1) A local education authority shall determine the budget share of a former grant-maintained or grant-maintained special school so as to include an amount for transitional funding.

(2) The amount referred to in paragraph (1) is the amount if any by which the school's protected level of funding in respect of the financial year beginning on 1st April 2002 determined by the local education authority in accordance with Schedule 3 is greater than the school's adjusted budget share for that financial year.

(3) For the purposes of this regulation, a school's adjusted budget share is its budget share determined in accordance with this Part and Part V but not taking into account the effect of this regulation and regulations 18 (budget share adjustments: pupil numbers), 19 (budget share adjustments: non-pupil number factors), 23 (excluded pupils), 24, 25 and 26 (additional provisions for redeterminations) and Part IV.

(4) The amount of a school's transitional funding shall not be affected by a net increase during the financial year in that school's adjusted budget share arising out of changes in the numbers of pupils with statements of special educational needs or changes in the needs of such pupils.

### **Redetermination of budget shares**

**22.**—(1) A local education authority shall include factors or criteria in their formula which enable them, if they so wish, to redetermine a school's budget share during the course of the financial year to take account wholly or partly of—

- (a) changes during the financial year in the number or estimates of the number of registered pupils (including the substitution of actual numbers for estimates) at the school by reference to which the budget share was determined in accordance with regulation 11(1) or (3) other than in cases where pupil numbers were weighted according to special educational needs;
- (b) other changes during the financial year in the data by reference to which the budget share was determined; and
- (c) changes during the financial year in the amount of the authority's individual schools budget.

(2) This regulation is subject to regulation 21 (transitional funding).

(3) A local education authority shall set out in their formula the factors or criteria that they will use, in redetermining schools' budget shares in accordance with paragraph (1), to allocate the planned expenditure referred to in paragraph 32 of Schedule 1.

(4) Where the local education authority propose to retain part of their individual schools budget pursuant to regulation 8(2) for the purpose of redeterminations or the correction of errors they shall include factors or criteria in their formula which require them to redetermine schools' budget shares before the end of the financial year so as to distribute to schools the unallocated balance of any such retained amount on the basis of pupil numbers in accordance with regulation 11(1) or (3).

(5) A local education authority shall include factors or criteria in their formula which enable them to 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—

- (a) any reduction or increase in the school's budget share under regulation 23 (pupils permanently excluded or admitted following a permanent exclusion); or
- (b) any increase in the school's budget share under this regulation in respect of significant increases in pupil numbers funded by the planned expenditure referred to in paragraph 32 of Schedule 1.

### **Pupils permanently excluded or admitted following a permanent exclusion**

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

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

A is the amount, in the financial year in which the permanent exclusion takes effect (as defined from time to time for the purposes of section 494 of the 1996 Act ("the relevant date")), determined by the authority, in accordance with this Part, to be attributable for the full financial year to a registered pupil of the same age and characteristics 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 or regulation 32 by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criteria 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, the amount attributable to that pupil shall be £2,600); and

B is the number of complete weeks remaining in the financial year 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 shall redetermine the admitting school's budget share in accordance with paragraph (4).

(4) The school's budget share shall 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 financial year during which the pupil is a registered pupil at the admitting school;

F is the number of complete weeks remaining in the financial year calculated from the relevant date.

### **Additional provisions for redeterminations in relation to financial years beginning on or before 1st April 2000: (1) Former grant-maintained or grant-maintained special schools in the period before they became such schools and (2) Schools which were never such schools**

24.—(1) A local education authority may in the circumstances described in paragraph (2) redetermine a school's budget share for the financial year beginning on 1st April 2002 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school, by reference to which the following were determined—

(a) the school's budget share within the meaning of the 1996 Act for any financial year beginning on or before 1st April 1998; or

- (b) in the case of a school which is not a former grant-maintained or grant-maintained special school, the school's budget share within the meaning of the 1998 Act for the financial year beginning on 1st April 1999 or the financial year beginning on 1st April 2000.
- (2) The circumstances referred to in paragraph (1) are that—
  - (a) such matters have not already been taken into account in any determination or redetermination of that school's budget share within the meaning of the 1996 Act or the 1998 Act or its maintenance grant (as a former grant-maintained or grant-maintained special school); and
  - (b) such redetermination as is proposed could have been made in relation to the preceding financial year in question under the terms of—
    - (i) the authority's scheme within the meaning of the 1996 Act in force in that year; or
    - (ii) in the case of the financial year beginning on 1st April 1999, the 1999 Regulations; or
    - (iii) in the case of the financial year beginning on 1st April 2000, the 2000 Regulations or the Financing of Maintained Schools (England) (No 2) Regulations 2000.

**Additional provisions for redeterminations in relation to the financial years beginning on 1st April 1999 or 1st April 2000: Former grant-maintained or grant-maintained special schools**

25.—(1) A local education authority may redetermine a former grant-maintained or grant-maintained special school's budget share for the financial year beginning on 1st April 2002 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school, by reference to which the school's budget share for the financial year beginning on 1st April 1999 or the financial year beginning on 1st April 2000 was determined if—

- (a) such matters have not already been taken into account in any determination or redetermination of that school's budget share for any financial year or financial years;
- (b) such redetermination as is proposed could have been made in the financial year beginning on 1st April 1999 (or, as the case may be, the financial year beginning on 1st April 2000) in accordance with the 1999 Regulations (or, as the case may be, the 2000 Regulations or the Financing of Maintained Schools (England) (No 2) Regulations 2000).

(2) In so far as a determination under paragraph (1) would require the amount that would otherwise be the budget share of the school to be reduced, it may not be reduced by an amount greater than the amount by which the school's budget share for the financial year beginning on 1st April 1999 (or, as the case may be, the financial year beginning on 1st April 2000) determined in accordance with regulation 18 (transitional funding) of the 1999 Regulations (or, as the case may be, regulation 18 (transitional funding) of the 2000 Regulations) could have been reduced.

(3) In so far as a determination under paragraph (1) would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of the school in the financial year beginning on 1st April 1999 (or, as the case may be, the financial year beginning on 1st April 2000) under regulation 18 (transitional funding) of the 1999 Regulations (or, as the case may be, regulation 18 (transitional funding) of the 2000 Regulations).

**Additional provisions for redeterminations in relation to financial years beginning on or before 1st April 1998: Former grant-maintained or grant-maintained special schools**

26.—(1) A local education authority may in the circumstances described in paragraph (2) redetermine a former grant-maintained or grant-maintained special school's budget share for the financial year beginning on 1st April 2002 to take into account changes in that school's non-domestic rates liability or to correct errors in data supplied by the head teacher or governing body of the school,

by reference to which the school's maintenance grant (as a grant-maintained or grant-maintained special school) was determined for any financial year beginning on or before 1st April 1998.

- (2) The circumstances referred to in paragraph (1) are that—
- (a) such matters have not already been taken into account in any determination or redetermination of that school's budget share within the meaning of the 1996 Act or the 1998 Act or its maintenance grant (as a grant-maintained or grant-maintained special school);
  - (b) such redetermination as is proposed could have been made in the preceding financial year in question in relation to a school maintained by the authority under the terms of the authority's scheme within the meaning of the 1996 Act in force in that year; and
  - (c) any increase or decrease in the amount of the school's budget share to take into account changes in the school's non-domestic rates liability does not exceed the change in the school's net liability in respect of rates.

(3) In so far as a determination under paragraph (1), arising from adjustments relating to the financial year beginning on 1st April 1998, would require the amount that would otherwise be the budget share of the school to be reduced, it may not be reduced by an amount greater than the amount by which the school's maintenance grant for that financial year determined in accordance with regulation 9 (transitional funding) of the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1998(14) ("the 1998 Regulations") could have been reduced.

(4) In so far as a determination under paragraph (1), arising from adjustments relating to the financial year beginning on 1st April 1998, would require the amount that would otherwise be the budget share of a former grant-maintained or grant-maintained special school to be increased, there shall be deducted from that increase any amount for transitional funding determined in respect of the school in the financial year beginning on 1st April 1998 under regulation 9 (transitional funding) of the 1998 Regulations.

### **Percentage of "pupil-led" funding**

27.—(1) In determining and redetermining budget shares for primary and secondary schools a local education authority shall ensure that their formula provides that at least 75 per cent. of the amount which is their individual schools budget, less the amounts referred to in paragraph (2), is allocated in one or more of the following manners—

- (a) in accordance with regulation 11(1) or (3);
- (b) in accordance with any other factors or criteria using pupil numbers which provide for the same funding for pupils of the same age irrespective of the nature of the school which they attend but such funding for children with special educational needs who do not have statements of special educational needs shall only count towards the figure of 75 per cent. referred to above to the extent that it does not exceed 5 per cent. of the amount allocated by the authority to primary and secondary schools from their individual schools budget;
- (c) to places in primary schools which the authority recognise as reserved for children in nursery classes;
- (d) to places in primary or secondary schools which the authority recognise as reserved for children with special educational needs;
- (e) for pupils with statements of special educational needs where funding in respect of such pupils forms part of schools' budget shares;
- (f) to places for pupils in boarding accommodation at boarding schools other than special schools; and

(g) in accordance with regulation 17.

(2) For the purposes of this regulation the following amounts are to be excluded from the local education authority's individual schools budget—

- (a) the budget shares of special schools;
- (b) any transitional funding determined under regulation 21;
- (c) any part of the individual schools budget retained pursuant to regulation 8(2) for the purpose of redeterminations or the correction of errors in relation to special schools;
- (d) any amount determined under Part IV.

## PART IV

### ADDITIONAL AMOUNT TO BE ADDED TO AMOUNT DETERMINED UNDER PART III

#### Definition for Part IV

**28.** In this Part a reference to a maintained school includes a proposed school which, on implementation of the proposals for the establishment of the school, will be a community, foundation or voluntary school or a community or foundation special school in the financial year beginning on 1st April 2002.

#### Determination of additional amount

**29.—(1)** In making the initial determination of a maintained school's budget share, a local education authority shall, subject to paragraphs (2), (3) and (5) and regulation 32 below, add to the amount determined in accordance with Part III, the amount which is set out in column (2) of the table below, opposite the description of that school in column (1).

<i>(1)</i> <i>Description of school</i>	<i>(2)</i> <i>Amount to be added</i>
Primary school with fewer than 100.5 pupils	£7,200
Primary school with 100.5 pupils or more but with fewer than 200.5 pupils	£13,900
Primary school with 200.5 pupils or more but with fewer than 400.5 pupils	£24,700
Primary school with 400.5 pupils or more but with fewer than 600.5 pupils	£30,900
Primary school with 600.5 pupils or more	£49,400
Secondary school with fewer than 600.5 pupils	£59,600
Secondary school with 600.5 pupils or more but with fewer than 1,200.5 pupils	£72,000
Secondary school with 1,200.5 pupils or more	£84,300
Special school with fewer than 100.5 pupils	£20,600
Special school with 100.5 pupils or more	£28,800

(2) A local education authority shall determine the budget share of a middle deemed primary school which has a year 8 or a year 9 class in accordance with this Part as if that school were a secondary school.

(3) Where a proposed school to which this Part applies will not have a budget share on or before 1st April 2002, a local education authority shall determine the budget share of that school in accordance with this Part as soon as it does have a budget share.

(4) References in the table to a number of pupils are references to—

- (a) the number of full-time equivalent pupils registered at the school on 17th January 2002; or
- (b) in the case of a school which is to open during the financial year or a school proposals for the establishment of which have not been fully implemented, the number of full-time pupils indicated, when proposals for the establishment of the school were published, as the number of such pupils to be admitted to the school when the proposals were fully implemented,

where the “full-time equivalent” is the number of full-time pupils plus half the number of part-time pupils, and a “part-time pupil” is one who attends school other than on the basis that he should attend both morning and afternoon sessions at least 5 days each week.

(5) A local education authority shall not determine the budget share of a school in accordance with this Part if proposals to discontinue the school in the financial year beginning on 1st April 2002 have already been approved, unless at a date following 1st April 2002 the closure date is amended to a date on or after 1st April 2003.

(6) Where—

- (a) a school’s budget share is determined in accordance with this Part; and
- (b) proposals to discontinue the school in the financial year beginning on 1st April 2002 are approved on or after that date; and
- (c) the local education authority are satisfied that there are successor schools opening on or before 31st March 2003 which will have their budget shares determined in accordance with this Part,

then the budget share of the discontinued school shall be redetermined so as to deduct the amount added in accordance with this Part.

### **Redeterminations of budget shares under Part III**

**30.** Whenever a local education authority redetermine a school’s budget share in accordance with Part III they shall—

- (a) first determine an amount in accordance with that Part without taking into account the amount to be added in accordance with this Part; and then
- (b) add to the amount so determined the amount to be added in accordance with this Part.

## **PART V**

### **CORRECTION OF ERRORS AND ADDITIONAL ARRANGEMENTS APPROVED BY THE SECRETARY OF STATE**

#### **Correction of errors**

**31.** A local education authority may at any time during the financial year redetermine a school’s budget share for the financial year beginning on 1st April 2002 in order to correct an error in a



determination or redetermination under these Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise.

#### **Additional arrangements approved by the Secretary of State**

**32.**—(1) The Secretary of State may, where it appears to her to be expedient to do so, authorise a local education authority to determine or redetermine budget shares, to such extent as she may specify, in accordance with arrangements approved by her in place of the arrangements provided for by these Regulations.

(2) Authorisations given and arrangements approved by the Secretary of State under the 1999 Regulations, the 2000 Regulations or the 2001 Regulations shall, unless the contrary intention appears in such authorisation or arrangements, continue to apply in relation to the financial year beginning on 1st April 2002.

## **PART VI**

### **SCHEMES**

#### **Required content of schemes**

**33.** A scheme prepared by a local education authority under section 48(1) of the 1998 Act shall deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 4.

#### **Manner of publication**

**34.** For the purposes of paragraph 1(7) of Schedule 14 to the 1998 Act (prescribed manner of publication of schemes) a scheme shall be published by the local education authority concerned on its coming into force and in the circumstances prescribed in regulation 35 by—

- (a) furnishing a copy to the governing body and a copy to the head teacher of each school maintained by the authority; and
- (b) making a copy available for reference at all reasonable times and without charge at each school maintained by the authority and at the principal education office of the authority.

#### **Additional occasions when schemes require publication**

**35.** 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 shall be published by the local education authority concerned on the coming into force of any revision of it.

21st February 2002

*Stephen Timms*  
Minister of State,  
Department for Education and Skills

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## SCHEDULE 1

Regulation 5

### CLASSES OR DESCRIPTIONS OF PLANNED EXPENDITURE WHICH MAY BE DEDUCTED FROM THE LOCAL 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 supported by specific and certain other grants

1. Expenditure—
  - (a) which is offset by a grant made to the authority under conditions which impose restrictions on the particular purposes of the authority for which the grant may be used (other than where the restriction is that the grant form part of the local schools budget or the individual schools budget); or
  - (b) which relates to an agreed activity or activities in pursuance of targets specified within a Local Public Service Agreement into which the authority has entered, and which the authority proposes to meet from funds provided, in connection with that Agreement, by way of a special grant paid to the authority under section 88B of the Local Government Finance Act 1988<sup>(15)</sup>.
2. Expenditure, not falling within paragraph 1, but taken into account in determining the amount of any grant of the kind referred to in paragraph 1(a).

#### Special educational provision

3. Expenditure on services provided by educational psychologists.
4. Expenditure, not falling within paragraph 3, 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).
5. Subject to paragraphs 6 and 7, 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.
6. Where a pupil falls within paragraph 5(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 occupying the 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.
7. Expenditure in making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 5(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.

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<sup>(15)</sup> 1998 c. 41. Section 88B was substituted by paragraph 18 of Schedule 10 to the Local Government Finance Act 1992 (1992 c. 14).

**8.** 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<sup>(16)</sup> issued under section 313 of the 1996 Act (being expenditure that it would be inappropriate to expect to be met from the school's budget share).

**9.** 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.

**10.** Expenditure for purposes connected with the encouragement of—

- (a) collaboration between special schools and primary and secondary schools to enable children with special educational needs to engage in activities at primary and secondary schools;
- (b) the education of children with special educational needs at primary and secondary schools; and
- (c) the engagement of children with special educational needs at primary and secondary schools in activities at the school with children who do not have special educational needs (being expenditure that it would be inappropriate to expect to be met from the school's budget share);
- (d) collaboration with other statutory and voluntary bodies to provide support for children with special educational needs.

**11.** Expenditure in connection with—

- (a) the provision of guidance and information to the parents of pupils with special educational needs which, in relation to pupils at a school maintained by the authority, is 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.

**12.** 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.

**13.** Expenditure, not falling within any other paragraph of this Schedule, incurred in preparing and reviewing a plan which sets out the arrangements made, or proposed to be made, by the authority in connection with the education of children with behavioural difficulties under section 527A of the 1996 Act<sup>(17)</sup> and such expenditure incurred on services required to implement the plan.

**14.** Expenditure on carrying out the authority's functions under the Children Act 1989<sup>(18)</sup> and other functions relating to child protection.

**15.** 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.

**16.** Expenditure incurred in entering into, or subsequently incurred pursuant to, an arrangement with a Health Authority, Primary Care Trust or NHS Trust under section 31 of the Health Act 1999<sup>(19)</sup>.

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<sup>(16)</sup> The Special Educational Needs Code of Practice (ISBN 1 84185 529 4).

<sup>(17)</sup> Section 527A was inserted by section 9 of the Education Act 1997 (c. 44) and amended by paragraph 144 of Schedule 30 to the 1998 Act.

<sup>(18)</sup> 1989 c. 41.

<sup>(19)</sup> 1999 c. 8.

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17. Expenditure in providing special medical support for individual pupils in so far as such expenditure is not met by a Health Authority, Primary Care Trust or NHS Trust.

### **School improvement**

18. Expenditure, not falling within any other paragraph of this Schedule, incurred in respect of action to support the improvement of standards in the authority's schools (including, in particular, expenditure incurred in preparing, reviewing and implementing the authority's education development plan under sections 6 and 7 of the 1998 Act).

### **Access to education**

19. 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 as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997<sup>(20)</sup>;
- (b) planning and managing the supply of school places, including the authority's functions—
  - (i) in relation to school organisation plans pursuant to section 26 of the 1998 Act,
  - (ii) in relation to the establishment, alteration or discontinuance of schools pursuant to Chapter II of Part II of the 1998 Act;
- (c) 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 shall—
  - (i) 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 such arrangements, and
  - (ii) allow the governing body to determine how such amount should be spent for that purpose;
- (d) the authority's functions in relation to the exclusion of pupils from schools including advice to the parents of an excluded pupil;
- (e) school organisation committees;
- (f) the authority's functions under section 509 of the 1996 Act (home-to-school transport);
- (g) the authority's functions under sections 510, 514 and 518<sup>(21)</sup> of the 1996 Act (provision and administration of clothing grants, boarding grants and educational maintenance allowances); and
- (h) the Education Welfare Service and other expenditure arising from the authority's functions under Chapter II of Part VI of the 1996 Act (school attendance).

<sup>(20)</sup> S.I. 1997/319; amended by S.I. 1998/371 and 1999/1852.

<sup>(21)</sup> Section 518 was substituted by section 129 of the 1998 Act. By virtue of regulations 3(1)(a) and 4(g) not all expenditure pursuant to section 518 will form part of the local schools budget.

**20.** Expenditure on milk, meals and other refreshment pursuant to section 512 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.

**21.** 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 local schools budget pursuant to paragraph 20.

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

**23.** 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.

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

**25.** Expenditure which enables pupils to enhance their experience of the visual and performing arts other than music.

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

### **Strategic management**

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

- (a) the Chief Education Officer 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<sup>(22)</sup> (Best Value) and also 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;

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(22) 1999 c. 27.

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- (f) authorisation and monitoring of expenditure which is not met from schools' budget shares (including expenditure in respect of schools which do not have delegated budgets) and all financial administration relating thereto;
- (g) 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<sup>(23)</sup>;
- (h) recruitment, training and personnel management of staff who are funded by expenditure not met from schools' budget shares or who are employed in schools which do not have delegated budgets;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff employed, or to be employed, at a school;
- (m) determination of conditions of service for non-teaching staff and advice to schools on the grading of such staff;
- (n) the authority's functions regarding the appointment or dismissal of employees;
- (o) consultation and functions preparatory to consultation with governing bodies and persons employed at schools or their representatives, or with other interested bodies;
- (p) compliance with the authority's duties under the Health and Safety at Work etc. Act 1974<sup>(24)</sup> and the relevant statutory provisions as defined in section 53(1) of that Act in so far as compliance cannot reasonably be achieved through functions delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such functions by governing bodies and where necessary the giving of advice to them;
- (q) the investigation and resolution of complaints;
- (r) legal services relating to the statutory functions of the authority;
- (s) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
- (t) the preparation, modification and revision of an early years development plan for their area under sections 120 and 121 of the 1998 Act;
- (u) 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;
- (v) the authority's duties under Article 4(2) and (5) of the Race Relations Act 1976 (Statutory Duties) Order 2001<sup>(25)</sup>;
- (w) 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<sup>(26)</sup> and the provision of

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<sup>(23)</sup> 1972 c. 70.

<sup>(24)</sup> 1974 c. 37.

<sup>(25)</sup> S.I. 2001/3458.

<sup>(26)</sup> 1998 c. 30.

information required by the Council pursuant to regulations<sup>(27)</sup> made under section 12 of that Act.

**28.** 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.

**29.** 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 which falls to be met by the authority except such expenditure which falls to be met from a school's budget share, by virtue of section 57 of the 1998 Act or the authority's scheme.

**30.** Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998 except such expenditure which falls to be met from a school's budget share.

**31.** Expenditure without which the education of pupils at a school would be seriously prejudiced and which because of either—

- (a) its size and unexpectedness; or
- (b) its size and unavailability,

it would not be reasonable to expect the governing body to meet from the school's budget share.

**32.** Expenditure on increases to a school's budget share to which the school is entitled by virtue of the authority's formula under regulation 10 or arrangements under regulation 32 or expenditure on the correction of errors.

**33.** Expenditure on establishing and maintaining electronic computer systems, including data storage, in so far as they link, or facilitate the linkage of, the authority to schools which they maintain, such schools to each other or such schools to other persons or institutions.

**34.** Expenditure on insurance except to the extent that governing bodies have elected to receive funding for insurance as part of their schools' budget shares.

**35.** Expenditure in making payments to, or in providing a temporary replacement for, a woman on maternity leave.

**36.** 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<sup>(28)</sup>;
- (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<sup>(29)</sup>;
- (d) undertaking jury service;
- (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977<sup>(30)</sup>;
- (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996<sup>(31)</sup>;

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<sup>(27)</sup> The regulations currently in force under this provision are the General Teaching Council for England (Deduction of Fees) Regulations 2001 (S.I. 2001/3993).

<sup>(28)</sup> 1992 c. 52.

<sup>(29)</sup> 1996 c. 18.

<sup>(30)</sup> S.I. 1977/500, amended by S.I. 1996/1513 and 1999/860.

<sup>(31)</sup> S.I. 1996/1513.

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- (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<sup>(32)</sup>;
- (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<sup>(33)</sup>;
- (j) suspended from working at a school;
- (k) who are members of the General Teaching Council for England or a committee thereof.

**37.** 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.

**38.** 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 provided that the net expenditure under this paragraph does not amount to more than 0.1 per cent of the authority's net local schools budget.

**39.** 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.

**40.** Expenditure on services to schools provided by museums and galleries.

**41.** 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 2002, 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
- (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.

**42.** Expenditure on licence fees or subscriptions paid on behalf of schools provided that the net expenditure does not amount in total to more than 0.2 per cent. of the authority's net local schools budget.

**43.** 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 not solely for the use of schools.

**44.** Expenditure on monitoring National Curriculum assessment arrangements required by orders made under section 356 of the 1996 Act<sup>(34)</sup>.

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<sup>(32)</sup> [S.I. 1981/1794](#); regulation 11A was inserted by [S.I. 1995/2587](#) and amended by [S.I. 1999/1925](#).

<sup>(33)</sup> [1996 c. 14](#).

<sup>(34)</sup> At the time these Regulations are made the relevant Orders are the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 1999 ([S.I. 1999/1236](#) amended by [1999/2187](#) and [2000/1242](#)), the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 1999 ([S.I. 1999/2188](#)) and the Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) Order 1999 ([S.I. 1999/2189](#)). All the foregoing were



45. Expenditure for purposes not falling within any other paragraph of this Schedule provided that the net expenditure does not amount in total to more than 0.1 per cent. of the authority's net local schools budget.

## SCHEDULE 2

## Regulation 16

### **ADDITIONAL FACTORS OR CRITERIA WHICH MAY BE TAKEN INTO ACCOUNT IN A LOCAL EDUCATION AUTHORITY'S FORMULA UNDER REGULATION 10**

Except where otherwise stated the factors or criteria set out below in this Schedule may not be taken into account by a local education authority in their formula on the basis of actual or estimated cost.

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, then they may make such transitional provision as they consider reasonable.

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: The funding must be in accordance with scales published by the authority which reflect so far as appropriate the statutory duties of governing bodies in relation to school premises and their eligibility for grant from any government department.

6. A school which has a split site: The funding must be in accordance with criteria published by the authority.

7. Facilities 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 (including actual or estimated cost).

11. Transport to and from activities outside the school premises which form part of the school's curriculum.

12. Hire of facilities outside school premises (including actual or estimated cost).

13. Insurance: the funding must be the appropriate proportion of the authority's planned expenditure on insurance or, if the authority do not insure, the appropriate proportion of the amount that the authority would have spent had they insured, to be determined on a basis decided by the authority.

14. Payments in relation to a private finance transaction as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (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 II of Part II of the 1998 Act, the subject of prescribed alterations, to reflect the extent to which a school which has been discontinued has

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spent more than or has not spent all of its budget share (within the meaning of the 1996 or the 1998 Act) in any financial year. Any such factor or criteria must provide that any amount deducted shall 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 the school is to be discontinued in the 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 2 of the School Teachers' Pay and Conditions Act 1991<sup>(35)</sup> or other salaries (including actual or estimated cost).

**20.** Social priority allowances paid in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 2 of the School Teachers' Pay and Conditions Act 1991 (including actual or estimated cost).

**21.** Differential costs of London weighting of salaries.

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

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

**24.** Schools whose budget shares would otherwise be reduced year-on-year by a percentage figure of 3 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 (within the meaning of the 1996 or 1998 Act) or its maintenance grant (as a grant-maintained or grant-maintained special school) 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<sup>(36)</sup>.

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<sup>(35)</sup> 1991 c. 49. As at the date these Regulations are made the relevant document is the School Teachers' Pay and Conditions Document 2001 (ISBN 0 11 271107 3). That document was given effect in [S.I. 2001/2962](#).

<sup>(36)</sup> [S.I. 2002/278](#).

### SCHEDULE 3

### Regulation 21

#### PROTECTED LEVEL OF FUNDING

1.—(1) This Schedule applies for the purpose of determining the protected level of funding for a school, to which regulation 21 (transitional funding) applies, in respect of the financial year beginning on 1st April 2002.

(2) References in this Schedule to the number of registered pupils at a school on a particular date are references to the full-time equivalent of that number, where—

- (a) “the full-time equivalent” is the number of full-time registered pupils plus half the number of part-time registered pupils; and
- (b) a “part-time pupil” is one who attends school other than on the basis that he should attend both morning and afternoon sessions at least five days each week.

2. Subject to paragraphs 3, 4 and 5, the protected level of funding for the financial year beginning on 1st April 2002 for each school to which regulation 21 applies shall be calculated according to the formula—

$$\frac{(a) \times (b)}{c} \times 1.076890625 \times d$$

Where

“a” and “b” have the values previously ascribed to them by the Secretary of State for the purposes of Schedule 4 to the 1999 Regulations;

“c” is the number appearing to the local education authority to be the number of registered pupils at the school on 15th January 1998 save that—

- (a) if “c” for the purposes of Schedule 4 to the 1999 Regulations was determined by the Secretary of State in accordance with paragraph 4(c) of that Schedule, then, to the extent that it was so determined other than on the basis of full-time equivalent pupil numbers, the local education authority may, if they consider it reasonable to do so, determine “c” substituting corresponding full-time equivalent pupil numbers; and
- (b) in the case of a special school, “c” shall have the value previously ascribed to it by the Secretary of State in relation to that school for the purposes of Schedule 4 to the 1999 Regulations;

“d” is the number appearing to the local education authority to be—

- (a) where the number of registered pupils at the school on 17th January 2002 is greater than the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 20th January 2000 plus an amount calculated to the nearest whole number (with half being rounded up) being 85 per cent. of the difference between those two sets of pupil numbers; or
- (b) where the number of registered pupils at the school on 17th January 2002 is less than the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 20th January 2000 less an amount calculated to the nearest whole number (with half being rounded up) being 85 per cent. of the difference between those two sets of pupil numbers; or
- (c) where the number of registered pupils at the school on 17th January 2002 is the same as the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 17th January 2002; or

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- (d) in the case of a special school, the appropriate number of places for which the school could be funded in accordance with these Regulations for the financial year beginning on 1st April 2002.

3.—(1) In the case of a special school which has places for both day and boarding pupils, the protected level of funding for the financial year beginning on 1st April 2002 for the school shall be calculated according to the formula  $((e \div f) \times 1.076890625 \times g) + ((h \div i) \times 1.076890625 \times j)$ .

(2) For the purposes of the formula in sub-paragraph (1) above,

“e”, “f”, “h” and “i” have the values previously ascribed to them by the Secretary of State for the purposes of Schedule 4 to the 1999 Regulations;

“g” is the number appearing to the local education authority to be the appropriate number of places for day pupils for which the special school could be funded in accordance with these Regulations for the financial year beginning on 1st April 2002;

“j” is the number appearing to the local education authority to be the appropriate number of places for boarding pupils for which the special school could be funded in accordance with these Regulations for the financial year beginning on 1st April 2002.

4. The protected level of funding for the financial year beginning on 1st April 2002 for—

Uppingham Community College, Rutland,  
Casterton Community College, Rutland,  
Vale of Catmose Community College, Rutland,  
shall be

$$\frac{(a-b) \times 1.076890625 \times d}{c}$$

Where

“a” is the amount as last determined in respect of the school before 15th December 1998 in accordance with regulation 5 of the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1998(37);

“b” is the same as “b” in paragraph 7 of Schedule 4 to the 1999 Regulations;

“c” is the number appearing to the local education authority to be the number of registered pupils at the school on 21st January 1999;

“d” is the number appearing to the local education authority to be—

- (a) where the number of registered pupils at the school on 17th January 2002 is greater than the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 20th January 2000 plus an amount calculated to the nearest whole number (with half being rounded up) being 85 per cent. of the difference between those two sets of pupil numbers; or
- (b) where the number of registered pupils at the school on 17th January 2002 is less than the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 20th January 2000 less an amount calculated to the nearest whole number (with half being rounded up) being 85 per cent. of the difference between those two sets of pupil numbers; or
- (c) where the number of registered pupils at the school on 17th January 2002 is the same as the number of registered pupils at the school on 20th January 2000, the number of registered pupils at the school on 17th January 2002.

5. Where a school is to close during the financial year, the protected level of funding shall be the amount determined in accordance with paragraph 2, 3 or 4, as the case may be, divided by 365 and multiplied by the number of days in the period beginning on 1st April 2002 and ending on the day on which the school closes.

#### **SCHEDULE 4**

**Regulation 33**

#### **CONTENTS OF SCHEMES**

The matters referred to in regulation 33, 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 financial year to another of surpluses and deficits arising in relation to schools' budget shares including budget shares as defined in section 101(3)(c) of the 1996 Act.
2. The carrying forward from one financial year to another of surpluses and deficits arising in relation to any maintenance, special purpose or capital grant within the meaning of Chapter VI of Part III of the 1996 Act paid in respect of the school.
3. Amounts which may be charged against schools' budget shares.
4. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
5. 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.
6. Terms on which services and facilities are provided by the authority for schools maintained by them.
7. The payment of interest by or to the authority.
8. 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.
9. The virement between budget heads within the delegated budget.
10. Circumstances in which the authority may delegate to the governing body the power to spend any part of the authority's local schools budget in addition to those set out in section 49(4)(a) to (c) of the 1998 Act.
11. 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.
12. Borrowing by governing bodies.
13. The banking arrangements that may be made by governing bodies.
14. 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.
15. 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.

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16. The keeping of a register of any business interests of the governors and the head teacher.
  17. The provision of information by and to the governing body.
  18. The maintenance of inventories of assets.
  19. Plans of a governing body's expenditure.
  20. A statement as to the taxation of sums paid or received by a governing body.
  21. Insurance.
  22. 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.
  23. The repayment to the Secretary of State of loans made to the governing body under section 255 of the 1996 Act.
  24. The provision of legal advice to the governing body.
  25. Funding for child protection issues.
  26. School meals.
  27. 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.
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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations prescribe the expenditure which makes up the local education authority's "local schools budget" for the financial year beginning on 1st April 2002.

These regulations specify the nature of the planned expenditure which a local education authority may deduct from their local schools budget in order to arrive at their "individual schools budget" for that financial year.

An authority's individual schools budget is to be divided between the schools which they maintain in the form of budget shares for each school. These regulations provide the basis on which a local education authority may determine the amount from their individual schools budget to be allocated to each school as its budget share for that financial year.

These regulations require a local education authority to deal in a scheme prepared by them with specified matters connected with the financing of schools which they maintain.

The most significant changes from the Financing of Maintained Schools (England) Regulations 2001 ("the 2001 Regulations") are as follows:

Under the 2001 Regulations, the amount allocated per pupil in an authority's formula was subject to a minimum annual increase of 2.5 per cent. over each of three categories (namely key stages 1 and 2, key stages 3 and 4, and above compulsory school age). Under regulation 11(7) this no longer applies to the latter category of pupils over compulsory school age.

Regulation 16(2) imposes a new requirement on local education authorities to include in their formulae a factor based on the incidence of social deprivation in the schools they maintain.

Regulation 17 requires local education authorities to include, in the budget shares of schools with sixth forms, sums allocated by the Learning and Skills Council in respect of those sixth forms. It also permits local education authorities to top-up such funding; and makes provision for certain deductions from it.

Regulation 27(1) requires a certain percentage of the individual schools budget to be allocated in one or more ways which are described as “pupil-led”. In these regulations, this percentage is lowered to 75 per cent., and the prescribed list of possibilities for pupil-led funding includes funding by the Learning and Skills Council.

Under the 2001 Regulations, School Standards Grant was not allocated to schools in respect of which proposals for discontinuance had already been approved at the beginning of the financial year. Regulation 29(5) qualifies this where such closure is postponed till on or after 1st April 2003. Conversely, regulation 29(6) ensures that School Standards Grant is recoverable from a school in respect of which proposals for discontinuance are approved after 1st April 2002.

Schedule 2 provides for certain additional factors which may be taken into account in a funding formula at the discretion of the local education authority. Under these regulations, some paragraphs have been omitted, preventing local education authorities from taking specific account of water or sewerage charges; cleaning of school premises; the employment of nursery nurses; and payroll administration costs. Paragraph 28 of the Schedule allows local education authorities for the first time to take account in their formulae of provision made by a school for pupils registered at other schools, pursuant to regulations made under section 50(3)(b) of the School Standards and Framework Act 1998.