

---

STATUTORY INSTRUMENTS

---

**2008 No. 228**

**The School Finance (England) Regulations 2008**

**PART 1**

**INTRODUCTION**

**Citation, commencement, application and interpretation**

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

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

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

(4) In these Regulations—

“the 1996 Act” means the Education Act 1996(1);

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

“the 2000 Act” means the Learning and Skills Act 2000(2);

“the 2002 Act” means the Education Act 2002(3);

“the 2005 Act” means the Education Act 2005(4);

“the 2006 Act” means the Education and Inspections Act 2006(5);

“the 2006 Regulations” means the School Finance (England) Regulations 2006(6);

“admission number” means the number of pupils in any relevant age group intended to be admitted in any school year as determined by an admission authority in accordance with section 89A of the 1998 Act(7);

“capital expenditure” means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003(8);

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

---

(1) 1996 c.56.

(2) 2000 c.21.

(3) 2002 c.32.

(4) 2005 c.18.

(5) 2006 c.40.

(6) S.I. 2006/468, as amended by S.I. 2007/365.

(7) This is the definition inserted by regulation 2(1) of the Education (Determination of Admission Arrangements) (Amendment) (England) Regulations 2002 (S.I. 2002/2896) into the Education (Determination of Admission Arrangements) (England) Regulations 1999 (S.I. 1999/126).

(8) 2003 c.26. Regulations made under this section in relation to England are the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003 (S.I. 2003/3146 as amended by S.I. 2004/534, 2004/3055 and 2007/573).

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

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

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

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

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

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

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

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

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

“key stage 4” means the fourth key stage of the National Curriculum for England comprising the requirements and entitlements described in sections 85 and 85A of the 2002 Act<sup>(9)</sup>;

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

“LSC” is the Learning and Skills Council for England<sup>(10)</sup>;

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

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools includes any expenditure of that class or description as the authority may incur in relation to Academies<sup>(11)</sup>, and to pupils registered at Academies;

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

“PFI scheme unitary payment” means a charge payable by a local education authority under a private finance transaction, as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997<sup>(12)</sup>;

---

<sup>(9)</sup> Section 74(1) of the 2006 Act substitutes section 85 and inserts new section 85A of the 2002 Act.

<sup>(10)</sup> The Learning and Skills Council for England was established under section 1 of the 2000 Act.

<sup>(11)</sup> Academies are established under section 482 of the 1996 Act. Section 482 was substituted by section 65 of the 2002 Act.

<sup>(12)</sup> S.I.1997/319, as amended by S.I.1998/371, 1999/1852 and 2003/515. The Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains savings provisions for regulation 16 of the 1997 Regulations.

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

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

“proper practices” means those accounting practices which a local authority are required to follow by virtue of any enactment, or which, so far as they are consistent with any such enactment are generally regarded, whether by reference to any generally recognised published code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned<sup>(13)</sup>;

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

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

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

“school year” has the meaning given to that expression in section 579(1) of the 1996 Act<sup>(14)</sup>; a reference to “special educational needs transport costs”, for the purposes of paragraph 36(e) of Schedule 2, is a reference to the costs of home to school transport for pupils with special educational needs in schools maintained by a local education authority where the authority is meeting such costs because the revenue savings that will be achieved by placing such children in a school maintained by them are equal to, or greater than, the cost of such transport;

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

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

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

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

## Revocation of previous Regulations

2. The Financing of Maintained Schools (England) 2004<sup>(15)</sup>, The LEA Budget, Schools Budget and Individual Schools Budget Regulations 2004<sup>(16)</sup>, and The LEA Budget, Schools Budget and

---

<sup>(13)</sup> This definition is taken from section 2 of the Local Government Act 2003 and regulations 25 and 26 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.

<sup>(14)</sup> This definition was inserted by section 57(1) of, and paragraph 43 of Schedule 7 to, the Education Act 1997 (c.44).

<sup>(15)</sup> S.I. 2004/3130.

<sup>(16)</sup> S.I. 2004/3131.

Individual Schools Budget (Amendment) (England) Regulations 2005(17) are revoked on 1st April 2008.

## PART 2

### ACTION TO BE TAKEN BY A LOCAL EDUCATION AUTHORITY

#### CHAPTER 1

##### APPROPRIATION OF THE LEA BUDGET

###### **The LEA Budget**

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

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

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

#### CHAPTER 2

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

###### **Initial determination of a local education authority's schools budgets**

4. A local education authority must not later than 31st March 2008—
- (a) make an initial determination of their schools budgets for funding periods 1, 2 and 3; and
  - (b) give notice of any such determination to the governing bodies of the schools they maintain.

###### **The schools budget**

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

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools(18), pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local education authority; and

---

(17) S.I. 2005/526.

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

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

(2) Where a local education authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 36(c) of Schedule 2 is only expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, provided that any expenditure is incurred in providing an educational benefit to those pupils.

### **Exceptions**

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

- (a) capital expenditure, other than
  - (i) CERA,
  - (ii) capital expenditure appropriated to the schools budget for the purpose of funding pay arrears due to staff whose salaries are met from the schools budget;
- (b) expenditure on capital financing, other than expenditure incurred
  - (i) on prudential borrowing, or
  - (ii) for the purpose of meeting the costs of financing the payment of pay arrears referred to in paragraph 6(a)(ii);
- (c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(19)</sup> (arrangements for patrolling school crossings); and
- (d) expenditure met by the local education authority under section 51A of the 1998 Act<sup>(20)</sup> (community purposes).

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

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

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

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

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

---

<sup>(19)</sup> 1984 c.27. Section 26 has been amended by section 8 of, and Schedule 5 to, the Local Government Act 1985 (c.51), and sections 288 and 423 of and Schedule 34 to, the Greater London Authority Act 1999 (c.29), and sections 270 and 274 of, and Schedule 31 to, the Transport Act 2000 (c.38).

<sup>(20)</sup> Section 51A was inserted by section 40 of the 2002 Act.

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

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

### **Consultation**

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

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

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

### **Formulae for determination of budget shares**

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

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

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

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

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

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

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

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

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

### **Delegated budgets for new schools**

- 11.—(1) A new school must have a delegated budget from the appropriate date.
- (2) Subject to paragraphs (3) and (6), the appropriate date is either—
- (a) the date which is fifteen calendar months before the opening date of the new school; or
  - (b) the date upon which a temporary governing body is constituted for that school,
- whichever is the later.
- (3) On the application of a local education authority, their schools forum may—
- (a) vary the appropriate date to a date proposed by the authority;
  - (b) vary the appropriate date to a different date; or
  - (c) refuse to vary the appropriate date.
- (4) Where—
- (a) a schools forum
    - (i) vary the appropriate date to a different date, or
    - (ii) refuse to vary the appropriate date; or
  - (b) a local education authority are not required to establish a schools forum for their area<sup>(21)</sup>,
- the authority may make an application to the Secretary of State for variation of the appropriate date.
- (5) On the application of a local education authority, the Secretary of State may—
- (a) vary the appropriate date to a date proposed by the authority;
  - (b) vary the appropriate date to a different date; or
  - (c) refuse to vary the appropriate date.
- (6) A local education authority must determine the amount of a new school's delegated budget for the period from the appropriate date to the opening date as an amount which is sufficient to fund the appointment of staff and to enable the purchase of any goods and services necessary in order to admit pupils.
- (7) After the opening date, a school's delegated budget must be determined in accordance with the local education authority's formula for the relevant funding period.

## **CHAPTER 3**

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

#### **Redetermination of schools budgets and individual schools budgets**

- 12.—(1) A local education authority may make a redetermination of their schools budgets and individual schools budgets for funding period 1, 2 or 3 at any time before or during the funding period to which those budgets relate.
- (2) In making any such redetermination, a local education authority—
- (a) may only reduce the amount of their schools budgets where they receive an amount of Dedicated Schools Grant which is lower than the amount on which they based their determinations under regulation 7;
  - (b) may not reduce their individual schools budget for funding period 1, 2 or 3 by making further deductions of central expenditure from their schools budgets unless they have

---

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

obtained authorisation to do so from their schools forum or the Secretary of State under regulation 14(2) or (4); and

- (c) must comply with the limits imposed by paragraph 36 of Schedule 2 and regulation 7(2) unless their schools forum or the Secretary of State authorise the variation those limits under regulation 14(2) or (4).

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

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

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

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

## CHAPTER 4

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

#### **Applications to the schools forum and the Secretary of State**

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

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

(2) Where—

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

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

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

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

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



**PART 3**  
**FORMULAE FOR DETERMINATION OF BUDGET SHARES**  
**CHAPTER 1**  
**FACTORS AND CRITERIA TAKEN INTO ACCOUNT**

**Pupil numbers**

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

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

(a) in places—

(i) in primary or secondary schools which the authority recognise as reserved for children with special educational needs, and

(ii) in boarding accommodation at boarding schools other than special schools

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

(b) in respect of whom grant is payable to the authority by the LSC (sixth form pupils); or

(c) in infant classes where the authority choose to take the class into account as an additional factor under paragraph 35 of Schedule 3.

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

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

(a) age, including weighting according to key stage or year group;

(b) in the case of pupils aged under five, their exact age when admitted to the school;

(c) in the case of pupils aged under five, whether they have been admitted to the school in excess of the admission number agreed with the authority;

(d) in the case of pupils aged under five, hours of attendance;

(e) whether a pupil has special educational needs;

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

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

(h) whether the pupil, although registered at a school, is also attending a college of further education or a course delivered by any training provider; and

(i) whether the pupil is in an infant class (in cases where an infant class is not taken into account as an additional factor under paragraph 35 of Schedule 3).

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

- (6) The dates for ascertaining pupil numbers are—
- (a) 17th January 2008 in respect of funding period 1;
  - (b) 15th January 2009 in respect of funding period 2; and
  - (c) 21st January 2010 in respect of funding period 3.
- (7) Subject to paragraph (8), where a primary school—
- (a) operates a policy of admitting children into reception classes in the summer term; and
  - (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in paragraph (6),

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

- (8) In determining the number of pupils they will take into account under paragraph (7), a local education authority—
- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before any of the dates specified in paragraph (6); and
  - (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

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

## **Places**

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

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

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

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

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

## **Special arrangements for pupils in maintained nursery schools and nursery classes**

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

- (a) the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes on the date specified in regulation 15(6) and their hours of attendance; or
  - (b) the number of places they wish to fund in those schools or those classes.
- (2) For the purpose of initially determining budget shares for maintained nursery schools for funding periods 2 and 3, a local education authority must estimate the number of pupils or places they wish to fund under paragraph (1).
- (3) In redetermining budget shares for maintained nursery schools and other primary schools, a local education authority must take into account in their formulae for funding periods 2 and 3—
- (a) the number of registered pupils in maintained nursery schools and the number of registered pupils in nursery classes on the dates specified in regulation 15(6)(b) and (c); and
  - (b) the number of hours each of those registered pupils spends in school per week,
- except where paragraph (4) applies, and except in the circumstances referred to in paragraph (5).
- (4) Where it appears to a local education authority that it is necessary to fund places, as opposed to numbers of pupils, in order to ensure that a maintained nursery school remains open or, in the case of other primary schools, that they are able to continue to provide nursery classes, a local education authority may take into account in their formulae for funding periods 2 and 3 the number of places they wish to fund in those schools or classes.
- (5) Subject to paragraph (6), where—
- (a) a primary school operates a policy of admitting children into nursery classes in the summer term; and
  - (b) will admit pupils into such classes in the summer term immediately after any of the dates specified in regulation 15(5)(b) or (c),
- a local education authority may determine a number representing the number of pupils who will be admitted in that summer term and the number of hours per week each pupil spends in school, and take such number into account in their formulae for funding periods 1, 2 or 3.
- (6) In determining the number of pupils they will take into account under paragraph (5), a local education authority—
- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately before either of the dates specified in regulation 15(5)(b) or (c); and
  - (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.
- (7) Where a local education authority take into account in their formulae the number of registered pupils in maintained nursery schools or the number of registered pupils in nursery classes under paragraph (1)(a) or (3)(a), they may weight pupil numbers according to any or all of the following factors—
- (a) the age of pupils when admitted to the school;
  - (b) whether any pupils have been admitted to the school in excess of the admission number agreed with the authority; and
  - (c) the special educational needs of any such pupils.

### **Differential funding**

**18.**—(1) For the purpose of initially determining budget shares in respect of funding periods 1, 2 and 3, a local education authority must use factors or criteria which differentiate between different categories or descriptions of schools insofar as the functions of the governing bodies of those schools

justify such differentiation, but may not otherwise do so except as required or expressly permitted by these Regulations.

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

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

### **Additional factors or criteria**

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

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

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

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

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

### **Minimum funding guarantee**

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

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

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

- (a) opening during any of these funding periods, except in the circumstances set out in paragraph 4 of Schedule 4; or
  - (b) closing during any of these funding periods in circumstances where a local education authority have redetermined that school's budget share during the relevant funding period.
- (3) For the purpose of initially determining budget shares for funding periods 2 and 3 under regulation 10(a), a local education authority must apply the relevant provisions in Schedule 4 using estimates of—
- (a) the number of registered pupils in schools funded on the basis of pupil numbers in accordance with regulations 15(5) and 17(2); or
  - (b) the number of places they wish to fund in accordance with regulation 16(4).
- (4) A local education authority may make changes to the operation of this Regulation and to the operation of Schedule 4 in determining and redetermining budget shares where authorised to do so by the Secretary of State or their schools forum under regulation 25 (additional arrangements).

### **Sixth form funding**

- 21.**—(1) A local education authority must include in a secondary school's budget share for funding periods 1, 2 and 3 an amount equal to any sum notified to the local education authority by the LSC as being the allocation in respect of that school's sixth form(**22**).
- (2) A local education authority may, in determining budget shares, use a factor which allocates funding in respect of sixth forms.
- (3) A local education authority may, in determining budget shares for schools with sixth forms, reduce the amount payable to each such school under their formulae by a sum representing any element which has been duplicated in the LSC's allocation.
- (4) A secondary school's budget share for funding periods 1, 2 and 3 must be redetermined before the end of the relevant funding period where the authority receive a written notification from the LSC of a revised allocation in respect of the sum referred to in paragraph (1).

### **New, reorganised and closing schools**

- 22.**—(1) A local education authority must include factors or criteria in their formulae which enable them to determine, or redetermine, a school's budget share for funding periods 1, 2 and 3 so as to take into account the particular needs of that school in the following cases—
- (a) a proposed school;
  - (b) a school, proposals for the establishment of which have not been fully implemented(**23**);
  - (c) a school which is the subject of a prescribed alteration within the meaning of regulations made under section 18 of the 2006 Act(**24**);
  - (d) a school which is to be discontinued; and
  - (e) a school which is to be the subject of a significant change, as determined by the authority.
- (2) In the case of schools falling within sub-paragraph (1)(c), such factors or criteria may not be used for a period of more than seven years after the date of implementation of the relevant alteration.

---

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

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

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

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

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

## CHAPTER 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Correction of errors and changes in non-domestic rates**

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

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

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

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

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

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

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

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

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

- (b) relate to a change to the formula determined under regulation 9(1) in respect of funding period 2 or 3,

their schools forum may authorise such determinations or redeterminations.

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

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

## PART 4

### SCHEMES

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

**26.** A scheme prepared by a local education authority under section 48(1) of the 1998 Act<sup>(25)</sup> must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5.

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

**27.**—(1) Where a local education authority submit proposals for any revisions to their scheme to their schools forum for approval pursuant to paragraph 2A of Schedule 14 to the 1998 Act<sup>(26)</sup>, the schools forum may—

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

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

(3) Where—

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

the authority may apply to the Secretary of State for approval of such proposals.

(4) The Secretary of State may—

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

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

---

<sup>(25)</sup> Section 48(1) has been amended by section 40 and paragraphs 2(1) and (2) of Schedule 3 to the 2002 Act.

<sup>(26)</sup> Paragraph 2A was inserted by section 57 of, and paragraph 5 of Schedule 5 to, the 2006 Act.



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

**Publication of schemes**

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

5th February 2008

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