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WELSH STATUTORY INSTRUMENTS

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**2010 No. 824**

**The School Funding (Wales) Regulations 2010**

**PART 3 —**

**Schools' budget shares**

**Allocation of individual schools budget**

**8.—(1)** A local authority must allocate in each funding period in accordance with this Part of these Regulations, all of their individual schools budget for that funding period as the budget shares of schools which they maintain.

(2) A local authority need not initially allocate all of their individual schools budget in the form of budget shares at the beginning of a funding period, and may instead 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 paragraph (1) before the end of that funding period.

**Timing and notification of initial determination of schools' budget shares**

**9.—(1)** Before 31 March immediately preceding the beginning of a funding period, a local authority must

- (a) make an initial determination of the amount of a school's budget share for that funding period, and
- (b) give notice of each school's budget share for that funding period to the governing bodies of the schools they maintain.

(2) The notice given under paragraph (1)(b) must contain an explanation of how the school's budget share was determined and an estimate of the school's budget shares for the following two funding periods but that estimate is not binding on the authority as to the actual determinations they make for the following two funding periods.

**Formula for determination of budget shares**

**10.—(1)** A local authority must determine before the beginning of a funding period, and after the consultation referred to in regulation 11, the formula which they will use to determine schools' budget shares in that funding period having regard to the factors, criteria and requirements set out in this Part of these Regulations.

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

(3) A local authority may not use factors or criteria in their formula which make an allowance, in whole or in part, for any amount allocated to the school from any grant paid to the authority by the Welsh Ministers.

(4) Subject to regulation 25 (additional arrangements approved by the Welsh Ministers) a local authority must use the formula determined under paragraph (1) in all determinations and redeterminations of budget shares.

## Consultation

11.—(1) In relation to their formula for a funding period, in addition to consulting the schools forum for their area, a local authority must consult the governing body and head teacher of every school which they maintain about any proposed changes to the factors and criteria which were taken into account, or the methods, principles and rules which were adopted in their formula in the preceding funding period (including any new factors, criteria, methods, principles or rules).

(2) Paragraph (1) does not apply to changes made pursuant to regulations 8(2), 19(4) or 22.

(3) Consultation under this regulation must 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.

(4) A local authority must inform all those who were consulted of the outcome of the consultation.

## New Schools

12.—(1) A new school must have a delegated budget from the date when the school first admits pupils.

(2) But a local authority's schools forum may on the application of the authority—

- (a) vary that date to one proposed by the authority,
- (b) vary it to a different date, or
- (c) refuse to vary the date.

(3) Where the schools forum vary the date to a different date or refuse to vary it, the local authority may apply to the Welsh Ministers to vary the date.

(4) The Welsh Ministers may—

- (a) vary the date to one proposed by the authority,
- (b) vary it to a different date, or
- (c) refuse to vary the date.

## Pupil numbers

13.—(1) In determining budget shares for maintained nursery, primary and secondary schools, a local authority must take into account in their formula the number of registered pupils at those schools on such dates as may be determined by them weighted if the authority consider it appropriate in accordance with paragraph (7).

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

- (a) pupils in respect of whom grant is payable to the authority by the Welsh Ministers under section 36 of the 2000 Act;
- (b) pupils in places which the authority recognise as reserved for children with special educational needs or (except where the local authority chooses not to exercise their discretion under regulation 15 in respect of children in nursery classes) for children in nursery classes.

(3) Where the authority determine only one date for the purposes of paragraph (1) it must be a date which falls—

- (a) before the beginning of the funding period in question; and
- (b) in the school year in which the beginning of the funding period in question falls.

(4) Where the authority determine more than one date for the purposes of paragraph (1) then—

- (a) one of those dates must satisfy paragraph (3);

(b) as respects the other date or dates—

- (i) no date may be earlier than the beginning of the school year in which the beginning of the funding period in question falls, and
- (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.

(5) The restrictions on the dates in paragraphs (3) and (4) do not apply in relation to pupils in nursery or reception classes whom the authority take into account under paragraph (1).

(6) 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—

- (a) the number of registered pupils at those special schools; or
- (b) the number of pupils in those reserved places at primary or secondary schools;

on the date or dates determined for the purpose of paragraph (1) (weighted if the authority consider it appropriate in accordance with paragraph (7)).

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

- (a) age, including weighting according to key stage or year group;
- (b) 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, hours of attendance;
- (e) special educational needs;
- (f) whether a pupil at a school is also attending an institution within the further education sector; and
- (g) whether a pupil is being educated through the medium of Welsh.

(8) Subject to paragraph (9), where—

- (a) a primary school operates a policy of admitting children into nursery or reception classes in the summer term, and
- (b) it will admit pupils into such classes in the summer term immediately after the date or dates determined under paragraph (1),

a local 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 formula.

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

- (a) must not determine any number which exceeds the number of pupils admitted in the summer term immediately prior to the date or dates determined under paragraph (1) and
- (b) must make any such determination before the beginning of the funding period during which the pupils will be admitted.

(10) A local authority must include provision in their formula enabling them to adjust the number of registered pupils used to determine 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 that pupil's permanent exclusion from another school maintained by a local authority.

### **Pupil Numbers: Dual Registration**

14. Where a pupil is, in accordance with regulations made under section 434 of the 1996 Act<sup>(1)</sup>, a registered pupil at more than one school then that pupil must be treated as being a full-time pupil at each such school unless the authority expressly provide otherwise in their formula.

### **Places**

15.—(1) In determining and redetermining budget shares a local authority may take into account in their formula 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;
- (c) primary schools with places which the authority recognise as reserved for children in a nursery class; or
- (d) maintained nursery schools.

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

(3) A local authority must provide that, if any places at special schools are taken into account in accordance with paragraph (1), the number must be no fewer than the number of registered pupils at the school on the date or dates determined for the purpose of regulation 13(1).

### **Schools of a particular description**

16. Where a local authority deduct from their schools budget planned expenditure which relates to maintained schools of a particular description, they must include factors or criteria in their formula in respect of that planned expenditure, in relation to maintained schools which do not fall within that description.

### **Differential funding**

17. A local authority must not use in their formula any factors or criteria which discriminate between schools by reference to their category under the 1998 Act except where differences in the functions of the governing bodies of schools of different categories justify such discrimination.

### **Additional factors or criteria**

18.—(1) Subject to regulations 16 and 17, a local authority may, in determining budget shares, take into account in their formula, as they consider appropriate, any or all of the factors or criteria set out in Schedule 3, as provided for in that Schedule.

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

(3) A factor included in an authority's formula pursuant to paragraph 19 of Schedule 3, is not, for the purpose of paragraph (2), a factor based on the incidence of social deprivation among pupils registered at a school.

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(1) See the Education (Pupil Registration) Regulations 1995, S.I.1995/2089 as amended by S.I. 1997/2624, 1999/2267, 2001/1109, 2003/3227 and 2005/2913.

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

(5) Where a local 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 funding period, they may make such transitional provision as they consider reasonable.

### **Funding for pupils over compulsory school age**

**19.**—(1) Subject to regulation 21 (budget share adjustments) the budget share for a secondary school or special school that provides education suitable for the requirements of persons over compulsory school age must include an amount (“the Amount”) in respect of that school’s pupils above compulsory school age.

(2) The Amount must include, on a net basis—

- (a) an allocation by the local authority in respect of that school’s provision for pupils over compulsory school age in accordance with the conditions of grant payable to the local authority by the Welsh Ministers under section 36 of the 2000 Act (“the Grant”);
- (b) any amount which the local authority provides for education of pupils over compulsory school age.

(3) To the extent the Amount is not subject to the conditions in the Grant, a local authority must, in determining budget shares use a factor which allocates funding in respect of pupils over compulsory school age.

(4) A school’s budget share for a funding period must be redetermined before the end of that funding period where the authority receive a written notification from the Welsh Ministers of an allocation of the Grant or a revised allocation of the Grant.

### **School re-organisation**

**20.**—(1) In the case of a maintained school which is—

- (a) a new school referred to in regulation 3(2);
- (b) a school (other than a new school) proposals for the establishment of which under any enactment have not been fully implemented;
- (c) a school which is the subject of proposals for a prescribed alteration under Chapter 2 of Part 2 of the 1998 Act or section 113A of the 2000 Act;
- (d) a maintained nursery school which is to be discontinued in the funding period in question,

the local authority must 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; and in particular may, if the funding period in question precedes the funding period 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 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.

### **Budget share adjustments**

**21.**—(1) To the extent that a school’s budget share for a funding period was—

- (a) determined by reference to an estimate of the number of registered pupils at the school on a particular date or dates; and
- (b) differences between the estimated number of pupils on that date or those dates and the actual number of pupils at the school on that date or those dates were not taken into account in a redetermination of the school's budget share for that funding period,

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

(2) A local authority may determine a school's budget share for a funding period so as to take into account any other change during the course of the preceding funding period in the data by reference to which the school's budget share for that preceding funding period was determined, if those changes were not taken into account in a redetermination of the school's budget share for that preceding funding period.

(3) A local authority may adjust the number of registered pupils used to determine a school's budget share for a funding period 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 for the preceding funding period arising from the permanent exclusion of a pupil from the school or the admission to the school of a pupil permanently excluded from another maintained school; or
- (b) any increase in the school's budget share for the preceding funding period arising from increases in pupil numbers during the course of that funding period.

(4) A local authority must include factors or criteria in their formula which satisfy the requirements of this regulation.

### **Pupils excluded or admitted following an exclusion**

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

(2) The school's budget share is to 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 these Regulations to be attributable for the full funding period 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 25 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; 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 1 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 who has been permanently excluded from a maintained school is, in the same funding period, admitted to a school maintained by the local authority ("the admitting school"), the authority must redetermine the admitting school's budget share in accordance with paragraph (4).

(4) The school's budget share is to 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;

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

(5) For the purposes of this regulation, the relevant date has the meaning prescribed in regulations made under section 494 of the 1996 Act<sup>(2)</sup>.

(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<sup>(3)</sup>, 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 authority other than at a school which is maintained by that authority.

### **Percentage of “pupil-led” funding**

**23.**—(1) Subject to paragraph (2), in determining and redetermining budget shares for primary and secondary schools a local authority must ensure that their formula provides that at least 70 per cent of the amount which is their individual schools budget is allocated in one or more of the following manners—

- (a) in accordance with regulation 13(1) or (6);
- (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;
- (c) to places in primary schools which the authority recognise as reserved for children in nursery classes;
- (d) for children with special educational needs who do not have statements of special educational needs but only up to 5 per cent of the total amount allocated by the authority to primary and secondary schools from their individual schools budget;
- (e) to places in primary or secondary schools which the authority recognise as reserved for children with special educational needs;
- (f) for pupils with statements of special educational needs where funding in respect of such pupils forms part of schools' delegated budgets.

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(2) Section 494(5) of the 1996 Act, which was substituted by paragraph 128 of Schedule 30 to the 1998 Act, provides that regulations may prescribe when a permanent exclusion is to be regarded as taking effect. The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999 (S.I. 1999/495) provide that a permanent exclusion takes place on the “relevant date” as defined in those Regulations, and amendments to them in the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 (S.I. 2003/3227).

(3) See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, S.I. 2003/3227 as amended by S.I. 2004/1805, and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003 (S.I. 2003/3246), as amended by S.I. 2004/1805.

(2) For the purposes of this regulation, the budget shares of schools providing education only for pupils over compulsory school age, of special schools and any part of the individual schools budget retained pursuant to regulation 8(2) for the purpose of redeterminations or the correction of errors must be excluded from the local authority's individual schools budget.

#### **Correction of errors**

**24.** A local authority may at any time during a funding period redetermine a school's budget share for that funding period 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 Welsh Ministers**

**25.** The Welsh Ministers may, where it appears to them to be expedient to do so, authorise a local authority to determine or redetermine budget shares, at any time and to such extent as they may specify, in accordance with arrangements approved by them in place of the arrangements provided for elsewhere in these Regulations.