
STATUTORY INSTRUMENTS

1994 No. 431 (S.16)

EDUCATION, SCOTLAND

**The Self-Governing Schools Grant and
Recovery (Scotland) Regulations 1994**

Made - - - - - *23rd February 1994*
Laid before Parliament *10th March 1994*
Coming into force - - - *1st April 1994*

The Secretary of State, in exercise of the powers conferred on him by sections 26, 27(5), 28 and 78(4) of the Self-Governing Schools etc. (Scotland) Act 1989⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Self-Governing Schools Grant and Recovery (Scotland) Regulations 1994 and shall come into force on 1st April 1994.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the Act” means the Self-Governing Schools etc. (Scotland) Act 1989;

“the 1980 Act” means the Education (Scotland) Act 1980⁽²⁾;

“the 1988 Act” means the School Boards (Scotland) Act 1988⁽³⁾;

“base year” means the last complete financial year immediately preceding the incorporation date;

“education authority” means the education authority for the area in which the school is situated;

(1) 1989 c. 39.
(2) 1980 c. 44.
(3) 1988 c. 47.

“grant year” means the financial year in respect of which the determination of recurrent grant is made.

(2) Schedule 1 shall have effect for the purpose of determining what is school level expenditure in respect of a school for the purposes of these Regulations.

(3) References in these Regulations to any change in the circumstances of a school include a change in any of the school’s characteristics, in the number of its pupils, or any other change having an effect on the running costs of the school.

(4) References in these Regulations to the relevant category of school mean, in the case of a school providing primary education, all schools under the management of the education authority providing primary education and, in the case of a school providing secondary education, all schools under the management of the education authority providing secondary education.

(5) References in these Regulations to a child or young person belonging to the area of an education authority shall be construed in accordance with section 23(3) of the 1980 Act and the Contributions for Educational Services (Prescription of Areas) (Scotland) Regulations 1951(4).

(6) The following table shows provisions defining or otherwise explaining expressions used in these Regulations (other than provisions defining or explaining an expression used only in the same regulation or Schedule), references in the second column thereof to sections being, respectively, references to sections of the Act, to the 1980 Act and to the 1988 Act:—

board of management	section 80 of the Act
capital grants	section 26(3)(a) of the Act
characteristics	section 30(13) of the Act
child	section 135(1) of the 1980 Act
financial year	section 80(2) of the Act and section 22(2) of the 1988 Act
incorporation date	section 19(2) of the Act
nomination of a school in a Record of Needs	section 65D(2)(d) of the 1980 Act(5)
pupil	section 135(1) of the 1980 Act
recorded and Record of Needs	section 60(3) of the 1980 Act(6)
recurrent grant	section 26(1) of the Act
School Board	section 22(2) of the 1988 Act
special school	section 135(1) of the 1980 Act(7)
special educational needs	section 1(5)(d) of the 1980 Act(8)
special purpose grants	section 26(3)(b) of the Act
young person	section 135(1) of the 1980 Act.

(7) Unless the context otherwise requires—

(4) S.I.1951/899.

(5) Section 65D was substituted by section 4(1) of the Education (Scotland) Act 1981 (c. 58) (“the 1981 Act”).

(6) Section 60(3) was substituted by section 4(1) of the 1981 Act.

(7) The definition of special school in section 135(1) was substituted by section 3(2) of and Schedule 2, Part I, paragraph 4(a) (iii) to the 1981 Act.

(8) Section 1(5)(d) was substituted by section 3(1) of the 1981 Act.

- (a) any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations; and
- (b) any reference in these Regulations to a numbered paragraph, sub-paragraph or head is a reference to the paragraph, sub-paragraph or head so numbered in the regulation or Schedule in which the reference appears.

PART II

RECURRENT GRANT

Amount of recurrent grant payable to the board of management of a self-governing school

3.—(1) The amount of recurrent grant payable for any financial year to a board of management in respect of a self-governing school which is not a special school shall consist of the aggregate of—

- (a) the amount of school level expenditure in respect of the school determined by the Secretary of State in accordance with regulations 6 and 7;
- (b) the amount attributable to expenditure for the purpose of making provision for the special educational needs of recorded pupils in attendance at the school, determined by the Secretary of State in accordance with regulation 8; and
- (c) the amount of central expenditure which it is appropriate to allocate to the school, determined by the Secretary of State in accordance with regulation 9.

(2) The amount of recurrent grant payable for any financial year to a board of management in respect of a self-governing school which is a special school shall be the amount determined by the Secretary of State in accordance with regulation 10.

Determination of amount of recurrent grant in respect of a self-governing school which is not a special school

4. Regulations 5 to 9 apply to the determination of the amount of recurrent grant payable for any financial year to the board of management of a self-governing school which is not a special school, regulations 5 to 7 applying insofar as such grant is attributable to expenditure other than for the purpose of making provision for the special educational needs of recorded pupils in attendance at the school.

Determination of an amount of school level expenditure for a grant year

5. The Secretary of State shall determine for each grant year an amount of school level expenditure in respect of the school for that year in accordance with regulations 6 and 7.

Determination of an amount of school level expenditure for the first grant year

6.—(1) For the first grant year, the Secretary of State shall determine in accordance with paragraph (2) an amount which he is satisfied fairly represents the amount of school level expenditure which it would have been appropriate for the education authority to incur in respect of the school in the base year.

(2) In making such determination, the Secretary of State shall have regard to the following matters, insofar as information as to those matters is available to him by 8th April, or such later date as the Secretary of State may determine, in the first grant year:—

- (a) the education authority's estimate of the amount of expenditure incurred by them in the base year in respect of the school attributable to each item of school level expenditure specified in paragraph 1 of Schedule 1, subject to paragraphs 2 and 3 of that Schedule;
- (b) the staffing complement for the school in the base year, the number of staff, their grades and salaries, any unfilled vacancies within such complement and the reasons for each such vacancy arising and being unfilled;
- (c) the education authority's estimate of the amount of expenditure incurred by them in the base year in respect of such school or group of schools under their management as the Secretary of State may specify attributable to each item of school level expenditure specified in paragraph 1 of Schedule 1, identifying separately the amount attributable to each such item in respect of each of those schools and the total amount so attributable in respect of all such schools, and subject to paragraphs 2 and 3 of that Schedule;
- (d) the education authority's estimate of the total amount of expenditure incurred by them in the base year for each item of school level expenditure specified in paragraph 1 of Schedule 1 (subject to paragraphs 2 and 3 of that Schedule) in respect of—
 - (i) the relevant category of school; and
 - (ii) all schools under their management; and
- (e) such other matters as he considers appropriate.

(3) The Secretary of State shall then adjust the amount he determines under paragraph (1) for the first grant year by such amount or amounts as appears or appear to him to be fair and reasonable to take account of the following matters:—

- (a) the extent to which the education authority's expected total amount of school level expenditure in the first grant year in respect of the relevant category of school is greater or less than their expected total amount of such expenditure in the base year in respect of such category, and any circumstances appearing to him to be relevant to such increase or decrease; and
- (b) any change in the circumstances of the school occurring during or since the base year or which it appears to the Secretary of State will be likely to occur before the end of the first grant year,

having regard, in particular, in relation to sub-paragraph (a) to the education authority's estimate of such expected amounts and to information provided by them concerning such estimate, insofar as such estimate and information are available to him by 8th April, or such later date as the Secretary of State may determine, in the first grant year.

(4) The amount determined under paragraph (1), as adjusted in accordance with paragraph (3), shall be the amount of school level expenditure determined in respect of the school for the first grant year.

Determination of an amount of school level expenditure for each subsequent grant year

7.—(1) For each grant year after the first grant year, the Secretary of State shall adjust the amount of school level expenditure determined in respect of the school for the preceding grant year by such amount or amounts as appears or appear to him to be fair and reasonable to take account of the following matters:—

- (a) the extent to which the education authority's expected total amount of school level expenditure in the relevant grant year in respect of the relevant category of school is greater or less than their expected total amount of such expenditure in the preceding grant year in respect of such category, and any circumstances appearing to him to be relevant to such increase or decrease; and

- (b) any change in the circumstances of the school occurring during or since the preceding grant year or which it appears to the Secretary of State will be likely to occur before the end of the relevant grant year,

having regard, in particular, in relation to sub-paragraph (a) to the education authority's estimate of such expected amounts and to information provided by them concerning such estimate, insofar as such estimate and information are available to him by 8th April, or such later date as the Secretary of State may determine, in the relevant grant year.

(2) The adjusted amount arrived at under paragraph (1) shall be the amount of school level expenditure determined in respect of the school for the relevant grant year.

Determination of an amount attributable to provision for the special educational needs of recorded pupils for a grant year

8.—(1) The Secretary of State shall determine, in accordance with this regulation, for each grant year, an amount which is attributable to expenditure for the purpose of making provision in that year for the special educational needs of recorded pupils in attendance at the school.

(2) Paragraphs (3) to (5) are subject to the provisions of section 27(8) and (9) of the Act (variation of agreement or of amount of recurrent grant payable).

(3) Where, for a grant year, the Secretary of State has accepted all aspects of an agreement between the education authority and the board of management of the school intimated to him under section 27(2) of the Act, the amount determined by him in accordance with paragraph (1) for that year shall be the amount specified in that agreement as the estimated cost of provision to be made in the grant year for the special educational needs of recorded pupils in attendance at the school.

(4) Where, for a grant year, intimation to the Secretary of State under section 27(2) of the Act is of a failure to reach such agreement, the amount determined by the Secretary of State in accordance with paragraph (1) for that year shall be the amount determined by him under section 27(3) thereof as the estimated cost of such provision.

(5) Where, for a grant year, the Secretary of State does not accept any aspect of an agreement intimated to him under section 27(2) of the Act, the amount determined by him in accordance with paragraph (1) for that year shall be the aggregate of—

- (a) the amount specified in that agreement as the estimated cost of such provision, to the extent that the Secretary of State has accepted such estimate and has not made a determination under section 27(3) of the Act as to such cost; and
- (b) where the Secretary of State has made a determination under section 27(3) of the Act as to the estimated cost of such provision, the amount so determined by him.

Allocation to school of amount of central expenditure

9.—(1) For any grant year, the Secretary of State shall determine an amount which he considers it appropriate to allocate to the school of the central expenditure described in Schedule 2 which it would be appropriate for the education authority to incur in the grant year.

(2) In making the determination referred to in paragraph (1), the Secretary of State shall have regard to the education authority's estimate of their expected amount of such expenditure, insofar as such estimate is available to him by 8th April, or such later date as the Secretary of State may determine, in the grant year, and to all other relevant factors.

Determination of an amount of recurrent grant in respect of a self-governing school which is a special school

10.—(1) This regulation applies to the determination of the amount of recurrent grant payable for any grant year to the board of management of a self-governing school which is a special school.

(2) Paragraphs (3) to (5) are subject to the provisions of section 27(8) and (9) of the Act (variation of agreement or of amount of recurrent grant payable).

(3) Where, for a grant year, the Secretary of State has accepted all aspects of an agreement between the education authority and the board of management of the school intimated to him under section 27(2) of the Act, the amount of recurrent grant determined by him for that year in respect of the school shall be the amount specified in that agreement as the estimated cost of the educational and other provision to be made in that year for the pupils in attendance at the school and the estimated expenditure incurred or to be incurred for the purposes of the board's other functions under section 7(1) of the Act.

(4) Where, for a grant year, intimation to the Secretary of State under section 27(2) of the Act is of a failure to reach such agreement, the amount of recurrent grant determined by the Secretary of State in respect of the school for that year shall be the amount determined by him under section 27(3) thereof as such estimated cost and such estimated expenditure.

(5) Where, for a grant year, the Secretary of State does not accept any aspect of an agreement intimated to him under section 27(2) of the Act, the amount of recurrent grant determined by him in respect of the school for that year shall be the aggregate of—

- (a) the amount specified in that agreement as such estimated cost and such estimated expenditure, to the extent that the Secretary of State has accepted such estimate and has not made a determination under section 27(3) as to such cost and such expenditure; and
- (b) where the Secretary of State has made a determination under section 27(3) of the Act as to such estimated cost and such estimated expenditure, the total amount so determined by him.

Sufficient information not available to the Secretary of State

11. Where there is not available to the Secretary of State on the date specified in regulation 6(2) or (3), 7(1) or 9(2) sufficient information as will, in his opinion, allow him to determine an amount he is required to determine under that regulation, he may determine that amount on such basis as appears to him to be fair and reasonable, having regard to the information available to him on that date.

Apportionment of recurrent grant for part year

12.—(1) This regulation applies in the case of a school which becomes self-governing after 1 April in the first grant year.

(2) The amount of recurrent grant payable in respect of such a school for that part of the first grant year falling on and after the incorporation date shall be the proportion of the amount of recurrent grant which would be payable in respect of that school for the first grant year if it became self-governing on 1 April in that year which the number of days in that year falling on or after the incorporation date bears to the total number of days in that year, such proportion being adjusted by the Secretary of State by such amount or amounts as appears or appear to him to be fair and reasonable to take account of a higher or lower level of costs in respect of any item of expenditure specified in paragraph 1 of Schedule 1 at a particular period or periods in that year, and such other matters as he considers appropriate.

(3) In making the adjustment referred to in paragraph (2), the Secretary of State shall have regard to any relevant representations made to him by the education authority before the expiry of the period

ending one month before the incorporation date, or such later date as the Secretary of State may determine.

Revisal of determination of amount of recurrent grant

13.—(1) Without prejudice to paragraph (3), this paragraph applies where—

- (a) after determining the amount of recurrent grant payable in respect of a school for any grant year in accordance with these Regulations, it appears to the Secretary of State that, by reason of—
 - (i) any change in the circumstances of the school;
 - (ii) any change in the circumstances of the school which was taken into account for the purposes of regulation 6(3) or 7(1), but which has not occurred before the end of the grant year; or
 - (iii) any change in the level of spending by the education authority in respect of education, the amount so payable should be revised; or
- (b) the Secretary of State is satisfied that his determination of the amount of recurrent grant payable in respect of a school for any grant year was made in ignorance of, or was based on a mistake as to, some material fact, or was not in accordance with these Regulations.

(2) In any case to which paragraph (1) applies, the Secretary of State may redetermine the amount of recurrent grant payable in respect of the school for that grant year in accordance with these Regulations and, if the amount so redetermined is different from the amount previously determined, revise his determination by increasing or reducing it accordingly.

(3) Where it appears to the Secretary of State that, by reason of any extraordinary circumstances, the amount of recurrent grant determined in respect of a school for any grant year is insufficient to enable its board of management adequately to carry out their functions with respect to the management of the school, he may redetermine the amount of such grant for that year in accordance with paragraph (4), and revise his determination accordingly.

(4) Where the Secretary of State decides to redetermine the amount of recurrent grant by virtue of paragraph (3), he shall redetermine that amount by adding to it such amount as appears to him to be necessary for the purpose of enabling the board of management adequately to carry out their functions with respect to the management of the school.

(5) Where the Secretary of State revises his determination of the amount of recurrent grant payable in respect of a school for any grant year, he shall give notice thereof to the board of management of the school and to the education authority.

(6) A determination which has been revised in accordance with this regulation may be further revised in accordance therewith, and may be so further revised notwithstanding that the Secretary of State is satisfied that the revised determination was not made in accordance with these Regulations.

Information as to provision for special educational needs of recorded pupils at a school which is not a special school

14.—(1) For the purposes of their duty under section 27(2) of the Act (duty to attempt to reach agreement as to certain matters in respect of recorded pupils attending the school), the education authority and the board of management of a self-governing school which is not a special school shall provide each other with information as to the matters described in paragraphs (2) to (4).

(2) For each grant year, the education authority shall provide the board of management with information as to the provision which the authority consider necessary to make adequate and efficient provision for the special educational needs of all recorded children and recorded young persons

belonging to the authority's area including, in particular, information as to the following matters, namely:—

- (a) the total number of such children and young persons;
- (b) a general description of the special educational needs of such children and young persons; and
- (c) the total resources which the education authority consider are necessary to make adequate and efficient provision for such needs of all such children and young persons.

(3) For each grant year, the education authority shall also provide the board of management with information as to—

- (a) the number of recorded children and young persons of whom they are aware (including such children and young persons belonging to the area of another education authority) and in whose Record of Needs the school is, or is proposed to be, the school nominated as that which that child or young person should attend; and
- (b) the special educational needs of each such child or young person,

together with a description of—

- (i) the resources which the education authority consider the board of management would need to supply directly from the school's own resources to provide for the special educational needs of each such child or young person;
- (ii) the resources which the education authority are under a duty, or have a power and are willing, to supply towards making such provision, and whether such supply would be with or without charge, and, if the former, what charge is proposed; and
- (iii) the resources which the education authority consider the board of management would need to obtain from third parties towards making such provision.

(4) For each grant year, the board of management shall provide the education authority with information as to the following matters:—

- (a) the range of provision the school has for pupils with special educational needs;
- (b) the number of recorded children and young persons for whom, and the special educational needs for which, the board consider they are able to provide (whether any such child or young person would attend the school by virtue of nomination of it in his Record of Needs or by virtue of direct application for admission);
- (c) the resources which the board consider would be necessary to make adequate and efficient provision for the special educational needs of such children and young persons, described under the following categories:—
 - (i) those which the board would intend to supply directly from the school's own resources;
 - (ii) those which the board would intend to request the education authority to supply and whether with or without payment; and
 - (iii) those which the board would intend to seek from third parties, with payment; and
- (d) the extent to which the board expect places at the school may be filled by recorded children and young persons not belonging to the area of the education authority and the extent and the nature of resources which they expect may be required in respect of such children and young persons.

Information as to provision for pupils at and other matters in respect of a special school

15.—(1) For the purposes of their duty under section 27(2) of the Act (duty to attempt to reach agreement as to certain matters), the education authority and the board of management of a self-

governing school which is a special school shall provide each other with information as to the matters described in paragraphs (2) to (4).

(2) For each grant year, the education authority shall provide the board of management with information as to the number of children and young persons (including those belonging to the area of another education authority) and the categories of special educational needs for which they would wish provision to be made at the school, together with information as to the following matters, namely:—

- (a) the total resources which the education authority consider are necessary to make adequate and efficient provision for the special educational needs of such children and young persons;
- (b) the resources which the education authority consider the board would need to supply directly from the school's own resources to provide for the special educational needs of each such child or young person;
- (c) the resources which the education authority are under a duty, or have a power and are willing, to supply towards making the provision mentioned in sub-paragraph (b), and whether such supply would be with or without charge, and, if the former, what charge is proposed; and
- (d) the resources which the education authority consider the board would need to obtain from third parties towards making such provision.

(3) The education authority shall also provide the board of management with information as to the following matters, namely:—

- (a) for the first grant year—
 - (i) their estimate of the amount of expenditure incurred by them in the base year in respect of the school attributable to each item of school level expenditure specified in paragraph 1 of Schedule 1, subject to paragraphs 2 and 3 of that Schedule;
 - (ii) the staffing complement for the school in the base year, the number of staff, their grades and salaries, any unfilled vacancies within such complement and the reason for each such vacancy arising and being unfilled;
 - (iii) their estimate of the amount of expenditure incurred by them in the base year in respect of all special schools under their management, attributable to each item of school level expenditure specified in paragraph 1 of Schedule 1, identifying separately the amount attributable to each such item in respect of each such school and the total amount so attributable in respect of all such schools, and subject to paragraphs 2 and 3 of that Schedule; and
 - (iv) the extent to which their expected total amount of school level expenditure in the first grant year in respect of the relevant category of school is greater or less than their expected total amount of such expenditure in the base year in respect of such category and any circumstances appearing to them to be relevant to such increase or decrease;
- (b) for each subsequent grant year, the extent to which their expected total amount of school level expenditure in the relevant grant year in respect of the relevant category of school is greater or less than their expected total amount of such expenditure in the preceding grant year in respect of such category and any circumstances appearing to them to be relevant to such increase or decrease; and
- (c) for each grant year, including the first grant year, their estimate of the amount of expenditure they expect to incur in the relevant grant year in connection with their functions in relation to school education, describing in particular—
 - (i) all expenditure they expect to incur specifically for the purposes of those functions;

- (ii) such part of the expenditure the local authority which are the education authority expect to incur for the purpose of various functions including school education as is reasonably attributable to school education; and
 - (iii) such part of the expenditure the local authority which are the education authority expect to incur on central administration (including finance, personnel and other central departments) as is reasonably attributable to school education,
- but excluding from the expenditure to be described in terms of heads (i) to (iii) of this sub-paragraph any expenditure which constitutes school level expenditure or which falls within any of the descriptions of expenditure set out in paragraph 2 of Schedule 2.
- (4) For each grant year, the board of management shall provide the education authority with information as to the following matters:—
- (a) the range of provision the school has for pupils with special educational needs;
 - (b) the number of pupils for whom, and the special educational needs for which, the board consider they are able to provide;
 - (c) the resources which the board consider would be necessary to make adequate and efficient provision for the special educational needs of such pupils, described under the following categories:—
 - (i) those which the board would intend to supply directly from the school's own resources;
 - (ii) those which the board would intend to request the education authority to supply and whether with or without payment; and
 - (iii) those which the board would intend to seek from third parties, with payment;
 - (d) the extent to which the board expect places at the school may be filled by recorded children and young persons belonging to the area of another education authority and the extent and the nature of the resources which they expect may be required in respect of such children and young persons; and
 - (e) any change in the circumstances of the school occurring during or since the preceding grant year (or, in respect of agreement to be reached for the first grant year, the base year) or which is likely to occur before the end of the relevant grant year.

Matters common to information as to both types of school

16.—(1) For the purposes of section 27(6) of the Act (variation of agreement reached under section 27(2) thereof), the education authority and the board of management of a self-governing school shall provide each other with any new or additional information as to the matters in respect of which they are required to exchange or provide information in accordance with regulation 14 or 15, as the case may be, for the purposes of their duty under section 27(2) of the Act, which have caused the authority, the board or the Secretary of State to consider that the agreement reached under that section should be varied.

(2) For the purposes of the Secretary of State considering any agreement intimated to him under section 27(2) or (7) of the Act, or for the purposes of himself making a determination under section 27(3) or a variation under section 27(9) thereof, the education authority and the board of management of a self-governing school shall provide to him information as to the following matters:—

- (a) in the case of an agreement intimated under section 27(2), or the Secretary of State himself making a determination under section 27(3), information which adequately describes the matters specified in regulation 14(2) to (4), where the school is not a special school, and regulation 15(2) to (4), where the school is a special school; and

(b) in the case of an agreement intimated under section 27(7), or the Secretary of State himself making a variation under section 27(9), information which adequately describes the matters specified in paragraph (1).

(3) The information which the education authority and the board of management of a self-governing school are required to provide to each other or to the Secretary of State in respect of any grant year in accordance with regulation 14 or 15 or paragraph (2)(a) of this regulation shall be provided by 8th April in the relevant grant year.

(4) The board of management of a self-governing school shall intimate to the Secretary of State by 8th May in each grant year the agreement reached by them with the education authority in accordance with section 27(2) of the Act in respect of that grant year, or if no such agreement has been reached by that date, the failure to reach such agreement.

PART III

CAPITAL GRANTS AND SPECIAL PURPOSE GRANTS

Capital grants

17. The Secretary of State may pay to a board of management of a self-governing school capital grants in respect of expenditure of a capital nature of a class or description specified in Schedule 3 incurred or to be incurred by them.

Special purpose grants

18. The Secretary of State may pay to a board of management of a self-governing school special purpose grants in respect of expenditure of a class or description specified in Schedule 4 incurred or to be incurred by them, being expenditure not of a capital nature and which the Secretary of State considers should not be met from recurrent grant.

PART IV

GENERAL PROVISIONS

Payment of recurrent grant in advance of determination

19. Payments to a board of management in respect of recurrent grant for any school in respect of any grant year may be made, before any amount has been determined in accordance with these Regulations as the amount of such grant payable for that year in respect of the school, by reference to an estimate of the amount which will be so payable made by the Secretary of State.

Time and manner of payment of grants

20. Recurrent grant, capital grants and special purpose grants may be paid as single payments, or by instalments of such amounts and at such times as the Secretary of State may determine.

Recovery of overpayment of grants

21. Where any sum is payable by the board of management of a self-governing school to the Secretary of State under any of the requirements set out in paragraphs 4, 5, 6, 7 or 10 of Schedule 5 and imposed on the board, the Secretary of State may (without prejudice to any other mode of recovery)

recover the whole or any part of that sum by deducting it from any grant payable by him to the board of management.

Requirements which may be imposed in respect of recurrent grant, capital grants or special purpose grants

22.—(1) The requirements set out in Part 1 of Schedule 5 are requirements which may be imposed by the Secretary of State in accordance with section 26(7) of the Act on boards of management to whom payments in respect of recurrent grant, capital grants or special purpose grants are or have been made.

(2) The Secretary of State may determine and further impose in accordance with that section on boards of management to whom payments in respect of recurrent grant, capital grants or special purpose grants are or have been made any requirement of a type set out in Part 2 of Schedule 5.

PART V

**RECOVERY OF AMOUNTS IN RESPECT OF
RECURRENT GRANT FROM EDUCATION AUTHORITY**

Determination of amount to be recovered

23.—(1) Subject to paragraph (2), the total amount which the Secretary of State may recover from the education authority in respect of a self-governing school for any financial year by virtue of section 28(1) of the Act shall be the amount determined in accordance with these Regulations as the amount of recurrent grant (as from time to time revised) payable in respect of the school for the financial year in question.

(2) The amount which would otherwise fall to be determined in accordance with paragraph (1) as the total amount recoverable from the education authority by virtue of section 28(1) of the Act in respect of the school for any financial year may be reduced by an amount not exceeding the amount of any excess amount recovered from the authority under that section in respect of any previous financial year.

St Andrew's House, Edinburgh
23rd February 1994

James Douglas-Hamilton,
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 2(2)

SCHOOL LEVEL EXPENDITURE

1. Subject to paragraphs 2 and 3, for the purposes of these Regulations, school level expenditure in respect of a school means expenditure directly attributable to the school in respect of the following categories and items within each category:—

expenditure in relation to staff (other than supply staff)—

- (a) teachers and instructors—permanent and temporary
- (b) school-based administrative and support staff
- (c) janitors and manual grades
- (d) other (including costs related to employment of staff)

expenditure in relation to premises—

- (a) rent and rates
- (b) insurance
- (c) fuel, gas and electricity
- (d) fixtures and fittings
- (e) cleaning of school premises and land
- (f) other (excluding repairs and maintenance of land, buildings and fixed plant)

expenditure in relation to supplies and services—

- (a) books, materials and educational equipment
- (b) other

expenditure in relation to transport—

- (a) purchase or leasing of vehicles or related equipment for the school, to the extent that it is not expenditure of a capital nature (within the meaning of Schedule 3)
- (b) repairs and maintenance of vehicles and equipment and other running costs
- (c) other

expenditure in relation to examination entry fees—

total examination entry fees

expenditure in relation to School Board—

- (a) cost of School Board administration and training
- (b) cost of School Board administration of functions delegated to them under section 15 of the 1988 Act

expenditure in relation to other items—

- (a) cost of school catering

- (b) other items not expressly listed above, expenditure on which the education authority treat as forming part of the direct running costs of the school.
2. The items of expenditure specified in paragraph 1 do not constitute school level expenditure to the extent that they fall within any of the following descriptions of expenditure, namely—
- (a) expenditure treated by the education authority as expenditure of a capital nature;
 - (b) expenditure in respect of the repayment of the principal of, the payment of the interest on and the discharge of any financial obligation in connection with, any loan obtained to meet expenditure of a capital nature;
 - (c) expenditure which is offset by income received as central government grant in support of specific expenditure;
 - (d) expenditure required to meet the liabilities of the education authority in respect of compensation for premature retirement of persons formerly employed by them to work at a school under their management, where the decision to credit a person with a period of service for the purposes of payment of compensation for premature retirement was made before 1st April in the base year.
3. There shall be deducted from each category of expenditure in paragraph 1 income from fees and charges received by the education authority relevant to that category.

SCHEDULE 2

Regulation 9(1)

CENTRAL EXPENDITURE TO BE ALLOCATED TO A SCHOOL

1. Subject to paragraph 2, the expenditure to which regulation 9 relates is all expenditure appearing to the Secretary of State to be incurred by the education authority in connection with their functions in relation to school education, including—
- (a) all expenditure appearing to be incurred specifically for the purposes of those functions;
 - (b) such part of the expenditure incurred by the local authority which are the education authority for the purpose of various functions including school education as it appears reasonable to attribute to school education; and
 - (c) such part of the expenditure incurred by the local authority which are the education authority on central administration (including finance, personnel and other central departments) as it appears reasonable to attribute to school education.
2. Expenditure is not to be treated as falling within paragraph 1 to the extent that it constitutes school level expenditure or falls within any of the following descriptions of expenditure, namely:—
- (a) expenditure in respect of the repayment of the principal of, the payment of the interest on and the discharge of any financial obligation in connection with, any loan obtained to meet expenditure of a capital nature;
 - (b) expenditure which is offset by income received as central government grant in support of specific expenditure; and
 - (c) expenditure on the following items and on any necessary administrative and support costs associated therewith:—
 - (i) transport of pupils between home and school;
 - (ii) the provision of clothing for pupils;

- (iii) the provision of financial assistance to school pupils to enable them to take advantage without hardship to themselves or their parents of the facilities for school education available to them;
- (iv) arrangements made for the patrolling of places where children cross roads on their way to or from school or from one part of a school to another;
- (v) the provision of a psychological service;
- (vi) identification, observation and assessment, and recording of children or young persons who have pronounced, specific or complex special educational needs;
- (vii) the provision and maintenance of hostels for pupils attending educational establishments in their area;
- (viii) the provision of a library service for pupils attending schools or other educational establishments in their area;
- (ix) the provision of a careers service for their area; and
- (x) any other thing done in pursuance of a power or duty which applies in relation to schools in, or pupils belonging to, the education authority's area generally, or applies in relation both to schools under the management of the education authority and self-governing schools or to pupils attending all such schools.

SCHEDULE 3

Regulation 17

EXPENDITURE OF A CAPITAL NATURE

1. Expenditure of a capital nature is expenditure on, or in connection with—
 - (a) the acquisition, reclamation, improvement or laying out of land;
 - (b) the acquisition, construction, enlargement, improvement, or demolition of any building, wall, fence or other structure, or any playground or other hard-standing;
 - (c) the laying out of playing fields and other facilities for social activities and physical recreation; or
 - (d) the provision of any furniture, plant, machinery, apparatus, vehicles, vessels and equipment;used or intended to be used for the purposes of a school.
2. In paragraph 1, "building" includes any fixtures and fittings affixed to the building.

SCHEDULE 4

Regulation 18

EXPENDITURE IN RESPECT OF WHICH SPECIAL PURPOSE GRANTS MAY BE PAID

1. In this Schedule—
 - "eligible training" means the further training of any teacher who is employed by the board of management of a self-governing school; and
 - "trainee" means a person undergoing eligible training in respect of whom special purpose grant is being paid under these Regulations.
2. The class or description of expenditure in respect of which special purpose grant may be paid is—

- (a) expenditure for or in connection with the training of any teacher employed by the board of management, including, in particular, expenditure on—
 - (i) tuition fees, examination fees and residential and other charges payable in respect of eligible training;
 - (ii) travelling, subsistence and other incidental expenses of a trainee;
 - (iii) that part of the remuneration of persons whose employment is necessary to free a trainee for training which relates to the period during which their employment is so necessary; and
 - (iv) the cost of providing (including the provision of premises), planning, co-ordinating, monitoring and evaluating eligible training, provided that where such costs are incurred for such purposes and for other purposes, special purpose grant shall be payable only in respect of such proportion of those costs as is attributable to the provision, planning, co-ordinating, monitoring or evaluation of eligible training; and
- (b) expenditure in respect of expenses which it appears to the Secretary of State the board of management cannot reasonably be expected to meet from recurrent grant, being expenses incurred or to be incurred for or in connection with—
 - (i) any structural survey which the Secretary of State has required to be carried out in respect of any building used for the purposes of the school;
 - (ii) the dismissal (whether by reason of redundancy or otherwise), or securing the resignation of any person who is or was a member of the staff of the school, or the premature retirement of such a person, to the extent that the Secretary of State, within 24 months of the incorporation date, or such longer period as the Secretary of State may determine in the circumstances of the particular case, has stated in writing that special purpose grant will be paid in respect of any such expenses;
 - (iii) any liability of the board of management in respect of Value Added Tax;
 - (iv) insurance of the school premises;
 - (v) meeting any urgent need of the school which in the opinion of the Secretary of State was occasioned by circumstances outwith the control of the board of management;
 - (vi) the school's acquisition of self-governing status and the transfer to its board of management of the responsibility for its management, where those expenses are incurred within 12 months of the incorporation date.

SCHEDULE 5

Regulation 22

REQUIREMENTS WHICH MAY BE IMPOSED IN RESPECT OF RECURRENT GRANT, CAPITAL GRANTS OR SPECIAL PURPOSE GRANTS

PART 1

1. In the case of any grant paid to them in accordance with these Regulations, a requirement that the board of management shall secure, so far as their powers extend, that the school is managed in accordance with any requirements imposed by or under any enactment including, in particular, any imposed by or under the Act or the scheme of government for the school.

2. In the case of capital and special purpose grants paid to them in accordance with these Regulations, a requirement that the board of management shall secure that any such grants are used only for the purposes for which they are paid.

3. In the case of recurrent grant paid to them in accordance with these Regulations, a requirement that such grant shall be used solely for the purposes of the school, and that the amount of such grant for a self-governing school which is not a special school which is attributable to expenditure for the purpose of making provision for the special educational needs of recorded pupils in attendance at the school shall be used solely for the purpose of making such provision.

4. In the case of any grant paid to them in accordance with these Regulations, a requirement that where, in respect of any financial year, any overpayment of grant is made to the board of management (including an overpayment due to the aggregate amount of payments made for that year in respect of recurrent grant exceeding the amount determined in accordance with these Regulations as the amount payable for that year, or to a reduction of the amount payable for that year following on revisal by the Secretary of State of his determination of that amount in accordance with these Regulations) a sum equal to the amount of overpayment shall be repayable to the Secretary of State by the board.

5. In the case of any grant paid to them in accordance with these Regulations, a requirement that, without prejudice to the requirement specified at paragraph 4 in respect of recovery of overpayment of grant, the board of management shall, at the request of the Secretary of State, repay to him so much of any such grant as has not been used for the purpose for which it was paid, except that—

(a) the board of management shall be entitled to retain out of recurrent grant two separate amounts, namely—

(i) a reserve fund of a sum not exceeding at any given time 10%, and

(ii) a sum not exceeding at any given time 2½%,

of the total amount of such grant paid in respect of the most recent grant year (excluding from such total amount any overpayment of such grant for that year); and

(b) in the case of special purpose grants, no such repayment shall be required where such grant was paid to meet any liability of the board of management in respect of Value Added Tax.

6. In the case of any grant paid to them in accordance with these Regulations, a requirement that the board of management shall repay to the Secretary of State such amount as after consultation with them, he may require, in the event of their failing to comply with any requirement imposed by him in accordance with these Regulations.

7. In the case of recurrent grant or capital grants paid to them in accordance with these Regulations, a requirement that, without prejudice to section 7(2)(b) of the Act (Secretary of State's written consent required for disposal of land by board of management), the board of management shall notify the Secretary of State of the disposal or alteration of use of land which has been acquired or improved wholly or partly, directly or indirectly, with the assistance of such grant and repay to him such sum as, after consultation with them, he may require, regard being had by him, in particular, to the proportion which the grant paid bore to the total cost of acquisition or improvement and to the amount of the free proceeds of disposal or value of the land at the time of disposal.

PART 2

(a) In the case of recurrent grant paid to them in accordance with these Regulations, requirements with respect to—

(i) the purpose for which the board of management may retain the sum mentioned at paragraph 5(a)(i), and the use to which such sum shall be put; and

(ii) an increase in the sum which the board may so retain; and

(b) in the case of capital and special purpose grants so paid, a requirement that any such grant is used before such date as the Secretary of State may specify in relation to it.

9. In the case of any grant paid to them in accordance with these Regulations, requirements as to the taking out of insurance by the board of management, including, without prejudice to that generality, in relation to their property, members, staff and third parties.

10. In the case of any grant paid to them in accordance with these Regulations, a requirement that the board of management shall obtain the written consent of the Secretary of State to the disposal of an asset other than land with a value exceeding such amount as the Secretary of State may, from time to time, specify, which has been acquired or improved wholly or partly, directly or indirectly, with the assistance of such grant, notify the Secretary of State of such disposal of such asset and repay to him such sum as, after consultation with them, he may require, regard being had by him, in particular, to the proportion which the grant paid bore to the total cost of acquisition or improvement and to the amount of the free proceeds of disposal or value of the asset at the time of disposal.

11. In the case of any grant paid to them in accordance with these Regulations, requirements with respect to the adoption of proper and prudent financial procedures and the maintenance of proper accounts by the board of management including, without prejudice to that generality, requirements as to—

- (a) the appointment by the board of management of a person who will be responsible to them for the proper administration of their financial affairs;
- (b) the accounting systems and methods to be adopted by the board of management and the form of their accounts and supporting records;
- (c) internal financial controls including, in particular, requirements as to the procedures to be adopted with respect to the receipt and disbursement of money by the board of management; and
- (d) the signature and publication of the board of management's annual accounts.

12. In the case of any grant paid to them in accordance with these Regulations, requirements as to audit, inspection and availability of the board of management's annual accounts, including, without prejudice to that generality, requirements as to—

- (a) the procedure to be adopted in appointing and replacing auditors;
- (b) the qualifications the auditors are to possess;
- (c) the duration of auditors' appointments;
- (d) the frequency of audits;
- (e) the functions which are to be performed by the auditors in respect of the school;
- (f) the inspection of accounts and supporting records on request by any person authorised by the Secretary of State;
- (g) examinations by persons authorised by the Secretary of State or the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the board of management have used their resources in discharging their functions; and
- (h) access to the audited accounts by parents of pupils in attendance at the school and by other members of the public.

13. In the case of any grant paid to them in accordance with these Regulations, any requirement formulated with a view to the Secretary of State satisfying himself that the board of management are complying or have complied with any other requirement imposed by him in respect of such grant including, without prejudice to that generality, requirements as to the provision by the board to the Secretary of State of such information, in such form, as the Secretary of State may require.

14. In the case of any grant paid to them in accordance with these Regulations, such further requirements relating to the conduct of the school's financial affairs as the Secretary of State thinks fit.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the method of determination of the amount of recurrent grant to be paid, the kinds of capital and special purpose grants which may be paid, and the manner of payment of such grants, by the Secretary of State to boards of management of self-governing schools incorporated under the Self-Governing Schools etc. (Scotland) Act 1989 (“the Act”). They also provide for exchange of information between education authorities and boards of management and provision of information by each to the Secretary of State in connection with the determination of the amount of recurrent grant in certain circumstances, and for the total amount which the Secretary of State may recover from education authorities in respect of recurrent grant paid to boards of management.

Recurrent grant is paid to meet expenditure on the normal running costs of the school; capital grant, to meet capital expenditure; and special purpose grant, to meet expenditure which is not capital expenditure and which the Secretary of State considers boards of management could not reasonably be expected to meet out of recurrent grant.

Determination of the amount of recurrent grant is covered by regulations 3 to 10.

For a self-governing school which is not a special school, the amount of recurrent grant is the aggregate of 3 amounts:

- (1) an amount of school level expenditure determined by the Secretary of State in accordance with regulations 6 and 7;
- (2) an amount determined by the Secretary of State in accordance with regulation 8 in respect of provision for the special educational needs of recorded pupils; and
- (3) an amount determined by the Secretary of State in accordance with regulation 9, representing the school’s share of the education authority’s central expenditure attributable to school education.

Regulation 6 provides for the determination of the amount of school level expenditure for the first grant year. First, the Secretary of State determines an amount which he is satisfied fairly represents the amount of school level expenditure which it would have been appropriate for the education authority for the area in which the school is situated to incur in respect of the school in the base year (the last complete financial year before the school became self-governing). Schedule 1 describes what is meant by school level expenditure—basically, the net direct running costs of the school. Provision is made as to the information the Secretary of State must have regard to in making his determination. Under regulation 6(3), the Secretary of State then adjusts the amount he has determined in respect of the base year to bring it up to date for the first grant year. He adjusts the amount by such amount or amounts as appears or appear to him to be fair and reasonable to take account of certain matters, having regard again to certain information. The matters are—

- (a) the extent to which the education authority’s expected total amount of school level expenditure in the first grant year in respect of the relevant category of school (primary or secondary) is greater or less than their expected total amount of such expenditure in the base year in respect of that category, and any circumstances appearing to him to be relevant to such increase or decrease; and
- (b) any change in the circumstances of the school occurring during or since the base year or which it appears to the Secretary of State will be likely to occur before the end of the first grant year.

Regulation 7 provides for the determination of the amount of school level expenditure for each subsequent grant year. The Secretary of State determines the amount by updating for each subsequent grant year after the first grant year the adjusted amount obtained for the preceding grant year. The updating is done on a similar basis, to take account of the change in the authority's expected total amount of school level expenditure for the relevant category of school between the preceding grant year and the relevant grant year and any circumstances appearing to the Secretary of State to be relevant to such increase or decrease, and of any change in the circumstances of the school for that period.

Regulation 8 provides for the determination for each grant year of an amount attributable to expenditure for the purpose of making provision in that year for the special educational needs of recorded pupils. The amount determined is the figure agreed between the education authority and the board of management, or determined by the Secretary of State, under section 27 of the Act as representing the estimated cost of such provision in that year.

Under regulation 9 and Schedule 2, the Secretary of State determines an amount which he considers it appropriate to allocate to the school of the expenditure (other than school level expenditure) which it would be appropriate for the education authority to incur in connection with their functions in relation to school education, including all expenditure appearing to be incurred specifically for those functions and other central expenditure a portion of which is reasonably attributable to school education.

For a self-governing school which is a special school, the amount of recurrent grant is determined in accordance with regulation 10. The amount of such grant determined by the Secretary of State for each grant year is the amount agreed between the education authority and the board of management, or determined by the Secretary of State, in accordance with section 27 of the Act as representing the estimated cost of the educational and other provision to be made in that year for the pupils in attendance at the school, and the estimated expenditure incurred or to be incurred for the purposes of the board of management's other functions under section 7(1) of the Act (general running of the school).

Regulation 11 provides that where there is not available to the Secretary of State on the date specified in regulation 6(2) or (3), 7(1) or 9(2) sufficient information as will, in his opinion, allow him to determine an amount which any of those provisions requires him to determine, he may determine the amount on such basis as appears to him to be fair and reasonable, having regard to the information available to him on that date.

Regulation 12 provides for the apportionment of recurrent grant for schools which become self-governing other than at the beginning of a grant year. Regulation 13 provides for the revisal of the amount of recurrent grant for any grant year in the light of subsequent changes or extraordinary circumstances, or to correct errors.

Regulations 14 to 16 provide for the exchange of information between education authorities and boards of management and the provision of information by each to the Secretary of State for the purposes of reaching agreement and making determinations in accordance with section 27 of the Act.

Regulation 17 and Schedule 3 enable the Secretary of State to pay capital grants in respect of certain expenditure. Regulation 18 enables him to pay special purpose grants for expenditure of a class or description specified in Schedule 4.

Regulations 19 and 20 make provision as to payment of grant, and regulation 21 as to the right to set off overpayments against grant due.

Regulation 22 and Schedule 5 set out requirements, and empower the Secretary of State to determine other requirements of specified types, which he may impose on boards of management to whom he pays recurrent grant, capital grants or special purpose grants.

Section 28(1) of the Act empowers the Secretary of State to recover from the education authority which otherwise would be responsible for the management of the school sums in respect of the

recurrent grant payable for any financial year to the board of management of a self-governing school. Regulation 23 specifies as the total amount which may be so recovered the amount of recurrent grant determined (and revised, where appropriate) in accordance with the Regulations. This amount is subject to adjustment to reflect any excess paid by the authority in previous financial years.