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STATUTORY INSTRUMENTS

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**1998 No. 798**

**EDUCATION, ENGLAND AND WALES**

**The Education (New Grant-maintained  
Schools) (Finance) Regulations 1998**

<i>Made</i>	- - - -	<i>25th March 1998</i>
<i>Laid before Parliament</i>		<i>25th March 1998</i>
<i>Coming into force</i>	- -	<i>1st April 1998</i>

In exercise of the powers conferred on the Secretary of State by sections 244(2), 245, 246(1) and (2), 247(2) and (6), 257 and 569(4) and (5) of the Education Act 1996<sup>(1)</sup> the Secretary of State for Education and Employment hereby makes the following Regulations:

**PART 1**

**GENERAL**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (New Grant-maintained Schools) (Finance) Regulations 1998 and shall come into force on 1st April 1998.

(2) These Regulations apply in relation to the financial year beginning on that date.

(3) These Regulations apply in respect of grant-maintained schools situated in England which are established pursuant to proposals under section 211 or 212 of the 1996 Act (proposals for establishment of new schools) except to such a school which is established—

- (a) where section 213(3) of the 1996 Act applies (proposals by promoters to establish a new school in place of an existing independent school which it is proposed to discontinue on or before the date of implementation of the proposals in respect of the new school); or
- (b) in connection with the discontinuance of another grant-maintained school pursuant to proposals published under section 267 or 268 of the 1996 Act.

**Interpretation**

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

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(1) 1996 c. 56. For the meaning of “regulations” see section 579(1) of the 1996 Act.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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“the 1996 Act” means the Education Act 1996;

“the 1997 Regulations” means the Education (New Grant-maintained Schools) (Finance) Regulations 1997(2);

“financial year in question” means the financial year beginning in 1998;

“local education authority” means—

- (a) in relation to any school and financial year, the local education authority for the area in which the school is situated; or
- (b) where the school is situated in the area of more than one local education authority, such local education authority as the Secretary of State, after consultation with those local education authorities concerned, may determine;

“preceding financial year” means the financial year beginning in 1997;

“pupils with statements of special educational needs” means pupils for whom statements of their special educational needs are maintained under section 324 of the 1996 Act;

“school” means a grant-maintained school in respect of which these Regulations apply.

(2) Expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column, references to regulations being references to regulations of these Regulations—

aggregated budget	section 101(3)(b) of the 1996 Act
allocation formula	section 106(2) of the 1996 Act
capital grants	section 246(1) of the 1996 Act
Central AMG	regulation 4(1)(b)
change in the characteristics of the school	regulation 7(6)
comparable maintained school	regulation 7(2)
date of implementation of the proposals	section 217 of the 1996 Act
Direct AMG	regulation 4(1)(a)
financial year	section 579(1) of the 1996 Act
general schools budget	section 101(3)(a) of the 1996 Act
maintained school	regulation 7(2)
maintenance grant	section 244(1) of the 1996 Act
relevant date	regulation 18(7)
relevant percentage	regulation 8(2)
scheme	section 101(1) of the 1996 Act
school’s budget share	section 101(3)(c) and (6) of the 1996 Act
special purpose grants	section 245(1) of the 1996 Act.

(3) For the purposes of these Regulations, a grant-maintained school is established on the date of implementation of the proposals in respect of the school under Chapter IV of Part III of the 1996 Act.

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

- (a) that number of pupils indicated by the local education authority, the promoters or the funding authority, as the case may be, when publishing proposals under section 35, 41, 211 or 212 of the 1996 Act for the establishment of that school, as the number 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 funding authority may determine.

(5) Unless the context otherwise requires, any reference in these Regulations to—

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

### **Revocation and transitional provisions**

3.—(1) The 1997 Regulations are revoked.

(2) Notwithstanding the provisions of these Regulations, the 1997 Regulations shall continue to apply for the purposes of—

- (a) determining, apportioning and redetermining the amount of maintenance grant payable in respect of a school as therein defined situated in England for the financial year ending on 31st March 1998; and
- (b) determining (and revising) the total amount of maintenance grant which the Secretary of State may recover from the local education authority (within the meaning of those Regulations) for such a school in respect of that year.

(3) Paragraph (1) is without prejudice to the continued operation after 31st March 1998 of any requirements imposed by the funding authority on a governing body to whom payments in respect of maintenance grant, capital grant and special purpose grant have been made under the 1997 Regulations.

## **PART 2**

### **MAINTENANCE GRANT**

#### **Determination of amount of maintenance grant**

4.—(1) The amount of maintenance grant payable for the financial year in question in respect of a school shall be the aggregate of the following amounts—

- (a) an amount (Direct AMG) determined in accordance with, as the case may be, regulation 5, 6 or 11;
- (b) an amount (Central AMG) determined in accordance with regulation 8 or that regulation as it has effect in accordance with regulation 12 (apportionment);
- (c) an amount determined in accordance with regulation 9 (Section 11 funding), regulation 10 (school meals, subject in the case of a school established in September in the financial year in question to apportionment under regulation 13), regulation 14 (contingencies) and regulation 15 (nursery education); and

- (d) (where applicable) an amount determined in accordance with regulations 16 and 17 (deductions representing excessive surpluses in previous year and excessive severance payments).

(2) Where in the opinion of the funding authority precise calculation for the purpose of determining any of the amounts referred to in paragraph (1)—

- (a) would be impracticable;
- (b) would not significantly affect the amount; or
- (c) would be disproportionately costly having regard to the complexity of the calculation and the likely effect on the amount,

paragraph (1) shall have effect as if it required the funding authority to determine as the amount of maintenance grant payable for the financial year in question such amount as appears to them to be fair and reasonable having regard in particular to the local education authority's scheme.

#### **Determination of Direct AMG for a complete financial year by reference to a comparable maintained school's budget share**

5.—(1) This regulation applies in the case of a school established on or before 1st April in the financial year in question.

(2) In any case to which this regulation applies, and subject to regulation 6 (alternative method), the funding authority shall determine an amount which appears to them to be equal or approximate to an amount which the local education authority could have determined, by the application (subject to regulation 7) of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as such a school's budget share for the financial year in question.

#### **Alternative method of determining Direct AMG**

6.—(1) The funding authority shall in the case of a school established on or before 1st April in the financial year in question, instead of determining an amount under regulation 5, determine, after consulting the local education authority and the governing body of the school, an amount in accordance with this regulation which is the aggregate of the amounts determined under paragraphs (2), (8) and (9), if such amount would be larger than the amount that would be determined under regulation 5.

(2) The funding authority shall determine an amount which appears to them to be equal or approximate to an amount which the local education authority could have determined, by the application (subject to regulation 7) of the allocation formula in their scheme in relation to a comparable maintained school covered by the scheme, as such a school's budget share for the financial year in question on the hypotheses, for the purposes of this paragraph, set out in paragraphs (3) to (7).

(3) In the case of a school situated in the area of a local education authority which does not use estimates of pupil numbers for the purposes of the allocation formula, the number of registered pupils at the school aged under 16 on 31st August 1998 is—

- (a) in the case of a primary school, 80 ("the minimum threshold") or, if higher, the number which the funding authority estimate will be the number of such pupils at the school on a date in April in the financial year in question determined by them; or
- (b) in the case of a secondary school, 220 ("the minimum threshold") or, if higher, the number which the funding authority estimate will be the number of such pupils at the school on a date in April in the financial year in question determined by them.

(4) In the case of a school situated in the area of a local education authority which does use estimates of pupil numbers for the purposes of the allocation formula, the number of registered pupils at the school aged under 16 on 31st August 1998 is—

- (a) in the case of a primary school, 80 (“the minimum threshold”) or, if higher, 5/12ths of the number which the funding authority estimate will be the number of such pupils at the school on a date in April in the financial year in question determined by them and 7/12ths of the number which they estimate will be the number of such pupils at the school on a date in September in the financial year in question determined by them; or
- (b) in the case of a secondary school, 220 (“the minimum threshold”) or, if higher, 5/12ths of the number which the funding authority estimate will be the number of such pupils at the school on a date in April in the financial year in question determined by them and 7/12ths of the number which they estimate will be the number of such pupils at the school on a date in September in the financial year in question determined by them.

(5) The ages of notional pupils (being the number by which the minimum threshold exceeds the funding authority’s estimate of pupil numbers under paragraph (3), or the composite number based on the funding authority’s estimates of pupil numbers under paragraph (4)) are determined pro rata according to the distribution of ages of pupils in that estimate or in that composite number based on those estimates, as the case may be.

(6) The number of registered pupils aged 16 or over on 31st August 1998 at the school is the number which the funding authority estimate will be the number of such registered pupils at the school on a date in April in the financial year in question determined by them.

(7) The allocation formula does not contain any factors which are applicable wholly or mainly to comparable maintained schools the proposals for the establishment of which have not yet been fully implemented.

(8) The funding authority shall determine £3,000 in respect of the school if the number, which they estimate will be the number of registered pupils at the school on a date in the financial year in question determined by them, is less than 80% of the number of registered pupils who will be at the school when the proposals for the establishment of the school have been fully implemented.

(9) If the number which the funding authority estimate will be the number of pupils at the school on a date in the financial year in question determined by them is less than 80% of the number of registered pupils who will be at the school when the proposals for the establishment of the school have been fully implemented, the funding authority shall determine in respect of the school £750 for every 15 registered pupils (rounding down to the nearest number divisible by 15) which they estimate will be in each age group on that date in the financial year in question determined by them.

#### **Additional provisions for determining Direct AMG**

7.—(1) Where—

- (a) at any time before the beginning of the financial year in question the allocation formula included a particular factor; and
- (b) the scheme has been revised, varied or replaced under section 111 or 114 of the 1996 Act at any time before the relevant date in relation to the school as initially determined in accordance with regulation 18(2), and for the financial year in question—
  - (i) no such provision is included in the allocation formula, or
  - (ii) the proportion of a comparable maintained school’s budget share derived from the application of that provision would be less than it would have been had the scheme not been so revised, varied or replaced,

the allocation formula shall be deemed, for the purposes of determining the amount under regulation 5 or 6, as the case may be, to include such provision for taking into account any

such factor (but subject always to regulation 6(7)) as it had effect immediately before the scheme was so revised, varied or replaced:

Provided that the funding authority shall add to, or subtract from, any sum derived from the application of the said provision such amount as appears to them to be fair and reasonable having regard to any increase or decrease in the actual or planned level of spending of the local education authority in respect of schools maintained by them occurring during or since the financial year which preceded the financial year in which such revision, variation or replacement occurred.

(2) Subject to paragraphs (3), (4) and (5), references in this Part to a maintained school are references to a school maintained by the local education authority in question, and references to a comparable maintained school are references to a maintained county school, any characteristics of which relevant for the purposes of any formula of a kind referred to in regulation 5 or 6, as the case may be, are identical to any such characteristics of the grant-maintained school and are references (in particular) to a school—

- (a) the number of registered pupils in each age group at which is identical to the number of such pupils in each age group at the grant-maintained school; and
- (b) any other factors affecting the needs of which (including, in particular, the number of registered pupils at the school who have special educational needs and the nature of the special educational provision required to be made for them) are identical to any other factors affecting the needs of the grant-maintained school.

(3) Where the allocation formula includes provision for taking into account the amount of any non-domestic rate payable in respect of a school, the funding authority shall, in applying the allocation formula for the purpose of determining the amount under regulation 5 or 6, as the case may be, apply the provision as if the amount of the non-domestic rate payable was, in the case of Brinkley Grove Primary School, Essex and Blenheim High School, Surrey, that payable in respect of a comparable maintained county school.

(4) For the purposes of this regulation, it is to be assumed that there is a comparable maintained school covered by the local education authority's scheme whether or not there is in fact such a school.

(5) In this regulation "factor" means, in relation to the allocation formula, any circumstance, fact or matter affecting the needs of individual schools and subject to variation from school to school which is to be taken into account in accordance with the allocation formula.

(6) References in these Regulations to any change in the characteristics of the school include, in particular, references to any change in the number of registered pupils thereat.

### **Determination of Central AMG**

8.—(1) Subject to regulation 12 (apportionment), the funding authority shall determine an amount for Central AMG which is equal to the relevant percentage of the amount calculated in respect of the school in accordance with regulation 5(2) (Direct AMG by reference to a comparable maintained school's budget share) whether or not Direct AMG for the school was determined under that regulation or regulation 6.

(2) In these Regulations the relevant percentage is the percentage determined in accordance with Schedule 1.

### **Section 11 funding**

9.—(1) Subject to paragraph (2), the funding authority shall determine in respect of the period in the financial year in question during which the school is a grant-maintained school ("the period in question"), the amount, if any, which it appears to them, were the school maintained by the local education authority, could have been allocated for the purposes of the school in accordance with

the authority's scheme in support of expenditure of the kind referred to in section 11 of the Local Government Act 1966<sup>(3)</sup> in respect of posts approved by the Secretary of State for the purpose of making grants in respect of such expenditure, not being expenditure expected to be offset by income received as central government grants or grant from any of the European Communities.

(2) If no such amount as referred to in paragraph (1) could have been so allocated in respect of the period in question the funding authority shall determine—

- (a) the amount which could have been so allocated in respect of an equivalent period in the last financial year, if any, in which any amount could have been so allocated; or
- (b) if no such amount as is referred to in sub-paragraph (a) above could have been so allocated such amount as appears to them to be fair and reasonable, being not more than half of the amount of "approved expenditure" which they estimate will be incurred by the governing body of the school for the period in question.

(3) In paragraph (2)(b) "approved expenditure" means expenditure of the kind referred to in section 11 of the Local Government Act 1966 both in respect of posts and of an amount approved by the Secretary of State for the purpose of making grants in respect of such expenditure.

#### **Calculation of an amount in respect of the provision of school meals**

10.—(1) Subject to regulation 13 (apportionment), the funding authority shall determine an amount in respect of the provision of school meals calculated by the application of the following formula—

$$\frac{(M \times F)}{(P)} + \frac{(S \times G)}{(B)}$$

where

M is the number of registered pupils in receipt of free school meals at the school on a date in the financial year in question determined by the funding authority;

F is the amount which, in the opinion of the funding authority, the local education authority will spend in the financial year in question in providing meals to pupils in receipt of free school meals at relevant schools, excluding any such expenditure falling within their aggregated budget;

P is the number of registered pupils in receipt of free school meals at relevant schools on a date in the financial year in question determined by the funding authority;

S is the number of registered pupils at the school who bought meals at the school on a date in the financial year in question determined by the funding authority;

G is the amount (which may not be less than zero) which, in the opinion of the funding authority, the local education authority will spend in the financial year in question on school meals, other than free school meals, at relevant schools and excluding—

- (i) expenditure to be met from any charges for such meals, and
- (ii) expenditure falling within their aggregated budget; and

B is the number of registered pupils at relevant schools who bought meals at those schools on a date in the preceding financial year determined by the funding authority.

(2) In paragraph (1) "relevant schools" means all primary or all secondary schools maintained or formerly maintained by the authority required to be covered by a statement for the year under section 122(2) of the 1996 Act, according as to whether the school is a primary school or a secondary school.

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(3) 1966 c. 42, as substituted by section 1(1) of the Local Government (Amendment) Act 1993 (c. 27).

(3) Without prejudice to regulation 19 (adjustments), until such time as the funding authority are able to determine an amount by the application of the formula in this regulation, having regard to the date or dates determined by them for the purposes of “M”, “P” and “S”, the funding authority shall determine such amount (“the estimated amount”) in respect of the provision of school meals as appears to them to be fair and reasonable and if the amount subsequently determined in accordance with the said formula is different from the estimated amount, they may revise their determination accordingly (whether or not this reduces the amount of maintenance grant payable in respect of the school for the financial year in question).

### **Determination of Direct AMG for schools established in September in the financial year in question**

**11.**—(1) This regulation applies in the case of a school established in September in the financial year in question.

(2) In any case to which this regulation applies the funding authority shall determine an amount in accordance with regulation 5 or 6, and subject to paragraph (3) below, as if the school had been established on 1st April in the financial year in question, and shall apportion that amount in accordance with the following formula—

$$(A \times 7/12) + B,$$

where

A is the amount so determined under regulation 5 or 6, as the case may be, but in the latter case is less the sum of the amounts determined in accordance with paragraphs (8) and (9) of that regulation; and

B is only added where Direct AMG has been determined under regulation 6 and is the sum of the amounts determined in accordance with paragraphs (8) and (9) of that regulation.

- (a) (3) (a) In any case to which this regulation applies paragraphs (3) and (4) of regulation 6 shall have effect as if the number of registered pupils at the school aged under 16 on 31st August 1998 is—
- (i) in the case of a primary school, 80 (“the minimum threshold”) or, if higher, the number which the funding authority estimate will be the number of such pupils at the school on a date in September in the financial year in question determined by them, or
  - (ii) in the case of a secondary school, 220 (“the minimum threshold”) or, if higher, the number which the funding authority estimate will be the number of such pupils at the school on a date in September in the financial year in question determined by them.
- (b) In any case to which this regulation applies paragraph (6) of regulation 6 shall have effect as if for the reference to “a date in April” there were substituted a reference to “a date in September.”

### **Determination of Central AMG—apportionment for schools established in September in the financial year in question**

**12.**—(1) This regulation applies in the case of a school established in September in the financial year in question.

(2) Where this regulation applies, regulation 8 (determination of Central AMG) shall have effect as if it required the funding authority to determine the relevant percentage of the amount determined in accordance with the following formula—

$$\frac{(A \times J),}{365}$$



where

J is the amount calculated in accordance with regulation 5(2) (Direct AMG by reference to a comparable maintained school's budget share) in respect of the school as if it had been established on 1st April in the financial year in question; and

A is the number of days in the financial year falling on or after the date on which the school was established.

### **Apportionment in respect of the provision of school meals for schools established in September in the financial year in question**

13. In the case of a school established in September in the financial year in question, the amount of maintenance grant payable in respect of the provision of school meals determined under regulation 10 for the financial year in question shall be apportioned in accordance with the following formula—

$$\frac{A \times C \times F}{B}$$

where

A is the number of days in the financial year falling on or after the date on which the school was established;

B is 365;

C is the amount determined in accordance with regulation 10 (school meals);

F is 1.015.

### **Contingencies**

14. The funding authority shall determine the amount which it appears to them, were the school maintained by the local education authority, could have been allocated for the purposes of the school in accordance with the authority's scheme in respect of contingencies.

### **Nursery Education**

15. Where the school provides education for junior pupils who have not attained the age of five years, the funding authority shall determine an amount in respect of such provision which they are satisfied is fair and reasonable having regard in particular to the extent to which, in their opinion, the cost of such provision ought to be met from the amount determined in accordance with (as the case may be) regulation 5, 6 or 11 (Direct AMG).

### **Excessive surpluses**

16.—(1) The funding authority shall determine the amount which appears to them to be equal or approximate to that amount of the school's maintenance grant and special purpose grant paid in respect of costs incurred by the school in respect of Value Added Tax for the preceding financial year which has not been spent by the governing body ("the unspent amount").

(2) Paragraph (3) applies where the unspent amount is greater than the sum of—

(a) 20 per cent. of the amount of maintenance grant that would, ignoring the effects of this regulation, be payable in respect of the school for the financial year in question; and

(b) the amount of special purpose grant which the funding authority estimate they would, ignoring the effects of this regulation, pay to the governing body in the financial year in question in respect of costs incurred by the school in respect of Value Added Tax.

(3) Where this paragraph applies, the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 4(1) shall have deducted from them such amount, if any, as the funding authority, having consulted the governing body of the school, may determine being no greater than the difference between the unspent amount and the sum of the amounts referred to in paragraph (2)(a) and (b).

### **Excessive Severance Payments**

17.—(1) This regulation applies in a case where the funding authority are, after consultation with the governing body of the school, of the opinion that the governing body have made a payment in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school which is, having regard to all the circumstances of the case, excessive or wholly improper.

(2) Where this regulation applies the amounts to be added together for the purpose of determining the amount of maintenance grant payable in respect of the school under regulation 4(1) shall have deducted from them such part of the payment referred to in paragraph (1) as the funding authority regard as excessive or, where they are of the opinion that the payment is wholly improper, the whole of the payment.

### **Relevant date**

18.—(1) Subject to regulation 25 (relevant date for the purposes of a redetermination of the amount of maintenance grant), any amount required to be determined by the funding authority under this Part shall be determined on the information available to them on the relevant date.

(2) In paragraph (1), the relevant date is such date as the funding authority may determine and different dates may be determined for different cases or classes of case.

(3) The funding authority may, in any case where they consider it appropriate to do so, redetermine the relevant date.

(4) Where—

- (a) the funding authority determine the relevant date, in respect of any school for the financial year in question, in accordance with paragraph (2); or
- (b) they redetermine the relevant date in accordance with paragraph (3),

they shall notify the governing body of the school and the local education authority in writing of that fact.

(5) Where there is not available to the funding authority on the relevant date sufficient information as will, in their opinion, allow them to determine any amount referred to in paragraph (1) they may determine the amount of maintenance grant payable in respect of the school on such basis as appears to them to be fair and reasonable having regard to the information available to them on the relevant date.

(6) The funding authority shall not take into account any information made available to them after the relevant date (but before the date of their determination) for the purposes of determining the amount of maintenance grant payable in respect of a school for the financial year in question.

(7) References in this Part to the relevant date are references to the date referred to in paragraph (2) unless the relevant date has been redetermined in accordance with paragraph (3) in which case it is a reference to that date as redetermined.

### **Adjustments**

19.—(1) Without prejudice to paragraph (5) but subject to paragraph (7) and regulation 24 (transfer of site), this paragraph applies where—

- (a) after determining the amount of maintenance grant payable in respect of any school for the financial year in question in accordance with this Part it appears to the funding authority that, by reason of—
  - (i) any change in the characteristics of the school,
  - (ii) any change in the level of spending by the local education authority, or
  - (iii) any other change affecting the needs of the school,the amount so payable should be revised; or
- (b) the funding authority are satisfied that their determination of the amount of maintenance grant payable in respect of any school for the financial year in question 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 funding authority may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with these Regulations and, if the amount so redetermined is different from the amount previously determined, revise their determination accordingly.

(3) Subject to paragraph (4), paragraph (2) shall not enable the funding authority to revise their determination of maintenance grant so as to reduce the amount of grant payable in respect of the school concerned for the financial year in question.

(4) The funding authority may revise their determination of maintenance grant so as to reduce the amount payable where—

- (a) that determination was made in ignorance of, or was based on a mistake as to, some material fact; and
- (b) such ignorance or mistake was not attributable to an act or omission of the local education authority.

(5) Where it appears to the funding authority that, by reason of any extraordinary circumstances, the amount of maintenance grant determined in respect of a school for the financial year in question is insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may redetermine the amount of maintenance grant payable in respect of the school for that year in accordance with paragraph (6), and revise their determination accordingly.

(6) Where the funding authority decide to redetermine the amount of maintenance grant by virtue of paragraph (5), they shall redetermine that amount by adding to it such amount as appears to them to be necessary for the purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

(7) Where the funding authority have determined the amount of Direct AMG in respect of a school under regulation 6 (including calculation in accordance with that regulation for the purposes of apportionment under regulation 11) they may not redetermine the amount of Direct AMG in respect of that school under regulation 5 (including calculation in accordance with that regulation for the purposes of apportionment under regulation 11) for the financial year in question.

### **Redetermination to enable governing body to carry out their functions**

**20.** Where it appears to the funding authority that the amount of maintenance grant determined in respect of a school for the financial year in question is insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school, they may, after consultation with the local education authority and the governing body of the school, redetermine the amount of maintenance grant payable in respect of the school for the year and revise their determination by adding such amount as appears to them to be fair and reasonable for the

purpose of enabling the governing body adequately to carry out their functions with respect to the conduct of the school.

### **Redetermination to take into account local education authority capital expenditure from the revenue account**

**21.**—(1) The funding authority may redetermine the amount of maintenance grant payable in respect of the school for the year and revise their determination by adding to the amount so determined such sum as appears to them to be fair and reasonable having regard to—

- (a) the amount of expenditure of a capital nature incurred by the local education authority in respect of relevant schools;
- (b) the proportion of the total amount of expenditure of a capital nature incurred by the local education authority charged to a revenue account of the authority as defined in section 41(2) of the Local Government and Housing Act 1989(4);
- (c) the amount of capital grants paid to the governing body of the school by the funding authority in the financial year in question.

(2) In paragraph (1)—

“expenditure of a capital nature” means expenditure treated by the local education authority as expenditure of a capital nature; and

“relevant schools” means all primary or all secondary schools maintained or formerly maintained by the authority required to be covered by a statement for the year under section 122(2) of the 1996 Act, according as to whether the school is a primary school or a secondary school.

### **Notice of revisions to the governing body and the local education authority**

**22.** Where in accordance with regulation 10(3) (redetermination of school meals), 19 (adjustments), 20 (redetermination to enable governing body to carry out their functions) or 21 (capital expenditure from the revenue account) the funding authority revise the amount of maintenance grant payable in respect of any school for the financial year in question they shall give notice thereof to the local education authority and to the governing body of the school.

### **Further revisions**

**23.** A determination which has been revised in accordance with regulation 19, 20 or 21 may be further revised in accordance with those regulations and may be so further revised notwithstanding that the funding authority are satisfied that the revised determination was not made in accordance with these Regulations.

### **Transfer of site**

**24.** Where, after the funding authority have determined under this Part the amount of maintenance grant payable in respect of any school for the financial year in question, the school is transferred to a new site in the area of another local education authority, the provisions of this Part shall apply for the purposes of redetermining the amount of maintenance grant payable in respect of the school for that year as if the school had not been so transferred.

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(4) 1989 c. 42.

### **Application of relevant date provisions to a redetermination of the amount of maintenance grant**

**25.**—(1) In its application for the purposes of any redetermination under regulation 19 (adjustments) of the amount of maintenance grant payable in respect of a school for the financial year in question, regulation 18 (relevant date) shall have effect subject to the following provisions of this regulation.

(2) Where the redetermination of maintenance grant is under regulation 19(2) on one or more of the grounds specified in paragraph (1)(a) of that regulation, the funding authority may take into account for the purposes of the redetermination any information received by them after the relevant date which relates to any of the reasons for making the redetermination.

(3) Where the redetermination of maintenance grant under regulation 19(2) is made on the grounds, specified in paragraph (1)(b) of that regulation, that the funding authority are satisfied that their determination was made in ignorance of, or was based on a mistake as to, some material fact, they may take into account any information received by them after the relevant date which relates to that fact.

(4) Where in accordance with paragraphs (2) and (3) any additional information is taken into account by the funding authority for the purposes of redetermining grant under regulation 19(2), they may take that information into account for the purposes of making any further redetermination under that regulation.

(5) Regulation 18 (relevant date) shall not apply where a redetermination is made by the funding authority in accordance with regulation 19(5) and (6) (redetermination by reason of extraordinary circumstances), regulation 20 (redetermination to enable governing body to carry out their functions) and regulation 21 (capital expenditure from the revenue account).

(6) Where the redetermination of maintenance grant is in accordance with regulation 10(3) (redetermination of school meals), the funding authority may take into account information received by them after the relevant date which relates to the number of registered pupils at the school in receipt of free school meals or who bought meals at the school or to the number of registered pupils in receipt of free school meals at relevant schools (as defined in regulation 10(2)).

### **Requirements which may be attached to payment of maintenance grant**

**26.**—(1) The requirement set out in paragraph 1 of Schedule 2 (conduct of school) is specified as a requirement which may be imposed by the funding authority on governing bodies to whom payments of maintenance grant are or have been made.

(2) The funding authority may determine, for the purposes of the application of section 247(1) and (2) of the 1996 Act to such governing bodies, any requirement referred to in paragraphs 2 to 4 of Schedule 2 (requirements as to accounts and financial affairs).

## **PART 3**

### **CAPITAL AND SPECIAL PURPOSE GRANTS**

#### **Capital grants**

**27.** The funding authority may pay 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 the governing body of a school.

### **Special purpose grants**

**28.**—(1) The funding authority may pay special purpose grants in respect of expenditure of any class or description specified in Schedule 4 incurred or to be incurred by the governing body of a school—

- (a) for or in connection with the educational purposes so specified; or
- (b) in respect of any expenses so specified being expenses which it appears to the funding authority the governing bodies of schools cannot reasonably be expected to meet from maintenance grant.

(2) Special purpose grants may be paid on a regular basis in respect of expenditure of a recurrent kind or by reference to expenditure incurred or to be incurred on particular occasions or during any particular period.

### **Requirements which may be attached to payment of capital or special purpose grants**

**29.**—(1) The requirements set out in paragraph 1 of Schedule 2 (conduct of the school) and paragraph (2) below are specified as requirements which may be imposed by the funding authority on governing bodies to whom payments of capital or special purpose grants are or have been made.

(2) The requirements referred to in paragraph (1) are—

- (a) a requirement that any such payment shall be applied for the purpose of defraying expenditure in respect of which it was made and for no other purpose; and
- (b) a requirement that such a payment shall be so applied before a date specified by the funding authority.

(3) The funding authority may determine for the purposes of the application of section 247(1) and (2) of the 1996 Act to such governing bodies as are referred to in paragraph (1)—

- (a) any requirement referred to in paragraphs 2 to 4 of Schedule 2 (requirements as to accounts and financial affairs);
- (b) any requirement formulated for the purpose of assisting the funding authority to be satisfied that a requirement imposed in accordance with paragraph (2) is being, or has been, complied with including, in particular, requirements as to the furnishing by the governing body of audited statements relating to expenditure in respect of which the grant has been paid together with such accounts, receipts, invoices and other information as the funding authority may require in order to verify the same; and
- (c) any requirement as to the repayment, in whole or in part, of payments made to the governing body in respect of such grant if any other requirement imposed by the funding authority in accordance with this regulation subject to which the payments were made is not complied with.

(4) The funding authority may determine for the purposes of the application of that section to such governing bodies as are referred to in paragraph (1), requirements as to the payment to the funding authority, if any conditions specified in the requirements are satisfied, of the whole or any part of the amount referred to in section 247(7) of the 1996 Act (subject always, where any payment is made in respect of capital grants, to the provisions of section 247(8) of that Act).

## PART 4

### RECOVERY OF AMOUNTS IN RESPECT OF MAINTENANCE GRANT FROM A LOCAL EDUCATION AUTHORITY

#### **Determination of amount to be recovered**

**30.** The total amount which the Secretary of State may recover by virtue of section 256 of the 1996 Act from a local education authority named in a determination under that section applying that section in respect of any school in relation to the financial year in question is the amount determined in accordance with these Regulations as the amount of the maintenance grant payable in respect of the school and financial year in question (as from time to time revised) but excluding any amount determined under regulation 21 (capital expenditure from the revenue account).

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## SCHEDULE 1

Regulation 8(2)

### DETERMINATION OF THE RELEVANT PERCENTAGE

1. This Schedule applies for the purposes of determining the relevant percentage under regulation 8(1).

2. For the purposes of regulation 8(1), the relevant percentage in respect of any primary or secondary school is the percentage determined for the school in accordance with paragraph 3. In determining the relevant percentage no account shall be taken of expenditure by the local education authority which is offset by income received other than as central government grants or grant from any of the European Communities.

3.—(1) For the purposes of this paragraph, the funding authority shall determine the percentage which the amount determined in accordance with sub-paragraph (2) below is of the amount which appears to them to be equal to the amount of the local education authority's aggregated budget for primary or secondary schools for the financial year in question included in accordance with regulation 3(a) of, and notes (3) and (8) or (4) and (8), as the case may be, in Schedule 1 to, the Education (School Financial Statements) (Prescribed Particulars etc.) Regulations 1995<sup>(5)</sup> ("the 1995 Regulations"), in Part 1 of the authority's statement prepared under section 122(2) of the 1996 Act for that year ("the statement"), according as to whether the school is a primary school or a secondary school.

(2) The funding authority shall determine an amount by the application of the following formula—

$$A \times \frac{B}{C}$$

where

A is the amount of that part of the local education authority's general schools budget for primary and secondary schools for the financial year in question included in accordance with regulation 3(a) of, and notes (3) and (44) or (4) and (44), as the case may be, in, Schedule 1 to the 1995 Regulations in Part 1 of the Statement which, in the opinion of the funding authority, would remain after deducting—

- (a) their aggregated budget for the year; and
- (b) the aggregate of the amounts referred to in paragraph 4.

B is the number of registered pupils on a date determined by the funding authority at all primary schools or all secondary schools maintained or formerly maintained by the local education authority (according as to whether the school is a primary school or a secondary school) which are required to be covered by a statement for the financial year in question under section 122(2) of the 1996 Act; and

C is the number of registered pupils on that date at all such schools whether primary or secondary.

4.—(1) The amounts referred to in paragraph 3 are the amounts included in the statement, in accordance with regulation 3(a) of, and the relevant notes in Schedule 1 to, the 1995 Regulations, in respect of the following matters—

- (a) capital expenditure (35);
- (b) capital financing costs (36);
- (c) provision of transport for pupils between home and school (25);

(5) [S.I. 1995/208](#).



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- (d) existing commitments to pay compensation for redundancy, dismissal or premature retirement of staff (40)(b);
  - (e) assessing pupils' special educational needs, making special educational provision for pupils with statements of special educational needs and reviewing such statements (13)(a) and (39);
  - (f) education welfare services (37);
  - (g) educational psychology services (38);
  - (h) provision for pupils of clothing, board and lodging and financial support (28);
  - (i) expenditure expected to be offset by income received as grant (41)(a)(i) and (b);
  - (j) provision of school meals and milk (26)(a) and (b);
  - (k) contingencies (31);
  - (l) expenditure of the kind referred to in section 11 of the Local Government Act 1966<sup>(6)</sup> not expected to be offset by income received as central government grants or grant from any of the European Communities (41)(a)(ii);
  - (m) expenditure which is expected to be offset by income received from Her Majesty's Chief Inspector of Schools in England (27); and
  - (n) provision of education at a school, other than a pupil referral unit, under section 19(1) of the 1996 Act.
- (2) For the purposes of sub-paragraph (1) above "the relevant notes" means, in relation to each matter set out in items (a) to (m) in that sub-paragraph, note (5) and the note indicated in respect of that matter.

## SCHEDULE 2

Regulations 26 and 29

### REQUIREMENTS WHICH MAY BE ATTACHED TO PAYMENT OF MAINTENANCE, CAPITAL AND SPECIAL PURPOSE GRANTS

1. A requirement that the governing body shall secure, so far as their powers extend, that the school is conducted in accordance with any requirements imposed by or under any enactment including, in particular, any imposed by or under the 1996 Act or the instrument or articles of government for the school.
2. Requirements with respect to the maintenance of proper accounts including, in particular, requirements as to—
  - (a) the appointment by the governing body of a person who will be responsible to them for the administration of their financial affairs;
  - (b) the accounting systems and methods to be adopted by the governing body 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 governing body; and
  - (d) the publication of the governing body's accounts.
3. Requirements as to audit and inspection of the governing body's accounts, including, in particular, requirements as to—

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<sup>(6)</sup> 1966 c. 42, as substituted by section 1(1) of the Local Government (Amendment) Act 1993 (c. 27). Section 11 is extended by section 211 of the Education Reform Act 1988 to which there are amendments not relevant to these Regulations.

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- (a) the procedure to be adopted in appointing and replacing auditors;
  - (b) any 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 funding authority; and
  - (g) examinations by persons authorised by the funding authority or the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the governing body of the school have used their resources in discharging their functions.
4. Such further requirements relating to the conduct of the school's financial affairs as the funding authority think fit.

### SCHEDULE 3

Regulation 27

#### 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 any land;
  - (b) the acquisition, construction, enlargement, improvement, repair 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 acquisition, installation or replacement 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 a building.

### SCHEDULE 4

Regulation 28

#### EXPENDITURE IN RESPECT OF WHICH SPECIAL PURPOSE GRANTS MAY BE PAID

1. In this Schedule—
- “eligible training” means—
- (a) the training or further training as teachers of persons other than qualified teachers who are employed by the governing body of a school; and
  - (b) the further training of any qualified teacher who is employed by the governing body of a school; and
- “trainee” means a person undergoing eligible training in respect of whom special purpose grant is being paid under these Regulations.
2. The expenditure in respect of which special purpose grants may be paid is—

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- (a) expenditure for or in connection with any of the purposes relevant to schools for which grants for education support and training are for the time being payable to local education authorities by virtue of regulations made under section 484 of the 1996 Act<sup>(7)</sup>;
- (b) expenditure for or in connection with the training of any teacher or other member of the staff of a school 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 the 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;
- (c) expenditure in respect of expenses which it appears to the funding authority the governing bodies of schools cannot reasonably be expected to meet from maintenance grant being expenses incurred or to be incurred for or in connection with—
  - (i) any structural survey which the funding authority have 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 for the purpose of securing the resignation of any person who is or was a member of the staff of the school, and the premature retirement of such a person;
  - (iii) any costs incurred by the school 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 funding authority was occasioned by circumstances outside the control of the governing body;
  - (vi) the acquisition by the school of grant-maintained status, and the transfer to the governing body of the responsibility for the conduct of the school, where those expenses are incurred within 12 months of the date of implementation of the proposals in respect of the school;
  - (vii) the implementation of that part of the curriculum for the school falling outside the curriculum referred to in section 352(1) of the 1996 Act;
  - (viii) the transfer of land to trustees to be held on trust for the purposes of the school pursuant to section 296 of the 1996 Act;
  - (ix) a contract for the provision of property and services to, or for the purposes of, the school, where the provision of the services is linked to and dependent upon the provision of the property; and
  - (x) payment of employer's contributions to the appropriate pension fund under the Local Government Pension Scheme Regulations 1995<sup>(8)</sup>;

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<sup>(7)</sup> The current Regulations are the Education (Grants for Education Support and Training) (England) Regulations 1998 (S.I. 1998/656).

<sup>(8)</sup> S.I. 1995/1019.

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- (d) expenditure of a class or description relevant to schools and for or in connection with the purpose for which grants are for the time being payable by virtue of regulations made under section 488 of the 1996 Act<sup>(9)</sup>;
- (e) expenditure in respect of expenses which appears to the funding authority the governing bodies of primary schools with fewer than 180 registered pupils cannot reasonably be expected to meet from maintenance grant being expenses incurred or to be incurred for or in connection with—
  - (i) the procurement of professional advice for the purposes of the school; and
  - (ii) staff absences; and
- (f) expenditure for or in connection with the provision at the school of nursery education as defined in section 1 of the Nursery Education and Grant-Maintained Schools Act 1996<sup>(10)</sup>.

*Stephen Byers*  
Minister of State,

25th March 1998

Department for Education and Employment

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## EXPLANATORY NOTE

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

These Regulations replace with modifications the Education (New Grant-maintained Schools) (Finance) Regulations 1997 (“the 1997 Regulations”) which are revoked. The Regulations apply, in relation to the financial year commencing on 1st April 1998 (“the financial year in question”), to new grant-maintained schools situated in England established pursuant to proposals published by the Funding Agency for Schools (“the FAS”) under section 211, or by promoters under section 212, of the Education Act 1996. The Regulations do not apply to such schools established in place of an existing independent school or in connection with proposals for the discontinuance of another grant-maintained school. The Regulations do not apply to grant-maintained special schools.

Part 2 of the Regulations provides for the determination and redetermination of the amount of maintenance grant to be paid to the governing bodies of schools to which the Regulations apply (*regulation 4*). Maintenance grant is made up of a number of elements. These are essentially the same as in the 1997 Regulations.

Where a new grant-maintained school is established on or before 1st April in the financial year in question, the FAS determine an amount for Direct AMG under regulation 5 in accordance with the local education authority’s scheme for the local management of their schools or, if it would produce a larger amount, under regulation 6. Where a new school is established in September in the financial year in question, an apportionment of the amount that would had been determined under regulation 5 or 6, if the school had been established on 1st April, takes place under regulation 11.

The FAS determine an amount for Central AMG in accordance with regulation 8 and Schedule 1 on the basis of the amount of Direct AMG calculated in accordance with regulation 5 (whether or not

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<sup>(9)</sup> The current Regulations are the Education (Grants) (Travellers and Displaced Persons) Regulations 1993 (S.I. 1993/569; amended by S.I. 1995/543).

<sup>(10)</sup> 1996 c. 50.

Direct AMG for the school was determined under that regulation). The “relevant percentage” is no longer calculated under Schedule 1 on the basis of data from the preceding financial year. A list of percentages is therefore no longer included in a table in that Schedule. The relevant percentage is to be calculated under Schedule 1 on the basis of data from the current financial year. Regulation 12 provides for an apportionment of the amount that would have been calculated under regulation 5 had the school been established on 1st April in the financial year in question. Central AMG is the notional amount representing certain kinds of expenditure for the purposes of the school which, in the case of a school maintained by a local education authority, do not form part of the school’s budget share.

The FAS determine an amount in respect of funding for the employment of teaching staff to make special provision for pupils belonging to ethnic minorities (*regulation 9*), school meals (*regulation 10 with apportionment under regulation 13*), contingencies (*regulation 14*) and nursery education (*regulation 15*).

An additional provision to those contained in the 1997 Regulations is that the FAS may reduce the amount of maintenance grant payable in respect of a school to take into account excessive balances carried forward from the previous year (*regulation 16*).

An additional provision to those contained in the 1997 Regulations is that the FAS may reduce the amount of maintenance grant payable in respect of a school to take into account excessive severance payments to members of staff (*regulation 17*).

The FAS may revise and redetermine maintenance grant in accordance with regulations 19, 20 and 23. The relevant date for these purposes is determined in accordance with regulations 18 and 25. The Regulations make special provision for redetermination of maintenance grant where it would otherwise be insufficient to enable the governing body of the school adequately to carry out their functions with respect to the conduct of the school (*regulation 20*), redetermination of grant to reflect local authority capital expenditure from the revenue account (*regulation 21*) and transfers of site (*regulation 24*).

The FAS may impose requirements under regulation 26 on governing bodies to whom payments of maintenance grant are or have been made.

Part 3 of the Regulations provides for the payment of capital and special purpose grants and the FAS may also impose requirements on governing bodies to whom payments of capital or special purpose grants are or have been made.

Consequent on section 256 of the Education Act 1996, Part 4 of the Regulations, prescribes the total amount of maintenance grant in respect of a new grant-maintained school which may be recovered by the Secretary of State from the local education authority named in a determination under that section. This does not include grant paid under regulation 21 (capital expenditure from the revenue account).