
STATUTORY INSTRUMENTS

1998 No. 798

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

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(1) 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—

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

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

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.

(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(2);
- (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.

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).