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WELSH STATUTORY INSTRUMENTS

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**2010 No. 824 (W.87)**

**EDUCATION, WALES**

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

*Made* - - - - 16 March 2010

*Coming into force* - - 1 September 2010

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales<sup>(1)</sup> by sections 45A, 45AC, 47, 48, 49 and 138(7) and (8) of, and paragraphs 1(7) and 2B of Schedule 14 to, the School Standards and Framework Act 1998<sup>(2)</sup>, and now vested in them<sup>(3)</sup>, make the following Regulations.

A draft of these Regulations has been laid before, and been approved by resolution of, the National Assembly for Wales<sup>(4)</sup>.

**PART 1 —**

**Introduction**

**Title, commencement and application**

1.—(1) The title of these Regulations is the School Funding (Wales) Regulations 2010, and they come into force on 1 September 2010.

(2) These Regulations apply in relation to financial years beginning on or after 1 April 2011.

(3) These Regulations apply in relation to Wales.

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- (1) Functions of the Secretary of State under sections 45A, 45AC, 47, 48, 49 and 138 and Schedule 14 were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, section 211 of the Education Act 2002 (c. 32), section 119 of the Education Act 2005 (c. 18) and section 180 of the Education and Inspections Act 2006 (c. 40).
- (2) 1998 c. 31. Section 45A was inserted by section 41(1) of the Education Act 2002 and amended by paragraph 3 of Schedule 16 to the Education Act 2005. Section 45AC was inserted by paragraph 4 of Schedule 16 to the Education Act 2005. Section 47 was amended by paragraph 6 of Schedule 16 to the Education Act 2005. Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the Education Act 2002, by section 117 of, and paragraph 7 of Schedule 18 to, the Education Act 2005 and by paragraph 3 of Schedule 5 to the Education and Inspections Act 2006. Section 49 was amended by paragraph 100 of Schedule 21 to the Education Act 2002 and by paragraph 4 of Schedule 5 to the Education and Inspections Act 2006. Paragraphs 1(7) and 2B of Schedule 14 were substituted by paragraph 5 of Schedule 5 to the Education and Inspections Act 2006. For the meaning of “prescribed” and “regulations” see section 142(1).
- (3) By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (4) In accordance with paragraph 34 of Schedule 11 to the Government of Wales Act 2006 and section 138(5) of the School Standards and Framework Act 1998 as amended by paragraph 8 of Schedule 16 to the Education Act 2005.

## Revocation

2. The LEA Budget, Schools Budget, and Individual Schools Budget (Wales) Regulations 2003(5), the Schools Budget Shares (Wales) Regulations 2004(6), and the Education (LEA Financial Schemes) (Wales) Regulations 2004(7) are revoked in relation to financial years beginning on or after 1 April 2011.

## Interpretation

3.—(1) In these Regulations—

- “the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(8);
- “the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998(9);
- “the 2000 Act” (“*Deddf 2000*”) means the Learning and Skills Act 2000(10);
- “the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002(11);
- “the Children and Young People’s Plan” (“*y Cynllun Plant a Phobl Ifanc*”) means a plan required under regulations made under section 26 of the Children Act 2004(12);
- “funding period” (“*cyfnod cyllido*”) means a financial year;
- “local authority” (“*awdurdod lleol*”) means a local education authority in Wales;
- “maintained school” (“*ysgol a gynhelir*”) means a community, or foundation or voluntary school or a community or foundation special school or a maintained nursery school;
- “nursery class” (“*dosbarth meithrin*”) means a class undergoing full time or part time education wholly or mainly suitable for children who have not attained compulsory school age.

(2) In these Regulations a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or community or foundation special school includes a new school (within the meaning of section 72(3) of the 1998 Act) which on implementation of proposals for the establishment of the school under any enactment will be such a school and which has a temporary governing body.

(3) In these Regulations a reference to a governing body includes the temporary governing body of a new school falling within paragraph (2).

(4) In these Regulations a reference to a primary or secondary school means a primary or a secondary school which is (or will be) a community, foundation or voluntary school.

(5) In these Regulations a reference (however framed) to schools maintained by a local authority does not include schools which are not maintained schools as defined in paragraph (1).

(6) In these Regulations, unless otherwise stated, references to expenditure are references to that expenditure net of—

- (a) all related specific grants;
- (b) all related fees, charges and income; and
- (c) funding received from the Welsh Ministers in respect of PFI scheme unitary payment.

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(5) S.I. 2003/3118 (W.296) as amended by S.I. 2004/696, 2005/2913 and 2005/3238.

(6) S.I. 2004/2506 (W.224) as amended by S.I. 2005/2913, 2005/3238.

(7) S.I. 2004/2507 (W. 225).

(8) 1996 c. 56.

(9) 1998 c. 31.

(10) 2000 c. 21.

(11) 2002 c. 32.

(12) 2004 c. 31. See the Children and Young People’s Plan (Wales) Regulations 2007, S.I. 2007/2316 (W.187).

(7) In these Regulations, a reference to specific grant is to any grant paid to the local authority under conditions which impose restrictions on the particular purposes of the authority for which the grant may be used but does not include—

- (a) any grant made by the Welsh Ministers in respect of sixth form funding; or
- (b) any specific grant which is used to support expenditure through the individual schools budget.

(8) In these Regulations, a reference to a PFI scheme unitary payment is a reference to a charge payable to a local authority under a private finance transaction.

(9) In these Regulations, a reference to a private finance transaction is a reference to a transaction as defined by regulation 16 of the Local Authorities (Capital Finance) Regulations 1997<sup>(13)</sup>.

(10) In these Regulations, a reference to capital expenditure means expenditure which a local authority proposes to capitalise in their accounts in accordance with proper practices being those accounting practices—

- (a) which the authority are required to follow by virtue of any enactment, or
- (b) which so far as they are consistent with any such enactment, are generally regarded whether by reference to any generally recognised published Code or otherwise, as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned.

(11) In these Regulations references to CERA are references to capital expenditure which a local authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003<sup>(14)</sup>.

(12) In these Regulations, references to excepted expenditure are references to the following classes or descriptions of expenditure—

- (a) capital expenditure other than CERA;
- (b) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984<sup>(15)</sup> (arrangements for patrolling school crossing); and
- (c) expenditure incurred by the local authority under section 51A of the 1998 Act<sup>(16)</sup> (expenditure incurred for community purposes).

## PART 2 —

### LEA Budget, Schools Budget, Individual Schools Budget

#### LEA Budget

4.—(1) The classes or descriptions of local authority expenditure specified in Schedule 1 are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's LEA budget, except in so far as such expenditure is excepted expenditure or falls within paragraph (2).

(2) Expenditure falls within this paragraph if it is expenditure which—

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<sup>(13)</sup> S.I. 1997/319, as amended by S.I. 1998/371, 1999/1852 and 2003/515. The Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 (S.I. 2004/533) contains savings provisions for regulation 16 of the 1997 Regulations.

<sup>(14)</sup> 2003 c. 36.

<sup>(15)</sup> 1984 c. 27.

<sup>(16)</sup> Section 51A was inserted by section 40 of, and Schedule 3 to, the Education Act 2002, and amended by paragraph 9 of Schedule 18 to the Education Act 2005.

- (a) by virtue of the authority's scheme (within the meaning of section 48(5) of the 1998 Act) or any enactment, falls to be met from a school's budget share; or
- (b) falls within sub-paragraph (1) of paragraph 1 of Schedule 2.

### **Initial determination of schools budget**

5.—(1) Before 14 February immediately preceding the beginning of a funding period a local authority must—

- (a) make an initial determination of their schools budget for that funding period; and
- (b) give notice of their determination to the Welsh Ministers, to the governing body of every school maintained by them.

(2) Where a local authority makes a redetermination of their schools budget, they must give notice of that redetermination to the Welsh Ministers and to the governing bodies of every school maintained by them within 28 days of making the redetermination.

### **Schools budget**

6.—(1) The classes or descriptions of local authority expenditure specified in paragraph (2) are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget.

(2) The classes or descriptions of local authority expenditure are—

- (a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at those schools;
- (b) expenditure on the education of pupils at independent schools, non-maintained special schools, pupil referral units, at home and hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local authority; and
- (c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as such expenditure does not fall within paragraph (a) or (b),

but only in so far as such expenditure—

- (a) does not fall within a class or description of expenditure prescribed by regulation 4 for the purposes of section 45A(1) of the 1998 Act and the determination of a local authority's LEA budget, and
- (b) is not excepted expenditure.

### **Individual schools budget**

7. Before 14 February immediately preceding the beginning of a funding period, a local authority must deduct from their schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 2, in whole or in part, in order to arrive at their individual schools budget for that funding period.

## PART 3 —

### Schools' budget shares

#### **Allocation of individual schools budget**

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

(2) A local authority need not initially allocate all of their individual schools budget in the form of budget shares at the beginning of a funding period, and may instead retain an amount for the purpose of redeterminations or the correction of errors but such amount must be used for that purpose or distributed to schools as required by paragraph (1) before the end of that funding period.

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

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

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

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

#### **Formula for determination of budget shares**

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

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

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

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

#### **Consultation**

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

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

(3) Consultation under this regulation must take place in sufficient time to allow the outcome to be taken into account in the determination of the authority's formula and in the initial determination of schools' budget shares.

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

### **New Schools**

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

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

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

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

(4) The Welsh Ministers may—

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

### **Pupil numbers**

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

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

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

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

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

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

- (a) one of those dates must satisfy paragraph (3);
- (b) as respects the other date or dates—
  - (i) no date may be earlier than the beginning of the school year in which the beginning of the funding period in question falls, and
  - (ii) the authority may determine a date or dates which are in the future and estimate the number of registered pupils at the school on that date or those dates.

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

(6) An authority may, in determining budget shares for special schools, or for primary or secondary schools with places which the authority recognise as reserved for children with special educational needs or for children in nursery classes, take into account in their formula—

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

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

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

- (a) age, including weighting according to key stage or year group;
- (b) whether a pupil is provided with nursery education by a school;
- (c) in the case of pupils aged under five, their exact age when admitted to the school;
- (d) in the case of pupils aged under five, hours of attendance;
- (e) special educational needs;
- (f) whether a pupil at a school is also attending an institution within the further education sector; and
- (g) whether a pupil is being educated through the medium of Welsh.

(8) Subject to paragraph (9), where—

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

a local authority may determine a number representing the number of pupils who will be admitted in that summer term, and take such number into account in their formula.

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

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

(10) A local authority must include provision in their formula enabling them to adjust the number of registered pupils used to determine a school's budget share where it is appropriate to do so in order to take into account, wholly or partly, the permanent exclusion of a pupil from the school or the admission of a pupil following that pupil's permanent exclusion from another school maintained by a local authority.

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

**14.** Where a pupil is, in accordance with regulations made under section 434 of the 1996 Act<sup>(17)</sup>, a registered pupil at more than one school then that pupil must be treated as being a full-time pupil at each such school unless the authority expressly provide otherwise in their formula.

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<sup>(17)</sup> See the Education (Pupil Registration) Regulations 1995, S.I. 1995/2089 as amended by S.I. 1997/2624, 1999/2267, 2001/1109, 2003/3227 and 2005/2913.

## **Places**

15.—(1) In determining and redetermining budget shares a local authority may take into account in their formula the number of places they wish to fund in—

- (a) special schools;
- (b) primary or secondary schools with places which the authority recognise as reserved for children with special educational needs;
- (c) primary schools with places which the authority recognise as reserved for children in a nursery class; or
- (d) maintained nursery schools.

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

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

## **Schools of a particular description**

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

## **Differential funding**

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

## **Additional factors or criteria**

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

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

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

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

(5) Where a local authority take new factors or criteria into account in their formula or delete factors from their formula or determine a formula substantially or wholly different from the previous funding period, they may make such transitional provision as they consider reasonable.

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

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

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

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

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

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

### **School re-organisation**

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

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

the local authority must include factors or criteria in their formula which enable them to determine the school’s budget share so as to take into account the particular needs of the school; and in particular may, if the funding period in question precedes the funding period in which a school first admits pupils, determine the amount of the budget share as zero.

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

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

### **Budget share adjustments**

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

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

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

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

(3) A local authority may adjust the number of registered pupils used to determine a school's budget share for a funding period where it is appropriate to do so in order to take into account, wholly or partly—

- (a) any reduction or increase in the school's budget share for the preceding funding period arising from the permanent exclusion of a pupil from the school or the admission to the school of a pupil permanently excluded from another maintained school; or
- (b) any increase in the school's budget share for the preceding funding period arising from increases in pupil numbers during the course of that funding period.

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

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

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

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

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

For the purposes of this definition the amount attributable to a registered pupil is the sum of the amounts determined in accordance with the authority's formula or regulation 25 by reference to pupil numbers rather than by reference to the number of places at the school or any other factor or criterion not dependent on pupil numbers; and

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

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

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

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

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

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

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

(5) For the purposes of this regulation, the relevant date has the meaning prescribed in regulations made under section 494 of the 1996 Act(18).

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school or by an appeal panel constituted under regulations made under section 52 of the 2002 Act(19), the school's budget share must be increased by an amount which is no less than  $G \times (H/I)$  where—

G is the amount by which the authority has reduced the school's budget share;

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

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

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

### Percentage of “pupil-led” funding

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

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

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

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

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

### **Correction of errors**

24. A local authority may at any time during a funding period redetermine a school's budget share for that funding period in order to correct an error in a determination or redetermination under these Regulations, whether arising from a mistake as to the number of registered pupils at the school or otherwise.

### **Additional arrangements approved by the Welsh Ministers**

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

## **PART 4 —**

### **Financial Schemes**

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

26. A scheme maintained by a local authority under section 48(1) of the 1998 Act must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 4 to these Regulations.

#### **Manner of publication**

27. For the purposes of paragraph 1(7) of Schedule 14 to the 1998 Act (prescribed manner of publication of schemes) a scheme must be published by the local authority concerned on its coming into force as revised under that Schedule by—

- (a) furnishing a copy to the governing body and head teacher of each school maintained by the authority; and
- (b) making a copy available for reference at all reasonable times and without charge—
  - (i) at the principal education office of the authority; and
  - (ii) at each school maintained by the authority or on a website which is maintained by the authority and accessible to the public.

#### **Approval by the schools forum or the Welsh Ministers of proposals to revise schemes**

28.—(1) Where a local authority submit proposals for any revisions to their scheme to their schools forum for approval pursuant to paragraph 2A of Schedule 14 to the 1998 Act, the schools forum may—

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

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

(3) Where the schools forum refuse to approve proposals submitted under paragraph 2A of Schedule 14 to the 1998 Act, or approve any such proposals subject to modifications which are not acceptable to the local authority, the authority may apply to the Welsh Ministers for approval of such proposals.

(4) The Welsh Ministers may—

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

(5) Where the Welsh Ministers approves any revisions to the scheme, they may specify the date upon which any revised scheme is to come into force.

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

16 March 2010

*Leighton Andrews*  
Minister for Children, Education and Lifelong  
Learning, one of the Welsh Ministers

## SCHEDULE 1

Regulation 4

Classes or Descriptions of Planned Expenditure Prescribed  
for the Purposes of the LEA Budget of a Local Authority

*Expenditure of a class or description referred to in this Schedule  
includes expenditure on associated administrative costs and overheads*

**Additional learning needs**

1. Expenditure on services provided by educational psychologists.
2. Expenditure in connection with the authority's functions under sections 321 to 331 of the 1996 Act (which functions relate to the identification and assessment of children with special educational needs and the making, maintaining and reviewing of statements for such children).
3. Expenditure on monitoring the provision for pupils in schools (whether or not maintained by the authority) for the purposes of disseminating good practice in relation to, and improving the quality of educational provision for, children with special educational needs.
4. Expenditure on collaboration with other statutory and voluntary bodies to provide support for children with special educational needs.
5. Expenditure in connection with—
  - (a) the provision of parent partnership services or other guidance and information to the parents of pupils with special educational needs which, in relation to pupils at a school maintained by the authority, is in addition to the information usually provided by the governing bodies of such schools; or
  - (b) arrangements made by the authority with a view to avoiding or resolving disagreements with the parents of children with special education needs.
6. Expenditure incurred in relation to the preparation of any part of the authority's Children and Young People's Plan relating to the education of children with behavioural difficulties.

**Health and child protection**

7. Expenditure on carrying out the authority's child protection functions under the Children Act 1989<sup>(20)</sup> and under section 175 of the 2002 Act and other functions relating to child protection.
8. Expenditure incurred in entering into, or subsequently incurred pursuant to, an arrangement under section 31 of the Health Act 1999<sup>(21)</sup> or regulations made under section 33 of the National Health Service (Wales) Act 2006<sup>(22)</sup>.
9. Expenditure in providing special medical support for individual pupils in so far as such expenditure is not met by a National Health Service Trust, Local Health Board or the Welsh Ministers.

**School improvement**

10. Expenditure incurred by the authority in respect of action to support the improvement of standards in the authority's schools, including, in particular—

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(20) 1989 c. 41.

(21) 1999 c. 8.

(22) 2006 c. 42.

- (a) expenditure incurred in connection with the exercise of their functions under section 197 of the 2002 Act (partnership agreements);
- (b) expenditure incurred in connection with entering into a contract pursuant to a direction under section 63 of the 2002 Act(23) (contracts to obtain services of an advisory nature in respect of schools with serious weaknesses or schools requiring special measures);
- (c) expenditure incurred in connection with the exercise of their functions under section 14 to 17 of the 1998 Act(24) (powers of intervention, of appointment of additional governors and of suspension of delegated budgets in schools causing concern); and
- (d) expenditure on the appointment and remuneration of interim executive members under section 16A of the 1998 Act(25).

### Access to education

#### 11. Expenditure in relation to the following matters—

- (a) management of the authority's capital programme including preparation and review of an asset management plan and negotiation and management of private finance transactions;
- (b) the authority's functions in relation to the exclusion of pupils from schools or pupil referral units, excluding the making of any provision of education to such pupils, but including advice to the parents of an excluded pupil;
- (c) administering the system for admissions of pupils to schools (including admissions appeals and carrying out consultations under section 89(2) of the 1998 Act(26));
- (d) expenditure incurred in connection with the authority's functions under section 85A of the 1998 Act(27) (which provides for the establishment and maintenance of admission forums);
- (e) the authority's functions under the Learner Travel (Wales) Measure 2008(28);
- (f) the authority's functions under sections 510 and 514 of the 1996 Act (provision and administration of clothing grants and boarding grants), and pursuant to regulations made under section 518(1) of the 1996 Act(29).

12. Expenditure on the Education Welfare Service and other expenditure arising from the authority's functions under Chapter 2 of Part 6 of the 1996 Act (school attendance).

13. Expenditure on the provision of support for students under section 1(1) of the Education Act 1962(30) and under section 22 of the Teaching and Higher Education Act 1998(31).

14. Expenditure on discretionary grants under section 1(6) or 2 of the Education Act 1962 (awards for designated and other courses).

15. Expenditure on the payment to persons over compulsory school age of allowances pursuant to regulations made under section 518(1)(b) of the 1996 Act.

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(23) Section 63 was amended by section 61 of the Education Act 2005, and section 71 of, and Schedule 7 to, the Education and Inspections Act 2006.

(24) 1998 c. 31. Sections 14 to 17 have been amended by sections 55 to 57 of, and Schedule 5 and paragraphs 92 to 94 of Schedule 21 to, the Education Act 2002, and by paragraphs 14 to 18 of Schedule 9 to the Education Act 2005.

(25) Section 16A was inserted by section 57 of the Education Act 2002.

(26) Section 89(2) was substituted by section 51 of, and paragraph 5 of Schedule 4 to, the Education Act 2002, and amended by section 45 of the Education and Inspections Act 2006.

(27) Section 85A was inserted by section 46 of the Education Act 2002, and amended by section 41 of the Education and Inspections Act 2006.

(28) 2008 nawm 2.

(29) Section 518 was substituted by section 129 of the School Standards and Framework Act 1998.

(30) 1962 c. 12.

(31) 1998 c. 30.

16. Expenditure on the payment to persons over compulsory school age of allowances in connection with education or training made under section 14 of the 2002 Act or pursuant to regulations made under section 181(1) of the 2002 Act.

### **Education, training and services for young persons and adults**

17. Expenditure on the provision of education and training and of organised leisure time occupation and other provision under sections 15A and 15B of the 1996 Act<sup>(32)</sup>.

18. Expenditure on the provision by the local authority under sections 15A and 508 of the 1996 Act<sup>(33)</sup> of recreation and social and physical training, and on the authority's provision of services under section 123 of the 2000 Act to encourage and enable the participation by young people in education and training.

19. Expenditure in relation to the local authority's functions in connection with the local curriculum under sections 116A to 116O of the 2002 Act<sup>(34)</sup> and sections 33J to 33L of the 2000 Act<sup>(35)</sup>.

### **Strategic management**

20. Expenditure in their capacity as a local education authority in relation to—

- (a) functions of the Chief Education Officer and his or her personal staff;
- (b) planning for the education service as a whole including—
  - (i) planning and managing the supply of school places, and functions in relation to the establishment, alteration or discontinuance of schools pursuant to Chapter 2 of Part 2 of the 1998 Act or section 113A of, and Schedule 7A to, the 2000 Act;
  - (ii) the preparation of any part of the authority's Children and Young People's Plan relating to school organisation and school improvement; and
  - (iii) responding to policy statements and consultation papers;
- (c) functions of the authority under Part 1 of the Local Government Act 1999<sup>(36)</sup> (Best Value) or Part 1 of the Local Government (Wales) Measure 2009<sup>(37)</sup> (local government improvement) and the provision of advice to assist governing bodies in procuring goods and services with a view to securing continuous improvement in the way the functions of those governing bodies are exercised, having regard to a combination of economy, efficiency and effectiveness;
- (d) revenue budget preparation; the preparation of information on income and expenditure relating to education, for incorporation into the authority's annual statement of accounts; the external audit of grant claims and returns relating to education and functions of the authority under section 44 of the 2002 Act;
- (e) administration of grants to the authority (including preparation of applications), functions imposed by or under Chapter 4 of Part 2 of the 1998 Act and, where it is the authority's duty to do so, ensuring payments are made in respect of taxation, national insurance and superannuation contributions;

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<sup>(32)</sup> Section 15A was inserted by section 140 of, and paragraph 63 of Schedule 30 to, the School Standards and Framework Act 1998, and was amended by section 149 of, and paragraph 54 of Schedule 9 to, the Learning and Skills Act 2000. Section 15B was inserted by section 149 of, and paragraph 55 of Schedule 9 to, the Learning and Skills Act 2000.

<sup>(33)</sup> Section 508 was amended by section 137 of the Learning and Skills Act 2000, and section 6(2) of the Education and Inspections Act 2006.

<sup>(34)</sup> Sections 116A to 116O of the 2002 Act were inserted by sections 4 to 18 of the [Learning and Skills \(Wales\) Measure 2009](#) ([nawm 1](#)).

<sup>(35)</sup> Sections 33J to 33L of the 2000 Act were inserted by sections 31 to 33 of the Learning and Skills (Wales) Measure 2009.

<sup>(36)</sup> 1999 c. 27.

<sup>(37)</sup> 2009 [nawm 2](#).

- (f) authorisation and monitoring of—
  - (i) expenditure which is not met from schools' budget shares; and
  - (ii) expenditure in respect of schools which do not have delegated budgets, and all related financial administration;
- (g) the authority's monitoring of compliance with the requirements of their financial scheme maintained under section 48 of the 1998 Act<sup>(38)</sup>;
- (h) the authority's functions under section 27 of the 2002 Act (provision of community facilities by governing bodies);
- (i) tasks necessary for the discharge of the authority's chief finance officer's responsibilities under section 151 of the Local Government Act 1972<sup>(39)</sup>;
- (j) recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares and who are paid for services carried out in relation to those of the authority's functions and services which are referred to in this Schedule;
- (k) investigations which the authority carry out of employees or potential employees of the authority or of governing bodies of schools, or of persons otherwise engaged or to be engaged (with or without remuneration) to work at or for schools;
- (l) functions of the authority in relation to superannuation, including the administration of teachers' pensions, other than functions which have been delegated to the governing bodies of schools;
- (m) retrospective membership of pension schemes and retrospective elections made in respect of pensions where it would not be appropriate to expect the governing body of a school to meet the cost from the school's budget share;
- (n) advice, in accordance with the authority's statutory functions, to governing bodies in relation to staff paid, or to be paid, to work at a school, and advice in relation to the management of all such staff collectively at any individual school ("the school workforce"), including in particular advice with reference to alterations in remuneration, conditions of service and the collective composition and organisation of such school workforce;
- (o) determination of conditions of service for non-teaching staff and advice to schools on the grading of such staff;
- (p) the authority's functions relating to the appointment or dismissal of employees;
- (q) consultation and functions preparatory to consultation with or by governing bodies, pupils and persons employed at schools or their representatives, or with other interested bodies;
- (r) compliance with the authority's duties under the Health and Safety at Work etc Act 1974<sup>(40)</sup> and the relevant statutory provisions as defined in section 53(1) of that Act in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and where necessary the giving of advice to them;
- (s) the investigation and resolution of complaints including action taken to assist a governing body in handling a complaint;

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<sup>(38)</sup> Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, by section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act, and by sections 57 and 184 of, and paragraph 3 of Schedule 5 and Part 6 of Schedule 18 to, the Education and Inspections Act 2006.

<sup>(39)</sup> 1972 c. 70.

<sup>(40)</sup> 1974 c. 37.

- (t) legal services relating to the statutory functions of the authority;
- (u) the preparation and review of plans involving collaboration with other local authority services or with public or voluntary bodies;
- (v) the preparation and publication of any part of the authority's Children and Young People's Plan relating to early years development and childcare and the provision of (but not the expenditure authorised by) an early years development and childcare partnership under section 119 of the 1998 Act;
- (w) provision of information to or at the request of the Welsh Ministers, a government department or any body exercising functions on behalf of the Crown and the provision of other information which the authority are under a duty to make available;
- (x) the authority's duties under Article 4(2) and (5) of the Race Relations Act 1976 (Statutory Duties) Order 2001(41);
- (y) the remittance of fees payable to the General Teaching Council for Wales by virtue of sections 4(4) and 9(1) of the Teaching and Higher Education Act 1998 and the provision of information required by the Council pursuant to regulations made under section 12 of that Act(42);
- (z) expenditure incurred in connection with the authority's functions pursuant to regulations made under section 12 of the 2002 Act (supervising by authorities of companies formed by governing bodies); and
- (aa) expenditure incurred in connection with the authority's functions under the Disability Discrimination Act 1995(43) in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and where necessary the giving of advice to them.

21. Expenditure in connection with monitoring the performance of schools, monitoring the management of delegated budgets and with monitoring the management and governance of schools.

22. Expenditure on establishing and maintaining electronic computer systems, including data storage, in so far as they link, or facilitate the linkage of, the authority to schools which they maintain, such schools to each other or such schools to other persons or institutions.

23. Expenditure on monitoring National Curriculum assessment arrangements required by orders made under section 108 of the 2002 Act.

24. Expenditure in connection with the authority's functions in relation to the Standing Advisory Council on Religious Education constituted by the authority under section 390 of the 1996 Act or in the reconsideration and preparation of an agreed syllabus of religious education in accordance with Schedule 31 to the 1996 Act.

25. Expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, or in respect of acts of discrimination against, any person.

26. Expenditure in respect of a teacher's emoluments under section 19(9) of the Teaching and Higher Education Act 1998.

27. Expenditure on making pension payments, other than in respect of staff employed in schools.

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(41) S.I. 2001/3458.

(42) 1998 c. 30. Section 12 was amended by sections 148 and 215 of the Education Act 2002 and paragraph 8 of Schedule 12 and paragraph 81 of Schedule 21 to that Act.

(43) 1995 c. 50.

**28.** Expenditure in pursuance of a binding agreement, where the other party is a local authority, or other parties include one or more local authorities, in relation to the operation of a facility provided partly but not solely for the use of schools.

**29.** Expenditure in respect of the functions of an appropriate body under regulations pursuant to section 19(2)(g) of the Teaching and Higher Education Act 1998~~(44)~~.

**30.** Expenditure on the appointment of governors, the making of instruments of government, the payment of expenses to which governors are entitled and which are not payable from a school's budget share and the provision of information to governors.

**31.** Any expenditure on insurance other than for liability arising in connection with schools or school premises.

**32.** Expenditure incurred in connection with the authority's functions under section 47A of the 1998 Act (the establishment and maintenance of, and consultation with, schools forums).

## SCHEDULE 2

Regulation 7

Classes or Descriptions of Planned Expenditure which may be Deducted from the Schools Budget of a Local Authority

*Expenditure of a class or description referred to in this Schedule includes expenditure on associated administrative costs and overheads*

### **Expenditure to support grants**

**1.**—(1) Expenditure (other than expenditure incurred in connection with any other paragraph of this Schedule or any paragraph of Schedule 1) which the authority is obliged to incur as a condition of a specific grant paid to the authority and which is taken into account in determining the amount of such specific grant.

(2) Any amount which the authority is obliged to make available as a condition of grant paid under section 14 of the 2002 Act or under section 484 of the 1998 Act and which is taken into account in determining the amount of such grant, decisions regarding the expenditure of which are delegated to the governing body of a maintained school.

### **Additional learning needs**

**2.** Subject to paragraphs 3 and 4, expenditure in making the provision specified in a pupil's statement of special educational needs except where the pupil is—

- (a) a registered pupil at a special school maintained by the authority; or
- (b) a registered pupil at a nursery, primary or secondary school maintained by the authority who occupies one of a number of places at that school which are recognised by the authority as being reserved for children with special educational needs.

**3.** Where a pupil falls within paragraph 2(a) or (b) and the cost of the provision specified in the pupil's statement of special educational needs is significantly greater than the average cost of the provision for the other pupils at the special school or the other pupils occupying the reserved places at the school in question, the amount by which that cost is greater.

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(44) See the Education (Induction Arrangements for School Teachers (Wales) Regulations 2005, S.I. 2005/1818.

4. Expenditure in making the provision specified in a pupil's statement of special educational needs where the pupil falls within paragraph 2(b) but the places which are recognised by the authority as being reserved for children with special educational needs are for such pupils with visual, hearing, speech or language impairments or other communication disorder.

5. Expenditure in respect of specialist support provided to assist the governing bodies of schools in meeting the particular needs of pupils with statements of special educational needs or who are within the scope of School Action Plus as described in the Code of Practice issued under section 313 of the 1996 Act<sup>(45)</sup> (being expenditure that it would be inappropriate to expect to be met from the school's budget share).

6. Expenditure (being expenditure that it would be inappropriate to expect to be met from the school's budget share) for purposes connected with the encouragement of—

- (a) collaboration between special schools and maintained nursery, primary and secondary schools to enable children with special educational needs to engage in activities at maintained nursery, primary and secondary schools;
- (b) the education of children with special educational needs at maintained nursery, primary and secondary schools; and
- (c) the engagement of children with special educational needs at maintained nursery, primary and secondary schools in activities at the school with children who do not have special educational needs.

7. Expenditure in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit as defined in that section.

8. Expenditure (other than expenditure incurred under Schedule 1 or any other paragraph of this Schedule) incurred on services relating to the education of children with behavioural difficulties and on other activities for the purpose of avoiding the exclusion of pupils from schools.

9. Expenditure on the payment of fees in respect of pupils with special educational needs—

- (a) at independent schools or at special schools which are not maintained by a local authority, under section 348 of the 1996 Act; or
- (b) at an institution outside England and Wales, under section 320 of the 1996 Act.

10. Expenditure on payments to another local authority pursuant to section 493 or 494 of the 1996 Act or section 207 of the 2002 Act (recoupment between local authorities).

## Staff

11. Expenditure in making payments to, or in providing a temporary replacement for, a woman on maternity leave or to a person on adoption leave.

12. Expenditure in making payments to, or in providing a temporary replacement for, persons—

- (a) carrying out trade union duties or undergoing training under sections 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(46)</sup>;
- (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c) performing public duties under section 50 of the Employment Rights Act 1996<sup>(47)</sup>;
- (d) undertaking jury service;

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<sup>(45)</sup> Section 313 was amended by section 140 of, and paragraph 72 of Schedule 30 to, the School Standards and Framework Act 1998, and by sections 195 and 215 of, and paragraphs 1 and 2 of Schedule 18 and paragraph 36 of Schedule 21 to the Education Act 2002.

<sup>(46)</sup> 1992 c. 52.

<sup>(47)</sup> 1996 c. 18.

- (e) who are safety representatives under the Safety Representatives and Safety Committee Regulations 1977<sup>(48)</sup>;
- (f) who are representatives of employee safety under the Health and Safety (Consultation with Employees) Regulations 1996<sup>(49)</sup>;
- (g) who are employee representatives for the purposes of Chapter 2 of Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992 as defined in section 196 of that Act or the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(50)</sup>;
- (h) taking time off for ante-natal care under section 55 of the Employment Rights Act 1996;
- (i) undertaking duties as members of the reserve forces as defined in section 1(2) of the Reserve Forces Act 1996<sup>(51)</sup>;
- (j) suspended from working at a school;
- (k) who are members of the General Teaching Council for Wales or a committee thereof; or
- (l) who are appointed learning representatives of trade unions, in order for them to analyse training requirements or to provide or promote training opportunities, and to carry out consultative or preparatory work in connection with such functions.

**13.** Expenditure in making payments to, or in providing a temporary replacement for, a person who is seconded on a full-time basis for a period of three months or more other than to a local authority or the governing body of a school.

**14.** Expenditure in making payments to, or in providing a temporary replacement for, persons who have been continuously absent from work because of illness for 21 days or more.

**15.** Expenditure, not falling within Schedule 1, in relation to the recruitment, training, continuing professional development, performance management and personnel management of staff who are funded by expenditure not met from schools' budget shares.

### **Other expenditure**

**16.** Expenditure on the provision of tuition in musical instruments or choral instruction (either to individuals or groups).

**17.** Expenditure on supporting travelling theatres so far as such expenditure is not covered by specific grants.

**18.** Expenditure in connection with the provision of Welsh language teaching by teachers who are employed to work otherwise than at a single school so far as such expenditure is not covered by specific grants.

**19.** Expenditure on the provision to schools of premises and facilities for sporting activities and outdoor activities (including premises provided on the site of a school for the benefit of the community at large).

**20.** Expenditure pursuant to section 512, 512ZA, 512ZB or 513 of the 1996 Act which in relation to secondary schools relates to the provision of milk and in relation to any other school relates to the provision of milk or meals and other refreshment.

**21.** Expenditure on the repair and maintenance of a school kitchen where expenditure on meals in relation to the school concerned is deducted from the authority's schools budget pursuant to paragraph 20.

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<sup>(48)</sup> S.I. 1977/500.

<sup>(49)</sup> S.I. 1996/1513.

<sup>(50)</sup> S.I. 2006/246.

<sup>(51)</sup> 1996 c. 14.

- 22.** Expenditure on determining the eligibility of a pupil for free school meals.
- 23.** Expenditure pursuant to section 18 of the 1996 Act in making any grant or other payment in respect of fees or expenses (of whatever nature) which are payable in connection with the attendance of pupils at a school which is not maintained by any local authority.
- 24.** Expenditure in connection with the provision of nursery education except where such provision is made at a maintained school.
- 25.** Expenditure on insurance in respect of liability arising in connection with schools and school premises except to the extent that governing bodies receive funding for insurance as part of their schools' budget shares.
- 26.** Expenditure on licence fees or subscriptions paid on behalf of schools provided that the expenditure does not amount in total to more than 0.2 per cent of the authority's schools budget.
- 27.** Expenditure incurred in responding to a report of an inspection under section 28 of the Education Act 2005.
- 28.** Expenditure on library services and museum services for schools.
- 29.** Expenditure without which the education of pupils at a school would be seriously prejudiced and which because of either—
- (a) its size and unexpectedness; or
  - (b) its size and unavoidability,
- it would not be reasonable to expect the governing body to meet from the school's budget share.
- 30.** Expenditure on increases to a school's budget share to which the school is entitled by virtue of the authority's formula or the re-determination of budget shares under the authority of the Welsh Ministers or expenditure on the correction of errors.
- 31.** Expenditure for purposes not falling within any other paragraph of this Schedule provided that the expenditure does not amount in total to more than 0.1 per cent of the authority's schools budget.
- 32.** CERA incurred for purposes not falling within any other paragraph of this Schedule or Schedule 1.
- 33.** Expenditure incurred pursuant to section 22 of the Education Act 2002 in the training of governors to enable the effective discharge of their functions in so far as this is not provided by specific grants.
- 34.** Expenditure incurred in relation to the training of clerks to the governing bodies to enable the effective discharge of their functions.

### SCHEDULE 3

Regulation 18

#### Additional Factors or Criteria which may be Taken into Account in a Local Authority's Formula under Regulation 18

1. Special educational needs of pupils determined in a manner that the authority consider appropriate as a means of assessing such needs.
2. Pupils for whom English or Welsh is not their first language.
3. Turnover of pupils other than as part of the general admissions process at a school.

4. The extent to which the authority meet the cost of admission arrangements at a school other than from the school's delegated budget.

5. The size and condition of a school's buildings and grounds relative to those of other schools maintained by the authority: the funding must be in accordance with scales published by the authority which reflect (so far as appropriate) the statutory duties of governing bodies in relation to school premises and their eligibility for grant from the Welsh Ministers or any government department.

6. A school which has a split site: the funding must be in accordance with criteria published by the authority.

7. Facilities, for the education of pupils, found at some schools only.

8. Rates payable in respect of the premises of each school (including actual or estimated cost).

9. Charges for water and sewerage (including actual or estimated cost).

10. Use of energy by schools.

11. Rent payable in respect of school premises or payments in respect of the use by a school of facilities not exclusively occupied by that school (including actual or estimated cost).

12. Cleaning of school premises.

13. Transport to and from activities outside the school premises which form part of the school's curriculum (including actual or estimated cost).

14. Hire of facilities outside school premises (including actual or estimated cost).

15. In cases where an amount in respect of insurance is to be included in the school's budget share—

(a) where the authority insure, the appropriate proportion of the authority's planned expenditure on insurance; or,

(b) where the authority do not insure, the appropriate proportion of the amount that the authority would have spent had they insured,

to be determined on a basis decided by the authority which must have regard to the number of registered pupils at the school.

16. Payments in relation to a private finance transaction (including actual or estimated cost).

17. Amounts payable to a school which is, as the result of the discontinuance of one or more maintained schools, either established or, pursuant to Chapter 2 of Part 2 of the 1998 Act, the subject of prescribed alterations, to reflect the extent to which a school which has been discontinued has spent more than or has not spent all of its budget share in any funding period. Any such factor or criteria must provide that any amount deducted must not exceed the amount which the school receives during the funding period as part of its budget share by virtue of being a new school.

18. Whether the school is to be discontinued in the funding period in question or the following funding period.

19. School milk, meals and other refreshment: the authority may not treat any element of this expenditure as having a negative value.

20. Salaries at a school (including actual or estimated cost): the funding must be in accordance with a scale published by the authority.

21. Safeguarding of salaries in accordance with orders made from time to time under section 122 of the 2002 Act or safeguarding other salaries.

**22.** Social priority allowances in accordance with a School Teachers' Pay and Conditions Document having effect in accordance with an order under section 122 of the 2002 Act (including actual or estimated cost).

**23.** The need for single payments to be allocated to primary, secondary or special schools, or any combination of such schools, regardless of size.

**24.** The need for payments to be allocated to schools, of a size and satisfying other conditions, specified by the authority.

**25.** Schools whose budget shares would otherwise be reduced year-on-year by more than 5 per cent: the funding must be in accordance with a scale published by the authority.

**26.** Contracts to which the governing body of a school are bound by virtue of a provision in the authority's scheme (including actual or estimated cost).

**27.** Payroll administration costs: the funding must be based on the number of staff at the school, unless factors permitted elsewhere in these Regulations are used.

**28.** Any other factors or criteria not otherwise falling within this Schedule provided that the total amount allocated in accordance with the authority's formula, having regard to such factors or criteria, does not exceed 1 per cent of the authority's schools budget.

**29.** Effect of taxation on schools.

**30.** Incidence of pupils from ethnic minorities having below average levels of academic achievement in relation to other pupils in the authority's area, to be determined on a basis decided by the authority.

**31.** Incidence of nursery classes and places recognised by the authority as reserved for children with special educational needs.

**32.** Incidence of Newly Qualified Teachers.

**33.** Housing development or armed forces' movements leading to an increase or reduction in numbers on roll at a school of at least 20% within the funding period in question.

**34.** Prior attainment of pupils entering a school.

**35.** Infant class sizes limited by Regulations made under section 1 of the 1998 Act: the authority may include a sum which reflects any increase in expenditure incurred as a direct result of those Regulations.

**36.** Junior class sizes limited to a maximum of 30 pupils: the authority may include a sum which reflects any increase in expenditure incurred as a direct result of conditions contained in any special grant made in accordance with section 88A of the Local Government Finance Act 1988 or any arrangements for financial assistance provided in accordance with section 14 of the 2002 Act which requires an improvement of school standards by reducing class sizes.

## SCHEDULE 4

Regulation 26

### Content of Financial Schemes

*The matters referred to in regulation 26, being matters connected with the financing of schools maintained by a local authority, required to be dealt with in the local authority's scheme are as follows:*

1. The carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares.
2. Amounts which may be charged against schools' budget shares.
3. Amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used.
4. The imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets and of sums made available to governing bodies by the authority which do not form part of delegated budgets, including conditions prescribing financial controls and procedures.
5. Terms on which services and facilities are provided by the authority for schools maintained by them.
6. The payment of interest by or to the authority.
7. The times at which amounts equal in total to the school's budget share are to be made available to governing bodies and the proportion of the budget share to be made available at each such time.
8. The virement between budget heads within the delegated budget.
9. Circumstances in which the authority may delegate to the governing body the power to spend any part of the authority's LEA budget or schools budget in addition to those set out in section 49(4) (a) to (c)(52) of the 1998 Act.
10. The use of delegated budgets and of sums made available to the governing body by the authority which do not form part of delegated budgets.
11. Borrowing by governing bodies.
12. The banking arrangements that may be made by governing bodies.
13. A statement as to the personal liability of governors in respect of schools' budget shares having regard to section 50(7) of the 1998 Act.
14. A statement as to the allowances payable to governors of a school which does not have a delegated budget in accordance with the scheme made by the authority for the purposes of section 519 of the 1996 Act(53).
15. The keeping of a register of any business interests of the governors and the head teacher.
16. The provision of information by and to the governing body.
17. The maintenance of inventories of assets.
18. Plans of a governing body's expenditure.
19. A statement as to the use that a governing body proposes to make of a surplus in the school balance which exceeds 5% of the school budget share or £10,000, whichever is the greater.

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(52) Section 49 is amended by paragraph 100(2) of Schedule 21 to the Education Act 2002.

(53) Section 519 was amended by paragraphs 57 and 139 of Schedule 30 to the 1998 Act.

- 20.** A provision under which—
- (a) the authority may direct the governing body as to how to spend a surplus in the school balance for a funding period, if—
    - (i) in the case of a primary school the surplus is £50,000 or more, and
    - (ii) in the case of a secondary school or a special school the surplus is £100,000 or more;
  - (b) the authority may, if the governing body do not comply with such a direction, require the governing body to pay all or part of that surplus to the authority to be applied as part of their schools budget for the funding period in question.
- 21.** A statement as to the taxation of sums paid or received by a governing body.
- 22.** Insurance.
- 23.** The use of delegated budgets by governing bodies so as to satisfy the authority's duties imposed by or under the Health and Safety at Work etc Act 1974<sup>(54)</sup>.
- 24.** The provision of legal advice to the governing body.
- 25.** Funding for child protection issues.
- 26.** School meals.
- 27.** To whom in the authority complaints should be made by persons working at the school or by school governors about financial management or financial propriety at the school and how such complaints will be dealt with.
- 28.** Expenditure incurred by a governing body in the exercise of the power conferred by section 27 of the Education Act 2002.
- 29.** Provision by governing bodies of returns and information for teacher pensions' purposes.

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## EXPLANATORY NOTE

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

These Regulations revoke and replace the LEA Budget, Schools Budget and Individual Schools Budget (Wales) Regulations 2003, the Schools Budget Shares (Wales) Regulations 2004 and the Education (LEA Financial Schemes) (Wales) Regulations 2004 in relation to financial years that commence on or after 1 April 2011. They make provision for the funding of maintained schools in Wales for those financial years.

Part 1 contains the introductory, interpretation and revocation provisions.

Part 2 deals with the LEA budget, the schools budget and the individual schools budget.

Regulation 4 and Schedule 1 set out the expenditure that constitutes the LEA budget.

Regulation 5 requires the local authority to make an initial determination of the schools budget before 14 February preceding a funding period. Regulation 6 defines the schools budget. Regulation 7 requires the individual schools budget to be determined before 14 February immediately preceding

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<sup>(54)</sup> 1974 c. 37.

a funding period. A funding period is a financial year. The individual schools budget is defined in regulation 7 and Schedule 2.

Part 3 deals with schools' budget shares. Regulation 8 requires the individual schools budget to be allocated as budget shares to schools. Regulation 9 requires an initial determination of the amount of a school's budget share to be made by the end of the March preceding a funding period and for the authority to notify schools' governing bodies of the amount of their budget shares together with information about how the budget share was calculated and estimates of the budget shares for the following two funding periods.

Regulation 10 requires an authority to determine a formula for the budget shares. Regulation 11 requires consultation on any changes made to the formula since the preceding funding period.

Regulation 12 makes provision for the delegated budget of a new school.

Regulations 13 to 23 and Schedule 3 set out the factors and criteria to be taken into account in determining budget shares.

Regulation 24 allows a local authority to redetermine a school's budget share in order to correct errors, and regulation 25 allows the Welsh Ministers to approve alternative arrangements to determine budget shares.

Part 4 deals with local authorities' financial schemes. Regulation 26 and Schedule 4 specify the matters that must be dealt with in schemes. These include a new provision which will allow local authorities to direct governing bodies how to spend a surplus of £50,000 or more in the case of a primary school and £100,000 or more in the case of a secondary school or a special school, and if they fail to do so, to recover those surpluses and apply them as part of their schools budget.

Regulation 27 sets out how revised schemes are to be publicised and regulation 28 requires any revisions to be approved by the schools forum or the Welsh Ministers.