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WELSH STATUTORY INSTRUMENTS

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**2002 No. 136 (W.19)**

**EDUCATION, WALES**

**The Financing of Maintained Schools  
(Amendment) (Wales) Regulations 2002**

*Made* - - - - - *25th January 2002*

*Coming into force* - - - - - *1st February 2002*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on the Secretary of State by sections 46(2) and (3) and 138(7) and (8) of the School Standards and Framework Act 1998(1) and now vested in the National Assembly for Wales(2).

**Name, commencement and application**

1.—(1) These Regulations are called the Financing of Maintained Schools (Amendment) (Wales) Regulations 2002 and shall come into force on 1st February 2002.

(2) They apply only to Wales.

(3) The amendments made by these Regulations shall not apply in relation to the financing of maintained schools in any financial year beginning before 1st April 2002.

**Amendment of Regulations**

2.—(1) The Financing of Maintained Schools Regulations 1999(3) are amended as follows.

(2) In regulation 3, omit paragraph (a) and after paragraph (d), insert—

“(dd) where expenditure on the acquisition or maintenance of a particular capital asset would fall within paragraph (d) if incurred by a local education authority directly, any expenditure incurred by the authority under—

(i) any agreement between any person and the authority which includes provision for the supply or maintenance of such an asset by that person; or

(ii) any borrowing arrangement (including any arrangement, whether by way of lease or otherwise, whose principal purpose is to raise money in respect of such an asset),

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(1) 1998 c. 31. For the meaning of “prescribed” and “regulations” see section 142(1).

(2) See the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).

(3) S.I. 1999/101 amended by S.I. 2000/911 (W.40) and 2001/495 (W.22). Those Regulations originally applied to both England and Wales but were revoked in relation to England by S.I. 2000/478.

insofar as such expenditure is attributable to the supply or maintenance of that asset or to the repayment of principal, interest or other charges on monies lent to the authority in respect of the acquisition or maintenance of it.

In this paragraph, “maintenance” means work of any description the expenditure for which, had it been incurred by the authority directly, would have fallen within paragraph (d).”.

(3) In regulation 7, insert before “A local education authority”, “(1) Subject to paragraph (2),” and insert at the end of that regulation—

“(2) A local education authority need not allocate all of their individual schools budget in accordance with this Part in the form of budget shares at the beginning of the financial year, 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 regulation 19(3A) before the end of the financial year.”.

(4) In regulation 19, in paragraph (1) for “to take account of”, substitute “, if they so wish, to take account wholly or partly of”, and after paragraph (3) of that regulation insert—

“(3A) Where a local education authority propose to retain part of their individual schools budget pursuant to regulation 7(2) for the purpose of redeterminations or the correction of errors they shall include factors or criteria in their formula which require them to redetermine schools' budget shares before the end of the financial year so as to distribute to schools the unallocated balance of any such retained amount on the basis of pupil numbers in accordance with regulation 11(1) or (5).”.

(5) In regulation 20, for 'B' of the formula specified in paragraph (2), substitute—

“B is the number of complete weeks remaining in the financial year calculated from the relevant date:

EXCEPT that where the permanent exclusion takes effect on or after 1st 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.”.

(6) In regulation 22, omit “, less the aggregate of the sum of the budget shares of special schools and any transitional funding determined under regulation 18,”, and insert at the end—

“(2) For the purposes of this regulation, the budget shares of special schools and any part of the individual schools budget retained pursuant to regulation 7(2) for the purpose of redeterminations or the correction of errors shall be excluded from the local education authority’s individual schools budget.”.

(7) After regulation 23 insert—

**“Correction of errors**

**23A.** A local education authority may at any time during the financial year redetermine a school’s budget share for that financial year 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.”.

(8) In paragraph 1 of Schedule 2, after “used” insert “except where the grant is made to the authority under a condition requiring it to be treated as part of the authority’s individual schools budget”.

(9) After paragraph 2 of that Schedule insert—

**“Nursery schools**

**2A.** Expenditure in connection with nursery schools.”.

(10) In paragraph 14 of that Schedule, insert after “1989”, “and other functions relating to child protection”.

(11) For paragraph 19 of that Schedule substitute—

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

(12) In paragraph 28 of that Schedule after sub-paragraph (b), insert—

“(c) functions of the authority under Part 1 of the Local Government Act 1999<sup>(4)</sup> (Best Value) and also 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;”

(13) For paragraph 28(p) of that Schedule substitute—

“(p) compliance with the authority’s duties under the Health and Safety at Work etc. Act 1974<sup>(5)</sup> and the relevant statutory provisions as defined in section 53(1) of that Act insofar as compliance cannot reasonably be achieved through functions delegated to the governing bodies of the schools; but including expenditure incurred by the authority in monitoring the performance of such functions by governing bodies and where necessary the giving of advice to them;”

(14) For paragraph 33 of that Schedule, substitute—

“**33.** 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 unavailability,

it would not be reasonable to expect the governing body to meet from the school’s budget share.”

(15) For paragraph 34 of that Schedule, substitute—

“**34.** Expenditure on increases to a school’s budget share to which the school is entitled by virtue of the authority’s formula under regulation 10 or arrangements under regulation 23 and expenditure on the correction of errors.”

(16) At the end of the unnumbered paragraph at the beginning of Schedule 3 insert—

“Where in a financial year a local education authority take factors or criteria into account in their formula which are additional to or different from factors or criteria taken into account in the previous financial year, they may make such transitional provision as they consider reasonable.”

(17) After paragraph 29 of Schedule 3, insert—

“**29A.** 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.”

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(4) 1999 c. 27.

(5) 1974 c. 37.

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

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Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(6)

25th January 2002

*J. E. Randerson*  
Assembly Secretary

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## EXPLANATORY NOTE

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

These Regulations amend the Financing of Maintained Schools Regulations 1999 (which now apply only to Wales).

Those 1999 Regulations prescribe the expenditure which makes up a local education authority's "local schools budget" and specify what expenditure may be deducted by them from their local schools budget in order to arrive at their individual schools budget. They also provide for the basis on which the latter budget is to be distributed between schools. They require local education authorities in a scheme prepared by them, to deal with specified matters connected with the financing of schools which they maintain.

The present Regulations make a number of changes to the 1999 Regulations. The more important ones are outlined below:—

1. *Regulation 3* is amended so that expenditure in connection with nursery schools is included in the local schools budget and so that the definition of capital financing costs excluded from the local schools budget extends to the capital financing elements of PFI payments.

2. *Regulation 7* is amended so as to enable a local education authority not to allocate all of their individual schools budget in the form of budget shares at the beginning of the financial year and instead to retain an amount for the purpose of re-determinations or the correction of errors.

3. *Regulation 19* is amended so as to require a local education authority to include factors or criteria in their formula to re-determine schools' budget shares and distribute to schools the unallocated balance of any amount retained under Regulation 7 before the end of the financial year.

4. *Regulation 20* is amended so that the calculation for adjusting a school's budget share where a pupil is permanently excluded on or after 1 April covers a move from an infants school to a junior school.

5. *Regulation 22* is amended so as to exclude from the individual schools budget any part of it initially retained, for the purpose of calculating the 75% minimum pupil-led funding figure.

6. *Schedule 2* (which lists planned expenditure which may be deducted from the local schools budget) is amended in the following ways:

- (i) in *paragraph 1*, dealing with expenditure offset by grants, provision is made for an exception where the grant is subject to a condition requiring it to be treated as part of the individual schools budget;
- (ii) a new *paragraph 2A* is inserted enabling local education authorities to deduct expenditure in connection with nursery schools from their local schools budget;
- (iii) *paragraph 19* is amended so that local education authorities may deduct from their local schools budget expenditure on the provision of premises and facilities for sporting activities and outdoor activities;
- (iv) a new *paragraph 28(c)* covers the local education authorities' statutory Best Value functions and enables them to meet the costs of giving advice to schools on Best Value issues;

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(v) *Paragraph 33* is expanded so as to include payments to schools facing unavoidable costs which they cannot reasonably be expected to meet, in addition to unforeseeable items of expenditure.

7. *Schedule 3* (additional factors or criteria which may be taken into account in a local education authority's formula for allocating funding to individual schools) is amended so as to permit transitional arrangements where a local education authority inserts new factors or criteria in their formula; and adds a factor for payroll administration costs.