WELSH STATUTORY INSTRUMENTS

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(**1**) 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(**2**), and now vested in them(**3**), make the following Regulations.

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

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.

(**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.

(**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(**13**).

(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(**14**).

(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(**15**) (arrangements for patrolling school crossing); and

(c) expenditure incurred by the local authority under section 51A of the 1998 Act(**16**) (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—

(**13**) 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.
(**14**) 2003 c. 36.
(**15**) 1984 c. 27.
(**16**) 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.