WELSH STATUTORY INSTRUMENTS

2004 No. 2506 (W.224)

EDUCATION, WALES

The Schools Budget Shares (Wales) Regulations 2004

Made - - - -	*21 September 2004*
Coming into force - -	*30 September 2004*

In exercise of the powers conferred on the Secretary of State by sections 47 and 138(7) and (8) of the School Standards and Framework Act 1998(**1**) and now vested in the National Assembly for Wales(**2**), the National Assembly for Wales hereby makes the following Regulations:

Name, commencement and application

1.—(1) These Regulations are called the Schools Budget Shares (Wales) Regulations 2004 and come into force on 30 September 2004.

(2) These Regulations apply for the purpose of the financing of maintained schools in Wales in respect of any financial year beginning after 31 March 2005.

Interpretation

2.—(1) In these Regulations —

"the 1996 Act" ("*Deddf 1996*") means the Education Act 1996(**3**);

"the 1998 Act" ("*Deddf 1998*") means the School Standards and Framework Act 1998;

"the 2000 Act" ("*Deddf 2000*") means the Learning and Skills Act 2000(**4**);

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002(**5**);

"the 1999 Regulations" ("*Rheoliadau 1999*") mean the Financing of Maintained Schools Regulations 1999(**6**);

"the 2003 Regulations" ("*Rheoliadau 2003*") mean the LEA Budget, Schools Budget and Individual Schools Budget (Wales) Regulations 2003(**7**)

(**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**) 1996 c. 56.
(**4**) 2000 c. 21.
(**5**) 2002 c. 32.
(**6**) S.I.1999/101 amended by S.I. 2000/911 (W.40), 2001/495 (W. 22), 2002/136(W.19) and 2003/538 (W.75).
(**7**) S.I.2003/3118(W.296).

"financial year in question" ("*blwyddyn ariannol o dan sylw*") means the financial year in respect of which maintained schools' budget shares are being determined;

"maintained school" ("*ysgol a gynhelir*") means a community, foundation or voluntary school or a community or foundation special school or a maintained nursery school;

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"the National Council" ("*y Cyngor Cenedlaethol*") means the National Council for Education and Training for Wales(**8**)

"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;

"preceding financial year" ("*blwyddyn ariannol flaenorol*") means the financial year preceding the financial year in question.

(2) In these Regulations a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or a 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 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 education authority does not include schools which are not maintained schools as defined in paragraph (1).

(6) In these Regulations a reference to the permanent exclusion of a pupil is a reference to the pupil's permanent exclusion as defined from time to time for the purposes of section 494 of the 1996 Act(**9**).

(7) Unless the context otherwise requires, words or expressions used in these Regulations set out below in this paragraph have the meanings given to them by the provisions specified —

budget share (*cyfran o'r gyllideb*):

section 47(1) of the 1998 Act;

delegated budget (*cylllideb ddirprwyedig*):

section 49(7) of the 1998 Act;

financial year (*blwyddyn ariannol*):

section 579(1) of the 1996 Act;

formula (fformwla):

regulation 7 of these Regulations;

individual schools budget (*cyllideb ysgolion unigol*):

section 45A(3) of the 1998 Act(**10**);

key stage (*cyfnod allweddol*):

section 103 of the 2002 Act;

nursery school (*ysgol feithrin*):

(**8**) The National Council was established by section 30 of the 2000 Act.
(**9**) Section 494 was substituted by paragraph 128 of Schedule 30 to the 1998 Act.
(**10**) Section 45A was inserted by section 41(1) of the 2002 Act (S.I. 2003/2961 (W.278)).

section 6(1) of the 1996 Act(**11**);

nursery education (*addysg feithrin*):

section 117 of the 1998 Act;

school year (*blwyddyn ysgol*):

section 579(1) of the 1996 Act(**12**);

schools budget (*cyllideb ysgolion*):

section 45A(2) of the 1998 Act;

special educational needs (*anghenion addysgol arbennig*):

section 312(1) of the 1996 Act.

(8) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation is a reference to the regulation of these Regulations so numbered and a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

Revocation and transitional provisions

3.—(1) Subject to paragraphs (2) and (3) and to the extent they apply in Wales, the 1999 Regulations (so far as not already revoked(**13**)), the Financing of Maintained Schools (Amendment) (Wales) Regulations 2000(**14**), the Financing of Maintained Schools (Amendment) (Wales) Regulations 2001(**15**), the Financing of Maintained Schools (Amendment) (Wales) Regulations 2002(**16**) and the Financing of Maintained Schools (Amendment) (Wales) Regulations 2003(**17**) are revoked from 1 April 2005.

(2) Notwithstanding paragraph (1), a school's budget share may be redetermined under the 1999 Regulations, in the financial year beginning on 1 April 2005, if such redetermination makes provision for —

(a) pupils permanently excluded or admitted following permanent exclusion; or

(b) the correction of errors, whether in calculation or data, under any of the provisions of the 1999 Regulations.

(3) Notwithstanding paragraph (1), Part IV (Schemes) and Schedule 5 to the 1999 Regulations remain in force.

Allocation of individual schools budget

4. A local education authority must allocate in each financial year, in accordance with the following provisions of these Regulations, all of their individual schools budget for that financial year as the budget shares of schools which they maintain.

Timing of initial determination of budget shares

5.—(1) The amount of a school's budget share for a financial year must be initially determined by the local education authority before the beginning of that financial year.

(**11**) Section 6(1) is amended by section 156(1) of the 2002 Act.
(**12**) Inserted by the Education Act 1997 (c. 44), Schedule 7, paragraph 43.
(**13**) Regulations 2, 3 and 5 of, and Schedule 2, to the 1999 Regulations were revoked on 1 April 2004 by the 2003 Regulations.
(**14**) S.I. 2000/911 (W.40).
(**15**) S.I. 2001/495 (W.22).
(**16**) S.I. 2002/136 (W.19).
(**17**) S.I. 2003/538 (W.75).

(2) A local education authority need not initially allocate all of their individual schools budget in the form of budget shares at the beginning of a 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 18(4) before the end of that financial year.

Consultation

6.—(1) In addition to consulting the schools forum for their area(**18**), a local education 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 under the 1999 Regulations or these Regulations in the preceding financial year (including any new factors, criteria, methods, principles or rules).

(2) Paragraph (1) shall not apply to changes made pursuant to regulations 5(2), 15, 18(3) or 19.

(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 before the beginning of the financial year in question.

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

(5) The requirement to consult in paragraph (1), in relation to changes proposed for the financial year beginning on 1 April 2005, may be satisfied by consultation which takes place during the financial year beginning on 1 April 2004 before the coming into force of these Regulations.

Formula for determination of budget shares

7.—(1) A local education authority must determine before the beginning of a financial year, and after the consultation referred to in regulation 6, the formula which they will use to determine schools' budget shares in that financial year having regard to the factors, criteria and requirements set out in these Regulations.

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

(3) A local education 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 National Assembly or the National Council.

(4) Subject to regulation 22 (additional arrangements approved by the National Assembly) a local education authority must use the formula determined under paragraph (1) in all determinations and redeterminations of budget shares in respect of that financial year.

Pupil numbers

8.—(1) In determining budget shares for primary and secondary schools and nursery schools, a local education authority must take into account in their formula the number of registered pupils at those schools on such date or dates as may be determined by the authority, weighted if the authority consider it appropriate in accordance with paragraph (8).

(2) For the purposes 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 National Council under section 36 of the 2000 Act;

(**18**) The schools forums were established by regulation 2 of the Schools Forums (Wales) Regulations 2003 (S.I. 2003/2909 (W.275)).

(b) pupils in places which the authority recognise as reserved for children with special educational needs or (except where the local education authority chooses not to exercise their discretion under regulation 10 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 1 April in the financial year in question; and

(b) in the school year in which 1 April in the financial year 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 1 April in the financial year 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) Paragraphs (4) and (5) 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 such date or dates as may be determined by the authority (weighted if the authority consider it appropriate in accordance with paragraph (8)).

(7) If the authority estimate the number of registered pupils at a school in accordance with paragraph (4)(b) they must consult the head teacher of the school.

(8) A local education 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.

(9) A local education 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 education authority.