Draft Regulations laid before Parliament under section 138(5) of the School Standards and Framework Act 1998, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No.

EDUCATION, ENGLAND

The School Finance (England) Regulations 2006

Made - - - - 2006

Coming into force in accordance with regulation 1(1)

In exercise of the powers conferred on the Secretary of State by sections 45A(**1**), 45AA(**2**), 47(**3**), 48(1) and (2) and 138(7) of, and paragraph 1(7)(b) of Schedule 14 to, the School Standards and Framework Act 1998(**4**), the Secretary of State for Education and Skills makes the following Regulations:

In accordance with section 138(5)(c) and (d) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament(**5**).

PART 1

INTRODUCTION

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the School Finance (England) Regulations 2006 and shall come into force two days after the day on which they are made.

(2) These Regulations apply in relation to the financial years beginning on 1st April 2006 and 1st April 2007.

(3) These Regulations apply only in relation to England.

(4) In these Regulations—

(**1**) Section 45A of the School Standards and Framework Act 1998 was inserted by section 41(1) of the 2002 Act, and amended by paragraph 3 of Schedule 16 to the 2005 Act.
(**2**) Section 45AA of the 1998 Act was inserted by paragraph 4 of Schedule 16 to the Education Act 2005.
(**3**) As amended by Schedule 16 to the 2005 Act.
(**4**) 1998 c. 31. Section 48 was amended by section 40 of, and paragraph 2 of Schedule 3 to, the 2002 Act, and section 117 of, and paragraph 7 of Schedule 18 to, the 2005 Act. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of "prescribed" and "regulations" see section 142(1).
(**5**) Sub-paragraphs (c) and (d) of section 138(5) were inserted by paragraph 8 of Schedule 16 to the 2005 Act.

"the 1996 Act" means the Education Act 1996(**6**);

"the 1998 Act" means the School Standards and Framework Act 1998;

"the 2000 Act" means the Learning and Skills Act 2000(**7**);

"the 2002 Act" means the Education Act 2002(**8**);

"the 2005 Act" means the Education Act 2005(**9**);

"the 2003 (No. 2) Regulations" means the Financing of Maintained Schools (England) (No. 2) Regulations 2003(**10**);

"the 2004 Regulations" means the Financing of Maintained Schools (England) Regulations 2004(**11**);

"the Budget Regulations" means the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004(**12**); and

The "Amended Budget Regulations" means the LEA Budget, Schools Budget and Individual Schools Budget (Amendment) (England) Regulations 2005(**13**);

"admission number" means the number of pupils in any relevant age group intended to be admitted in any school year as determined by an admission authority in accordance with section 89A of the 1998 Act(**14**);

"capital expenditure" means expenditure of a local authority which falls to be capitalised in accordance with proper practices, or expenditure which shall be treated as capital expenditure by virtue of any regulations or directions made under section 16 of the Local Government Act 2003(**15**);

"central expenditure" means the total amount deducted by a local education authority from their schools budget;

"CERA" means capital expenditure which an authority expect to charge to a revenue account of the authority within the meaning of section 22 of the Local Government Act 2003(**16**);

a "combined service" is a service funded partly from central expenditure, and partly from other budgets of the authority or contributions from other bodies;

the "Dedicated Schools Grant" is the grant of that name paid to a local education authority by the Secretary of State under section 14 of the 2002 Act;

"expenditure on the school specific contingency" is expenditure—

(a) it would not be reasonable to expect a governing body to meet from the school's budget share;

(b) on increases to a school's budget share to which the school is entitled by virtue of the authority's formula or the determination of budget shares under the authority of the schools forum or the Secretary of State; and

(c) on the correction of errors;

(**6**) 1996 c. 56.
(**7**) 2000 c. 21.
(**8**) 2002 c. 32.
(**9**) 2005 c. 18.
(**10**) S.I. 2003/3247.
(**11**) S.I. 2004/3130.
(**12**) S.I. 2004/3131.
(**13**) S.I. 2005/526.
(**14**) This is the definition inserted by regulation 2(1) of the Education (Variation of Admission Arrangements) (Amendment) (England) Regulations 2002 (S.I. 2002/2896) into the Education (Variation of Admission Arrangements) (England) Regulations 1999 (S.I. 1999/126).
(**15**) 2003 (c. 26). Regulations made under this section are the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003 (S.I. 2003/3146), as amended by S.I. 2004/534 and 2004/3055.
(**16**) 2003 c. 26.

"funding period 1" is the financial year beginning on 1st April 2006;

"funding period 2" is the financial year beginning on 1st April 2007;

"key stage 4" means the fourth key stage of the National Curriculum for England comprising core and foundation subjects, and other elements as described in section 85 of the 2002 Act, as amended by any Order made by the Secretary of State under subsection (6)(d) of that section;

a "local education authority's formula" has the meaning in regulation 9;

the "LSC" is the Learning and Skills Council for England(**17**);

a reference (however framed) to a maintained nursery school, a community, foundation or voluntary school or a community or foundation special school includes a proposed school which on implementation of proposals for the establishment of the school will be such a school, and which has a temporary governing body;

a reference to a particular class or description of expenditure in relation to maintained schools and to pupils registered at such schools shall include any expenditure of that class or description as the authority may incur in relation to Academies(**18**), and to pupils registered at Academies;

a "Performance Reward Grant" is the grant of that name paid under section 31 of the Local Government Act 2003 to reward local authorities for improvements in local services;

"PFI scheme unitary payment" means a charge payable by a local education authority under a private finance transaction as defined in regulation 16 of the Local Authorities (Capital Finance) Regulations 1997(**19**);

"primary or secondary school" means a primary or secondary school which is a community, foundation, voluntary or maintained nursery school;

"proper practices" means those accounting practices which a local authority are required to follow by virtue of any enactment, or 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(**20**);

"prudential borrowing" means borrowing money for the purpose of facilitating the modernisation and rationalisation of the school estate, where the revenue savings that will be achieved are equal to or more than the expenditure that will be incurred in borrowing the money;

"School Improvement Partner" means a person employed by, or engaged to work for, a local education authority in accordance with the programme of that name;

"School Standards Grant" is the grant of that name paid to a local education authority by the Secretary of State under section 14 of the 2002 Act;

"school year" means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July, in accordance with the Education (School Day and School Year) (England) Regulations 1999(**21**);

"SEN transport costs", for the purposes of paragraph 35(e) of Schedule 2, means the costs of home to school transport for pupils with special educational needs in schools maintained by the authority, where the revenue savings that will be achieved by placing such children in a school maintained by the authority are equal to, or greater than, the cost of such transport;

(**17**) The Learning and Skills Council for England was established under section 1 of the 2000 Act.
(**18**) Academies are established under section 482 of the 1996 Act. Section 482 was substituted by section 65 of the 2002 Act.
(**19**) S.I. 1997/319, as amended by S.I. 1998/371, 1999/1852 and 2003/515. The Local Authorities (Capital Finance) (Consequential, Transitional and Savings Provisions) Order 2004 (S.I. 2004/533) contains savings provisions for regulation 16 of the 1997 Regulations.
(**20**) Section 2 of the Local Government Act 2003 (c. 32) and regulations 25 and 26 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) as amended by S.I. 2004/534.
(**21**) S.I. 1999/3181.

"specific grant" means grant, other than the Dedicated Schools Grant and any grant made by the LSC under section 7 of the 2000 Act, paid to a local authority under conditions which impose restrictions on the particular purposes for which the grant may be used;

"summer term" means the third term of the school year;

"Threshold and Performance Pay Grant" means a sum of money paid under that name to a local education authority by the Secretary of State under section 14 of the 2002 Act;

"termination of employment costs", for the purposes of paragraph 35(b) of Schedule 2, means expenditure in respect of the dismissal or premature retirement of, or for the purpose of securing the resignation of, any person employed in a maintained school where—

(a) the dismissal, premature retirement or resignation occurs after the beginning of funding period 1, and

(b) the revenue savings that will be achieved are equal to or greater than the costs incurred;

"vocational education" means education provided to pupils aged 14–16 years at school or elsewhere which prepares them for a qualification for a particular profession, trade or employment, or which provides the necessary training and skills for such a profession or employment.

Revocation of previous Regulations

2. The 2003 (No. 2) Regulations, the Budget Regulations, and the Amended Budget Regulations are revoked on 1st April 2006.

PART 2

ACTION TO BE TAKEN BY A LOCAL EDUCATION AUTHORITY

CHAPTER 1

appropriation of the lea budget

LEA Budget

3.—(1) The following classes or descriptions of local education authority expenditure are prescribed for the purposes of section 45A(1) of the 1998 Act and the determination of a local education authority's LEA budget, subject to the exceptions in regulation 6—

(a) those specified in Schedule 1, and

(b) any other expenditure which falls outside the classes or descriptions of expenditure specified in regulation 5 and Schedule 2 (the schools budget).

(2) Any expenditure which falls within the classes or descriptions of expenditure specified in regulation 5 or Schedule 2 is not expenditure prescribed for the purposes of section 45A(1) of the 1998 Act.

CHAPTER 2

determination of schools budgets, individual schools budgets, and budget shares for funding periods 1 and 2

Initial determination of a local education authority's schools budgets

4. A local education authority must not later than 31st March 2006—

(a) make an initial determination of their schools budgets for funding periods 1 and 2, and

(b) give notice of any such determination to the governing bodies of the schools they maintain.

Schools Budget

5.—(1) The classes or descriptions of local education authority expenditure specified in sub-paragraphs (a) and (b) are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, subject to the exceptions in regulation 6—

(a) expenditure on the provision and maintenance of maintained schools and on the education of pupils registered at maintained schools; and

(b) expenditure on the education of pupils at independent schools, non-maintained special schools(**22**), pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for pupils otherwise than at schools maintained by a local education authority.

(2) Where a local education authority operates a combined service for the benefit of pupils referred to in paragraph (1), expenditure referred to in paragraph 35(c) of Schedule 2 is expenditure prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local education authority's schools budget, provided that any expenditure incurred is commensurate with the educational benefit to those pupils.

Exceptions

6. A local education authority's LEA budget or schools budget shall not include the following classes or descriptions of expenditure—

(a) capital expenditure other than CERA;

(b) expenditure on capital financing other than expenditure incurred on prudential borrowing;

(c) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(**23**) (arrangements for patrolling school crossings); and

(d) expenditure met by the local education authority under section 51A of the 1998 Act (community purposes).

Determination of the individual schools budget for funding periods 1 and 2

7.—(1) Subject to paragraphs (2) and (3), not later than 31st March 2006, a local education authority may deduct from their schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 2 (the "central expenditure"), in order to arrive at their individual schools budgets for funding periods 1 and 2.

(2) Any deductions made under paragraph (1) must be made in accordance with the provisions of Schedule 3 (Maximum Increase in Central Expenditure), unless the authority has obtained the approval of their schools forum or the Secretary of State under regulation 13 to vary the limit imposed by that Schedule.

(3) In deducting any of the classes or descriptions of planned expenditure referred to in paragraph 35 of Schedule 2, a local education authority must not exceed the limit or exclude the condition referred to in that paragraph, unless they have obtained the approval of their schools forum or the Secretary of State under regulation 13 to vary that limit, or exclude that condition.

(**22**) Non-maintained special schools are approved and regulated by regulations made under section 342 of the 1996 Act. Section 342 was substituted by paragraph 82 of Schedule 30 to the 1998 Act.

(**23**) 1984 c. 27, amended by the Local Government Act 1985 (c. 51), section 8 and Schedule 5, the Greater London Authority Act 1999 sections 288 and 423 and Schedule 34, and the Transport Act 2000 sections 270 and 274 and Schedule 31.