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

1998 No.

EDUCATION, ENGLAND AND WALES

The Financing of Maintained Schools Regulations 1998

Made - - - -	*1998*
Coming into force - -	*1998*

In exercise of the powers conferred on the Secretary of State by sections 46, 47, 48(1) and (2), 138(7) and (8) and 144(1) and (2)(g) of, and paragraph 1(7) of Schedule 14 to, the School Standards and Framework Act 1998(**1**) the Secretary of State for Education and Employment, as regards England, and the Secretary of State for Wales, as regards Wales, hereby make the following Regulations, a draft of which has been laid before, and approved by, each House of Parliament:

PART I

INTRODUCTION

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Financing of Maintained Schools Regulations 1998 and shall come into force on the seventh day after the day on which they are made.

(2) These Regulations shall apply for the purposes of the financing of maintained schools in any financial year beginning on or after 1st April 1999.

(3) In these Regulations—

"the 1996 Act" means the Education Act 1996(**2**);

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

"the 1998 Regulations" mean the Education (Grant-maintained and Grant-maintained Special Schools) (Finance) Regulations 1998(**3**).

(4) In these Regulations "maintained school" means—

(**1**) 1998 c. 31; for the meaning of "prescribed" and "regulations" *see* section 142(1). Sections 46, 47 and 48 apply in relation to county, voluntary, maintained special, grant-maintained and grant-maintained special schools within the meaning of the Education Act 1996 (c. 56) by virtue of S.I.1998/2670.

(**2**) 1996 c. 56.

(**3**) S.I. 1998/799.

(a) in relation to the period ending immediately before 1st September 1999, a county, voluntary, maintained special, grant-maintained or grant-maintained special school within the meaning of the 1996 Act; and

(b) in relation to the period beginning on 1st September 1999, a community, foundation or voluntary school or a community or foundation special school.

(5) In these Regulations a reference (however framed) to a county, voluntary or maintained special school within the meaning of the 1996 Act includes a proposed school proposals for the establishment of which have been published under section 35, 41 or 339(1) of the 1996 Act but not yet implemented and which has a temporary governing body.

(6) In these Regulations a reference (however framed) to a community, foundation or voluntary school or a community or foundation special school includes a proposed school which on implementation of proposals under section 35, 41 or 339(1) of the 1996 Act or section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act will be such a school and which has a temporary governing body.

(7) In these Regulations a reference to a governing body includes the temporary governing body of a proposed school falling within paragraph (5) or (6).

(8) In these Regulations a reference to a primary or secondary school—

(a) in relation to the period ending immediately before 1st September 1999, means a primary or secondary school which is a county, voluntary or grant-maintained school within the meaning of the 1996 Act; and

(b) in relation to the period beginning on 1st September 1999, means a primary or secondary school which is a community, foundation or voluntary school.

(9) 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 (4).

(10) In these Regulations a reference to the permanent exclusion of a pupil is a reference to his permanent exclusion as defined from time to time for the purposes of section 494 of the 1996 Act(**4**).

(11) Unless the context otherwise requires, words or expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

budget share	section 47(1) of the 1998 Act
delegated budget	section 49(7) of the 1998 Act
expenditure	regulation 2(2) of these Regulations (for the purposes of Part II of these Regulations)
financial year	section 579(1) of the 1996 Act
formula	regulation 10 of these Regulations
individual schools budget	section 46(2) of the 1998 Act
key stage	section 355 of the 1996 Act
local schools budget	section 46(1) of the 1998 Act
maintained school	regulation 1(4) of these Regulations
maintenance grant	sections 244(1) and 250(1) of the 1996 Act
nursery school	section 6(1) of the 1996 Act

(**4**) Section 494 is substituted by paragraph 128 of Schedule 30 to the 1998 Act as from 1st April 1999, *see* S.I. 1998/2212.

permanent exclusion	regulation 1(10) of these Regulations
scheme	section 48(5) of the 1998 Act (in relation to the period on and after 1st April 1999) or section 101(1) of the 1996 Act (in relation to the period before 1st April 1999)
school maintained by a local education authority	regulation 1(9) of these Regulations
school year	section 579(1) of the 1996 Act(**5**)
special educational needs	section 312(1) of the 1996 Act.

(12) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation of, or Schedule to, 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.

PART II

LOCAL AND INDIVIDUAL SCHOOLS BUDGET

Local schools budget

2.—(1) The classes or descriptions of local education authority expenditure specified in sub-paragraphs (a) and (b) below are hereby prescribed for the purposes of section 46(1) of the 1998 Act and the determination of a local education authority's local schools budget subject to the exceptions in regulation 3—

(a) expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education; and

(b) expenditure on items listed in paragraph 25(a) to (d) and (r) to (t) of Schedule 1 or, as the case may be, paragraph 28(a) to (d) and (r) to (t) of Schedule 2, in so far as such expenditure does not fall within sub-paragraph (a) above.

(2) For the purposes of this Part expenditure does not include expenditure defrayed by fees and charges collected by the governing body of a maintained school which are—

(a) specifically required or permitted to be collected by any provision of the Education Acts; or

(b) in respect of the use of school premises or equipment.

Exceptions

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

(a) expenditure in connection with nursery schools;

(b) expenditure in connection with any provision made for children who have not attained the age of five except where such provision is made at a maintained school or the expenditure is by way of fees paid under section 320 or 348 of the 1996 Act (special provision for children with special educational needs);

(**5**) Inserted by the Education Act 1997 (c. 44), Schedule 7, paragraph 43.

(c) expenditure in making payments to another local education authority pursuant to section 492, 493 or 494(**6**) of the 1996 Act (recoupment between authorities);

(d) expenditure which the authority capitalise in their accounts in accordance with proper practices being those accounting practices—

(i) which the authority are required to follow by virtue of any enactment, or

(ii) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned,

but in the event of any conflict in any respect between the practices falling within sub-paragraph (i) above and those falling within sub-paragraph (ii) above, only those falling within sub-paragraph (i) above are to be regarded as proper practices(**7**);

(e) expenditure offset by income received from Her Majesty's Chief Inspector of Schools in England or Her Majesty's Chief Inspector of Schools in Wales; and

(f) expenditure for the purposes of section 26 of the Road Traffic Regulation Act 1984(**8**) (arrangements for patrolling school crossings).

Individual schools budget for local education authorities in England

4. A local education authority in England may deduct from their local schools budget any or all of the classes or descriptions of planned expenditure set out in Schedule 1, in whole or in part, in order to arrive at their individual schools budget for a financial year.

Individual schools budget for local education authorities in Wales

5.—(1) Subject to paragraphs (2) to (4), a local education authority in Wales may deduct from their local 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 a financial year.

(2) Paragraphs 23, 25, 29, 39 and 42 of Schedule 2 do not apply in relation to planned expenditure in respect of schools which are, or were immediately before 1st April 1999, grant-maintained schools.

(3) In the case of planned expenditure in respect of other maintained schools, planned expenditure of a kind referred to in paragraphs 23, 29, 39 and 42 of Schedule 2—

(a) may not be deducted by an authority from their local schools budget for the financial year beginning on 1st April 1999 unless expenditure of the same class or description in the financial year beginning on 1st April 1998 did not form part of, or was deducted pursuant to the terms of the authority's scheme (within the meaning of the 1996 Act) as then in force from, the authority's general schools budget (within the meaning of the 1996 Act) for that financial year; and

(b) may not be deducted by an authority from their local schools budget for any financial year beginning after 1st April 1999.

(4) Planned expenditure of the kind referred to in paragraph 25(a) of Schedule 2 in relation to secondary schools may not be deducted by an authority from their local schools budget for any financial year beginning after 1st April 1999.

(**6**) Section 494 is substituted by paragraph 128 of Schedule 30 to the 1998 Act as from 1st April 1999, *see* S.I. 1998/2212.

(**7**) These are the proper practices as referred to in section 66(4) of the Local Government and Housing Act 1989 (c. 42) and, at the date that these Regulations are made, they include the Code of Practice on Local Authority Accounting in Great Britain 1998 (ISBN 0 85299 853 8).

(**8**) 1984 c. 27, amended by the Local Government Act 1985 (c. 51), Schedule 5, paragraph 4(10).

PART III

SCHOOLS' BUDGET SHARES

Determination of budget shares

6. This Part applies for the purpose of determining the amount which a local education authority may determine as a maintained school's budget share for a financial year.

Allocation of individual schools budget

7. A local education authority shall allocate in each financial year in accordance with this Part 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

8. The amount of a school's budget share for a financial year shall be initially determined by the local education authority before the beginning of that year.

Consultation

9.—(1) A local education authority shall consult the governing body and head teacher of every county, voluntary, maintained special, grant-maintained or grant-maintained special school within the meaning of the 1996 Act which they will maintain on 1st April 1999 in relation to the factors and criteria which the authority propose to take into account, in the formula referred to in regulation 10, in determining budget shares for the financial year beginning on 1st April 1999 and in relation to any methods, principles and rules which they propose to adopt in that formula in relation to such determinations.

(2) In relation to subsequent financial years a local education authority shall consult the governing body and head teacher of every school which they maintain about proposed changes in relation to the factors and criteria that were taken into account, or the methods, principles and rules that were adopted, in their formula in the preceding financial year (including any new factors, criteria, methods, principles or rules).

(3) Consultation under this regulation shall 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 a financial year.

(4) The requirement to consult in paragraph (1) can be satisfied by consultation which takes place on and after 20th October 1998 in the case of a local education authority in England, or on and after 23rd October 1998 in the case of a local education authority in Wales, and (in either case) before the coming into force of these Regulations.

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

Formula for determination of budget shares

10.—(1) A local education authority shall determine before the beginning of a financial year, and after the consultation referred to in regulation 9, 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 this Part.

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