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WELSH STATUTORY INSTRUMENTS

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**2000 No. 1867 (W.126)**

**EDUCATION, WALES**

**The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 (Amendment) (Wales) Regulations 2000**

Made - - - - 14th July 2000  
Coming into force - - 31st July 2000

In exercise of the powers conferred on the Secretary of State by sections 138(7) and 144 of, and paragraph 1 of Schedule 10 to, the School Standards and Framework Act 1998<sup>(1)</sup>, which powers are now vested in the National Assembly for Wales<sup>(2)</sup>, the National Assembly for Wales hereby makes the following Regulations:

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 (Amendment) (Wales) Regulations 2000 and shall come into force on 31st July 2000.

(2) In these regulations —

“the 1999 Regulations” (“*Rheoliadau 1999*”) means the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999<sup>(3)</sup>; and

“the operative date” (“*y dyddiad gweithredol*”) means the date these Regulations come into force.

(3) These Regulations shall apply only in Wales.

**Amendment of the 1999 Regulations**

2. The 1999 Regulations shall be amended in respect of Wales only by the substitution for Regulation 54 of those Regulations of the regulations set out in the Schedule to these Regulations.

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(1) 1998 c. 31.

(2) See as to section 138(7) and Schedule 10 the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and as to section 144 the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253.)

(3) S.I. 1999/362.

### **Transfers from local education authorities**

3.—(1) Where any property other than land or any right or liability not relating to land has, prior to the operative date, transferred to and, by virtue of regulation 54 of the 1999 Regulations, vested in a local education authority, the said property, right or liability shall on the operative date be transferred to and, by virtue of this regulation, vest in the governing body of the relevant school constituted under the instrument of government.

(2) In this regulation —

“relevant school” (“*ysgol berthnasol*”) means —

- (a) where the transfer was by virtue of paragraph (1) of the said regulation 54, the school for whose purposes the property, right or liability was, immediately before the transfer date, held, used, acquired or incurred;
- (b) where the transfer was by virtue of paragraphs (1) and (2) of the said regulation 54, the school to which the property, right or liability was allocated as a result of the division or apportionment carried out in accordance with the said paragraph (2); or
- (c) where the transfer was by virtue of paragraph (4) of the said regulation 54, the school which appeared on the first transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent; and

“first transfer date” and “transfer date” have the meanings given to them in regulation 54 of the 1999 Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(4).

14th July 2000

*Jane Davidson*  
The Deputy Presiding Officer, National  
Assembly for Wales

## SCHEDULE

## Regulation 2

### Regulations substituted for regulation 54 of the 1999 Regulations

#### “Transfer of land

**54.**—(1) Subject to paragraphs (3), (5) and (6), in the case of each grouped school, on the transfer date —

- (a) all land which, immediately before the transfer date, was held by the grouped governing body for the purposes of the school; and
- (b) all rights and liabilities of the grouped governing body relating to land and subsisting immediately before that date, which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this regulation, vest in the body specified in paragraph (2) below.

(2) The body specified for the purposes of paragraph (1) shall be either —

- (a) the governing body of the school constituted under the instrument of government, in the case of a grouped school which on or after the appointed day becomes a foundation or voluntary aided school; or
- (b) the local education authority, in the case of a grouped school which on or after the appointed day becomes a community, community special or voluntary controlled school.

(3) Subject to paragraph (6), on the first transfer date, any land, and any rights and liabilities relating to land, of a grouped governing body held or used or subsisting for the purposes of more than one school in the group shall, where the nature of the land, right or liability permits, be divided or apportioned between the schools, in such proportions as may be appropriate.

(4) Where any estate or interest in land falls to be divided in accordance with paragraph (3) —

- (a) any rent payable under a lease in respect of that estate or interest; and
- (b) any rent charged on that estate or interest;

shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(5) Subject to paragraph (6), any such land, right or liability as is mentioned in paragraph (3), the nature of which does not permit its division or apportionment as so mentioned, shall be transferred either to the governing body constituted under the instrument of government of any one or other of the schools in the group which on or after the appointed day becomes a foundation or voluntary aided school or to the local education authority in the case of any school in the group which on or after the appointed day becomes a community, community special or voluntary controlled school, according to —

- (a) in the case of an estate or interest in land, whether on the first transfer date one or other of the schools appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of the security, which of them appears on that date to be likely to make use of the land to the greater extent; or
- (b) in the case of any right or liability, which of them appears on the first transfer date to be likely to be affected by the right or liability to the greater extent;

subject (in either case) to such arrangements for the protection of the other school or schools concerned as may be appropriate.

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(6) Paragraphs (1), (3) and (5) shall not apply to any land, right or liability vested in the grouped governing body as trustees.

- (a) (7) In this regulation, “first transfer date” means the first transfer date of the first school in the group to have a governing body constituted under the instrument of government and “transfer date”, in relation to a grouped school, means the appointed day or the day after the actual incorporation date, if different.
- (b) References in this regulation to the grouped governing body include a grouped transitional governing body.
- (c) References in this regulation to a school or schools in the group shall include a school or schools which were in the group immediately before the first transfer date.

**54A.**—(1) Section 198(3) of and paragraphs 2 to 10 of Schedule 10 to the Education Reform Act 1988<sup>(5)</sup> (which make further provision in relation to transfers of property, rights and liabilities) shall apply to transfers under regulation 54 with the following modifications.

(2) Paragraph 2(1) of Schedule 10 shall apply subject to —

- (i) the reference to “paragraph 1(4) above” being treated as a reference to “paragraph (5) of regulation 54 of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999”;
- (ii) in sub-paragraph 1(a) the substitution of “other school or schools concerned” for “transferor”; and
- (iii) in sub-paragraph 1(b) the substitution of “other school or schools concerned” for “transferor” in the last place where that word occurs.

(3) References in section 198(3) and in the said paragraphs of Schedule 10, as they apply for the purposes of regulation 54, to the transfer date are to the transfer date as it is defined for the purposes of regulation 54.

### **Transfer of property other than land**

**54B.**—(1) Subject to paragraphs (2), (3) and (4), in the case of each grouped school, on the transfer date —

- (a) all property other than land which, immediately before the transfer date, was property of the grouped governing body held for the purposes of the school; and
- (b) all rights and liabilities of the grouped governing body not relating to land and subsisting immediately before that date, which were acquired or incurred for those purposes,

shall be transferred to and by virtue of this regulation vest in the governing body of the school constituted under the instrument of government.

(2) Subject to paragraph (4), on the first transfer date, any property other than land, and any rights and liabilities not relating to land, of a grouped governing body held or used or subsisting for the purposes of more than one school in the group shall, where the nature of the property, right or liability permits, be divided or apportioned between the schools, in such proportions as may be appropriate.

(3) Subject to paragraph (4), any such property, right or liability as is mentioned in paragraph (2), the nature of which does not permit its division or apportionment as so mentioned, shall be transferred to the governing body constituted under the instrument of government of one of the schools in the group according to which of them appears on the first transfer date to be likely to make use of the property or (as the case may be) to be affected by

(5) 1998 c. 40; amended by Schedule 29 to the School Standards and Framework Act 1998.

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the right or liability to the greater extent, subject to such arrangements for the protection of the other school or schools concerned as may be appropriate.

- (4) Paragraphs (1), (2) and (3) shall not apply to —
  - (a) rights and liabilities under any contract of employment; or
  - (b) any property, right or liability vested in the grouped governing body as trustees.
- (a) (5) In this regulation “first transfer date” means the transfer date of the first school in the group to have a governing body constituted under the instrument of government and “transfer date”, in relation to a grouped school, means the appointed day or the day after the actual incorporation date, if different.
- (b) References in this regulation to the grouped governing body include a grouped transitional governing body.
- (c) References in this regulation to a school or schools in the group shall include a school or schools which were in the group immediately before the first transfer date.

**54C.**—(1) Section 198(3) of and paragraphs 2 to 10 of Schedule 10 to the Education Reform Act 1988 (which make further provision in relation to transfers of property, rights and liabilities) shall apply to transfers under regulation 54B with the following modifications.

- (2) Paragraph 2(1) of Schedule 10 shall apply subject to —
  - (i) the reference to “paragraph 1(4) above” being treated as a reference to “paragraph (3) of regulation 54B of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999”;
  - (ii) in sub-paragraph 1(a) the substitution of “other school or schools concerned” for “transferor”; and
  - (iii) in sub-paragraph 1(b) the substitution of “other school or schools concerned” for “transferor” in the last place where that word occurs.
- (3) References in section 198(3) and in the said paragraphs of Schedule 10, as they apply for the purposes of regulation 54B, to the transfer date are to the transfer date as it is defined for the purposes of regulation 54B.”

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## EXPLANATORY NOTE

*(This note does not form part of the Regulations)*

These Regulations amend the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999.

Regulation 54 of those Regulations in its original form provides for —

- (a) all property (including land) of a grouped governing body held or used for the purposes of the school;
- (b) all rights and liabilities of the grouped governing body acquired or incurred for those purposes,

to vest in the new individual governing body of the school concerned (in the case of a foundation or voluntary aided school) or the local education authority (in other cases).

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This was not, however, what was intended. The intention was that property *other than land*, and associated rights and liabilities, should, in *all cases*, vest in the new individual governing body of the school concerned. These Regulations therefore amend the earlier Regulations to reflect that intention. They also provide for any property other than land, and any associated rights and liabilities which have already passed to the local education authority under the old regulation 54, to vest in the individual governing body of the appropriate school.

The amendments already apply in England by virtue of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 (Amendment) Regulations 1999 (S.I.[1999/3297](#)).