
WELSH STATUTORY INSTRUMENTS

1999 No. 2633 (W.7)

EDUCATION, WALES

**The Education (Change of Category of
Maintained Schools) (Wales) Regulations 1999**

Made - - - - 23rd August 1999

Coming into force - - 1st September 1999

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on the Secretary of State by sections 35(2) and 138(7) and (8) of, and paragraphs 2, 3 and 5 of Schedule 8 and paragraph 1(5) of Schedule 12 to, the School Standards and Framework Act 1998(1) and now vested in the Assembly(2).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (Wales) Regulations 1999 and shall come into force on 1st September 1999.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations:

“the Act” means the School Standards and Framework Act 1998 (“*y Ddeddf*”);

“the Assembly” means the National Assembly for Wales(2)(“*y Cynulliad*”);

“the governing body” means the governing body of the school in respect of which a change of category is proposed or, as the case may be, takes place (“*y corff llywodraethu*”);

“the implementation date” means the date specified in the proposals as the date on which it is intended that the change of category should take place (“*y dyddiad gweithredu*”);

“the main school government regulations” means the Education (School Government) (Wales) Regulations 1999(3)(“*y prif reoliadau llywodraethu ysgol*”);

(1) 1998 c. 31

(2) The functions of the Secretary of State under the provisions under which these regulations are made were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).

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(3) S.I. 1999/2242 W2

“the proposals” means the proposals published under paragraph 3 of Schedule 8 to the Act with any modifications made by the Assembly under paragraph 8 or 10 of Schedule 6 (as those paragraphs have effect with modifications by virtue of Schedule 1 to these Regulations) (“*y cynigion*”).

(2) Expressions used in these Regulations set out in the first column of the table below have the meaning given by, or (as the case may be) are to be interpreted in accordance with, the provisions referred to in the second column of that table —

“Education Action Forum” (“ <i>Fforwm Gweithredu Addysg</i> ”)	section 11(2) of the Act(4)
“education action zone” (“ <i>parth gweithredu addysg</i> ”)	section 10(1) of the Act;
“instrument of government” (“ <i>offeryn llywodraethu</i> ”)	section 37(1) of the Act;
“sponsor” (“ <i>noddwr</i> ”)	paragraph 1 of Schedule 1 to the main school government regulations

Prescribed period for the purpose of section 35(2) of the Act

3. For the purposes of section 35(2) of the Act (which provides that, except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of paragraph 3 of Schedule 8 to the Act, that Schedule does not apply at any time before the end of such period as may be prescribed) the prescribed period is the period starting on 1st September 1999 and ending on 31st August 2000.

Application of regulations 5 to 9

4. Regulations 5 to 9 shall apply in relation to proposals published under paragraph 3 of Schedule 8 to the Act, during the period prescribed in regulation 3, for a voluntary aided school to become a voluntary controlled school and in relation to the implementation of such proposals.

Application of section 28 of and Schedule 6 to the Act

5.—(1) Schedule 1 to these Regulations has effect for applying with modifications provisions of section 28 of, and Part II of Schedule 6 to, the Act in relation to proposals such as are mentioned in regulation 4.

(2) The provisions of section 28 of, and Part II of Schedule 6 to, the Act so applied are set out in Schedule 2 to these Regulations, as so modified; and with references to the Assembly (in whom the functions of the Secretary of State are now vested) substituted for references to the Secretary of State.

Implementation of proposals

6. On the implementation date the school shall become a voluntary controlled school.

Transfer of staff

7.—(1) Subject to paragraph (2), this regulation shall apply to any person who immediately before the implementation date is employed by the governing body.

(4) Sections 10-13 of the Act do not apply in relation to Wales unless an Order made by the Assembly provides otherwise—See section 10(8). At the date of the making of these Regulations no such Order had been made.

(2) This regulation shall not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

(3) A person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter shall be treated for the purposes of this regulation as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the governing body.

(4) The contract of employment between a person to whom this regulation applies and the governing body shall have effect from the implementation date as if originally made between him and the local education authority.

(5) Without prejudice to paragraph (4) —

- (a) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this regulation be transferred to the local education authority on the implementation date; and
- (b) anything done before that date by or in relation to the governing body in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the local education authority.

(6) Paragraphs (4) and (5) are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this regulation.

Instrument of government and reconstitution of governing body

8.—(1) The governing body and the local education authority shall secure that, as soon as reasonably practicable after the implementation date (and in any event within three months after the implementation date) —

- (a) a new instrument of government is made for the school in accordance with Schedule 12 to the Act and Part II of the main school government regulations; and
- (b) the governing body are reconstituted in accordance with the new instrument of government Part II of the main school government regulations⁽⁵⁾;

(2) The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 3.

(3) It shall be a sufficient compliance with paragraph (2) if the instrument of government is in a form substantially to the like effect to the form set out in Schedule 3.

(4) A failure by the governing body or local education authority to discharge the duty in paragraph (1) within the time limit prescribed in that paragraph shall not relieve the governing body or the local education authority of that duty.

Transitional provisions

9.—(1) Anything done by the governing body as admission authority before the implementation date under any provision in Chapter I of Part III of the Act (admission arrangements) shall from the implementation date have effect as if done by the local education authority.

(5) Part II of the Education (School Government) (Wales) Regulations 1999 makes provision regarding contents of instrument of government, appointments and elections of governors, and the removal of surplus governors, other than surplus foundation governors. Provision for the removal of surplus foundation governors is in paragraph 11 of the pro-forma instrument of government set out in Schedule 2 to those Regulations.

(2) If on the implementation date proposals published by the governing body under section 28, 29 or 31 of the Act fall to be implemented under paragraph 10 of Schedule 6 to the Act they shall be implemented by the local education authority.

Signed on behalf of the Assembly under section 66(1) of the Government of Wales Act 1998(6)

23rd August 1999

Jane Davidson
The Deputy Presiding Officer of the Assembly

SCHEDULE 1

Regulation 5

PROVISIONS OF SECTION 28 OF, AND SCHEDULE 6 TO THE ACT HAVING EFFECT IN RELATION TO PROPOSALS MENTIONED IN REGULATION 4

1. The subsections of section 28 of, and the paragraphs in Part II of Schedule 6 to, the Act referred to in column 1 of Tables 1 to 3 below shall have effect in relation to proposals such as are mentioned in regulation 4 with the modifications specified in this Schedule in relation to those provisions.

2. The provisions of the Act specified in column 1 of Table 1 below shall have effect as if for the words referred to in column 2 of that table there were substituted the words in column 3 of that table.

Tabl/Table 1

colofn/column 1	colofn/column 2	colofn/column 3
adran/section 28(5)	“under this section”	“under paragraph 3 of Schedule 8”
adran/section 28(5)	“the relevant body or promoters”	“the governing body”
adran/section 28(5)	“the relevant body or promoters”	“the governing body”
Atodlen/Schedule 6 paragraff/ paragraph 6	“section 28, 29 or 31”	“paragraph 3 of Schedule 8”
Atodlen/Schedule 6 paragraff/ paragraph 7	“section 28,29 or 31”	“paragraph 3 of Schedule 8”
Atodlen/Schedule 6 paragraff/ paragraph 8(2)(c)	“such persons or bodies as may be prescribed”	“the local education authority and the governing body”

3. The provisions of the Act specified in column 1 of Table 2 below shall have effect as if the words or the provision referred to in column 2 of that table were omitted.

Tabl/Table 2

colofn/column 1	colofn/column 2
adran/section 28(11)	is-baragraff/sub-paragraph (a)
Atodlen/Schedule 6 paragraff/paragraph 6	“or proposed school”
Atodlen/Schedule 6 paragraff/paragraph 7	is-baragraff/sub-paragraph (2)
Atodlen/Schedule 6 paragraff/paragraph 8(4)	“or (in the case of a new school) is proposed to be”
Atodlen/Schedule 6 paragraff/paragraph 10	is-baragraffau/sub-paragraphs (3) to (6)

4. The provisions of the Act referred to in column 1 of Table 3 below shall have effect as if for the words contained in that provision there were substituted the words referred to in column 2 of that table.

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Tabl/Table 3

colofn/column 1	colofn/column 2
adran/section 28(3)	<p>“(3) Proposals under paragraph 3 of Schedule 8 shall—</p> <ul style="list-style-type: none"> (a) contain the following information — <ul style="list-style-type: none"> (i) the name of the governing body publishing the proposals, (ii) the date on which it is proposed that the change of category should take place, (iii) a statement explaining the effect of paragraph 7 of Schedule 6 including the date by which objections should be sent to the National Assembly for Wales, (iv) a statement that it is proposed to change the category of the school from voluntary aided to voluntary controlled, (v) a statement that after the change of category has taken place, the local education authority will be the admission authority for the school; and (b) shall be published — <ul style="list-style-type: none"> (i) by being posted in a conspicuous place in the area served by the school, (ii) in at least one newspaper circulating in the area served by the school, and (iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.”
adran/section 28(7)	<p>“(7) Where any proposals published under paragraph 3 of Schedule 8 relate to a school in Wales, the governing body shall send —</p> <ul style="list-style-type: none"> (a) a copy of the published proposals, and (b) the information specified in subsection (7A), to the National Assembly for Wales. <p>(7A) The information referred to in subsection (7) is —</p>

colofn/column 1	colofn/column 2
	<ul style="list-style-type: none">(a) the objectives of the proposals;(b) evidence of consultation before the proposals were published including —<ul style="list-style-type: none">(i) copies of the consultation documents, and(ii) the views and responses from the persons consulted;(c) a map showing the location of the school and all other community, voluntary and foundation schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school or 4.828032 kilometres (3 miles) where the school is a secondary school;(d) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (iv)), the previous school year —<ul style="list-style-type: none">(i) the standard number for each relevant age group,(ii) the number of year groups,(iii) the capacity of the school, and(iv) the number of pupils at the school;and a forecast of the matters specified in sub-paragraphs (ii) to (iv) for each of the subsequent five years;(e) a list of all the schools within the radius of the school mentioned in paragraph (c) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (d) in respect of each such school;(f) the following information relating to the accommodation at the school —<ul style="list-style-type: none">(i) the location of the accommodation,(ii) whether the school occupies a single or split site,(iii) how accessible the accommodation is,

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colofn/column 1	colofn/column 2
	<ul style="list-style-type: none"> (iv) details of the general and specialist accommodation (both teaching and non-teaching), and (v) (where relevant) details of accommodation for nursery education; (g) a breakdown of any costs involved in the change of category; (h) details of the policy of the school relating to the education of pupils with special educational needs; (i) a statement as to whether the school has been inspected under section 10 of the School Inspection Act 1996(7) during the period starting three years before the date of the notice of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection; (j) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held as a lease, details of the lease; and (k) details of the trusts on which the site of the school is held.”
Atodlen/Schedule 6 paragraff/paragraph 7(3)	<p>“(3) Any objections under this paragraph shall be sent to the National Assembly for Wales —</p> <ul style="list-style-type: none"> (a) within two months after the date of publication of the proposals, except where paragraph (b) of this sub-paragraph applies; and (b) within one month after the date of publication of the proposals, where the school is one to which section 15 applies.”
Atodlen/Schedule 6 paragraff/paragraph 8(1)	<p>“(1) Proposals published under paragraph 3 of Schedule 8 require approval under this paragraph.”</p>
Atodlen/Schedule 6 paragraff/paragraph 8(3)	<p>“(3) An approval given under this paragraph may be expressed to take effect only if a scheme relating to any charity connected with the school is made by a date specified in the approval.”</p>

(7) 1996 p.57.

colofn/column 1	colofn/column 2
Atodlen/Schedule 6paragraff/paragraph 8(5)	“(5) Proposals published under paragraph 3 of Schedule 8 may only be withdrawn with the consent in writing of the National Assembly for Wales.”
Atodlen/Schedule 6 paragraff/paragraph 10(1)	“(1) Where any proposals published under paragraph 3 of Schedule 8 have been approved under paragraph 8 then (subject to the following provisions of this paragraph) the proposals shall be implemented in the form in which they were so approved in accordance with regulations made under paragraph 5 of Schedule 8.”
Atodlen/Schedule 6 paragraff/paragraph 10(2)	“(2) At the request of the governing body or the local education authority, the National Assembly for Wales — (a) may modify the proposals after consulting that governing body and the local education authority; and (b) where any approval under paragraph 8 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the scheme in question must be made.”

SCHEDULE 2

Regulation 5(2)

PROVISIONS OF SECTION 28 OF, AND PART II OF SCHEDULE 6 TO THE ACT APPLIED BY SCHEDULE 1 AS MODIFIED

Section 28

- (3) Proposals under paragraph 3 of Schedule 8 shall —
- (a) contain the following information—
 - (i) the name of the governing body publishing the proposals,
 - (ii) the date on which it is proposed that the change of category should take place,
 - (iii) a statement explaining the effect of paragraph 7 of Schedule 6 including the date by which objections should be sent to the National Assembly for Wales,
 - (iv) a statement that it is proposed to change the category of the school from voluntary aided to voluntary controlled,
 - (v) a statement that after the change of category has taken place, the local education authority will be the admission authority for the school; and
 - (b) shall be published —
 - (i) by being posted in a conspicuous place in the area served by the school,
 - (ii) in at least one newspaper circulating in the area served by the school, and

(iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.

(5) Before publishing any proposals under paragraph 3 of Schedule 8, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the governing body shall have regard to any guidance given from time to time by the National Assembly for Wales.

(7) Where any proposals published under paragraph 3 of Schedule 8 relate to a school in Wales, the governing body shall send —

- (a) a copy of the proposals, and
- (b) the information specified in subsection (7A),

to the National Assembly for Wales.

(7A) The information referred to in subsection (7) is —

- (a) the objectives of the proposals;
- (b) evidence of consultation before the proposals were published including —
 - (i) copies of the consultation documents, and
 - (ii) the views and responses from the persons consulted;
- (c) a map showing the location of the school and all other community, voluntary and foundation schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school or 4.828032 kilometres (3 miles) where the school is a secondary school;
- (d) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (iv)), the previous school year —
 - (i) the standard number for each relevant age group,
 - (ii) the number of year groups,
 - (iii) the capacity of the school, and
 - (iv) the number of pupils at the school;and a forecast of the matters specified in sub-paragraphs (ii) to (iv) for each of the subsequent five years;
- (e) a list of all the schools within the radius of the school mentioned in paragraph (c) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (d) in respect of each such school;
- (f) the following information relating to the accommodation at the school —
 - (i) the location of the accommodation,
 - (ii) whether the school occupies a single or split site,
 - (iii) how accessible the accommodation is,
 - (iv) details of the general and specialist accommodation (both teaching and non-teaching), and
 - (v) (where relevant) details of accommodation for nursery education;
- (g) a breakdown of any costs involved in the change of category;
- (h) details of the policy of the school relating to the education of pupils with special educational needs;
- (i) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996 during the period starting three years before the date of the notice

- of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection;
 - (j) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held on a lease, details of the lease; and
 - (k) details of the trusts on which the site of the school is held.
- (11) In this part —
- (b) “area” (without more) means a local education authority area.

Part II of Schedule 6

6. This Part of this Schedule applies to proposals published under paragraph 3 of Schedule 8 which relate to a school in Wales.

7.—(1) Any person may make objections to any proposals published under paragraph 3 of Schedule 8.

- (3) Any objections under this paragraph shall be sent to the National Assembly for Wales —
- (a) within two months after the date of publication of the proposals, except where paragraph (b) of this sub-paragraph applies; and
 - (b) within one month after the date of publication of the proposals, where the school is one to which section 15 applies.

8.—(1) Proposals published under paragraph 3 of Schedule 8 require approval under this paragraph.

(2) Where any proposals require approval under this paragraph, the National Assembly for Wales may —

- (a) reject the proposals,
- (b) approve them without modification, or
- (c) approve them with such modifications as it thinks desirable after consulting the local education authority and the governing body.

(3) Any approval given under this paragraph may be expressed to take effect only if a scheme relating to any charity connected with the school is made by a date specified in the approval.

(4) When deciding whether or not to give any approval under this paragraph the National Assembly for Wales shall have regard to the school organisation plan for the area in which the school is situated.

(5) Proposals published under paragraph 3 of Schedule 8 may only be withdrawn with the consent of the National Assembly for Wales.

10.—(1) Where any proposals published under paragraph 3 of Schedule 8 have been approved under paragraph 8 then (subject to the following provisions of this paragraph) the proposals shall be implemented in the form in which they were so approved in accordance with regulations made under paragraph 5 of Schedule 8.

(2) At the request of the governing body or the local education authority, the National Assembly for Wales.

- (a) may modify the proposals after consulting the governing body and the local education authority; and

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- (b) where any approval under paragraph 8 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the scheme in question must be made.

SCHEDULE 3

Regulation 8

INSTRUMENT OF GOVERNMENT

1. The name of the school is
2. The school is a voluntary controlled school.
3. The name of the governing body is "the governing body of" (*insert the name of the school as in paragraph 1 above*).
4. The governing body shall consist of
 - (a) parent governors;
 - (b) LIA governors;
 - (c) teacher governors;
 - (if applicable)*
 - (d) one staff governor;
 - (e) foundation governors;
 - (f) co-opted governors (*including any governors referred to in paragraph 6, 7 or 8 below*);
 - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors (except any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be ...).
(if applicable)
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)
(if applicable)
7. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school)
(if applicable)
8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.)

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9. Set out the name of any foundation body or persons entitled to appoint foundation governors. If there is more than one such person, set out the basis on which the appointments are made.

10. (a) The holder of the following office shall be a foundation governor ex-officio.

name of office

(b) [for ... and ... jointly] shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

11. Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.

Set out procedure for eliminating any excess in the number of foundation governors.

12. Where the school is a voluntary school with a religious character, describe the ethos of the school.

13. This instrument comes into effect on the date of making

14. This instrument was made by order of
Local Education Authority on

EXPLANATORY NOTE

(This note is not part of the Regulations)

From 1 September 1999, maintained schools are divided into the following categories: community; foundation; voluntary (comprising voluntary aided and voluntary controlled); community special; and foundation special. These Regulations prescribe a one year moratorium from 1 September 1999 during which schools in Wales will be unable to publish statutory proposals to change their category. This is to ensure a “settling in” period. The Regulations allow one exception: a change of category from voluntary aided to voluntary controlled where governing bodies of voluntary aided schools are unable to meet their financial liabilities. They lay down the procedures to be followed in such cases

and provide for the transfer of staff and other matters. A more detailed explanation of the provisions of the Regulations is set out below.

Regulation 3 provides for the moratorium referred to above to be for a period starting on 1st September 1999 and ending on 31st August 2000.

Regulation 4 provides for the provisions of Regulations 5-9 to apply during the period of the moratorium in relation to proposals published under paragraph 3 of Schedule 8 to the Act and their implementation.

Regulation 5 applies section 28 of, and Part II of Schedule 6 to, the Act, with modifications, in relation to proposals for a voluntary controlled school to become a voluntary aided school, and in relation to the implementation of such proposals. The provisions applied, and the modifications subject to which they are so applied, are set out in Schedule 1. To assist the reader, those provisions (as so applied with modifications) are set out in Schedule 2.

Regulation 6 provides that on the implementation date (as defined in regulation 2(1) as “the date specified in the proposals as the date on which it is intended that the change of category should take place”) the school shall become a voluntary controlled school.

Regulation 7 provides for the transfer of staff to the employment of the local education authority.

Regulation 8 and Schedule 3 provide for the governing body and local education authority to make a new instrument of government for the school (in accordance with the legislative requirements referred to in that regulation), and for the governing body to be reconstituted in accordance with the instrument (and those requirements). The instrument of government must be made in the form (or substantially in the form) and in accordance with the directions set out in Schedule 3.

Regulation 9 contains transitional provisions.