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WELSH STATUTORY INSTRUMENTS

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**1999 No. 2633**

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

**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(1)(“*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(2)(“*y prif reoliadau llywodraethu ysgol*”);

“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 —

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“Education Action Forum” (“ <i>Fforwm Gweithredu Addysg</i> ”)	section 11(2) of the Act(3)
“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>noddwyr</i> ”)	paragraph 1 of Schedule 1 to the main school government regulations

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(1) 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).

(2) S.I. 1999/2242 W2

(3) 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.

### **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.

(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<sup>(4)</sup>;

(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.

(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<sup>(5)</sup>

23rd August 1999

*Jane Davidson*  
The Deputy Presiding Officer of the Assembly

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(4) 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.

(5) 1998 c. 38