
WELSH STATUTORY INSTRUMENTS

2001 No. 2678 (W.219)

EDUCATION, WALES

**The Change of Category of Maintained
Schools (Wales) Regulations 2001**

Made - - - - *17th July 2001*

Coming into force - - *1st September 2001*

In exercise of the powers conferred on the Secretary of State by sections 35(2), 138(7) and (8) and 144 of, and paragraphs 2, 3, 4 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 National Assembly for Wales⁽²⁾, the National Assembly for Wales makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations are called the Change of Category of Maintained Schools (Wales) Regulations 2001 and shall come into force on 1st September 2001.

(2) They apply to Wales.

Revocation and savings

2.—(1) Subject to paragraph (2) the Education (Change of Category of Maintained Schools) (Wales) Regulations 1999⁽³⁾ are revoked.

(2) Schedule 6 to the Act as applied, with modifications, by those Regulations shall continue to apply in relation to any proposals published, in accordance with that Schedule as so applied with modifications, before the date of coming into force of these Regulations.

Interpretation

3.—(1) In these Regulations, unless the context otherwise requires:

“the Act” (“*y Ddeddf*”) means the School Standards and Framework Act 1998⁽⁴⁾;

(1) 1998 c. 31. For the meaning of “prescribed” and “regulations” see section 142(1). The “prescribed period” (“*cyfnod rhagnodedig*”) for the purposes of section 35(2) was prescribed by the Education (Change of Category of Maintained Schools) (Wales) Regulations 1999 (S.I. 1999/2633 (W.7)) as the period of twelve months ending on 31st August 2000.

(2) See the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and, as regards, section 144, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253 (W.5)).

(3) S.I. 1999/2633 (W. 7).

(4) 1998 c. 31.

“foundation body” (“*corff sefydledig*”) has the meaning given to it by section 21(4)(a) of the Act;

“the governing body” (“*y corff llywodraethu*”) 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;

“group” (“*grŵp*”) has the meaning given to it by section 21(4)(b) of the Act;

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

“the implementation period” (“*y cyfnod gweithredu*”) means the period commencing on the date proposals are approved under paragraph 8 of modified Schedule 6 to the Act, and ending on the implementation date;

“modified Schedule 6 to the Act” (“*Atodlen 6 addasedig i'r Ddeddf*”) means that Schedule as it has effect with modifications by virtue of regulation 7 of and Part I of Schedule 1 to these Regulations;

“modified Schedule 12 to the Act” (“*Atodlen 12 addasedig i'r Ddeddf*”) means that Schedule as it has effect with modifications by virtue of regulation 12 of and Part VI of Schedule 3 to these Regulations;

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

“the proposals” (“*y cynigion*”) means the proposals published under paragraph 2 or 3 of Schedule 8 to the Act with any modifications made by the National Assembly under paragraph 8 or 10 of modified Schedule 6 to the Act;

“publicly funded land” (“*tir a ariennir yn gyhoeddus*”) means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996⁽⁵⁾;
- (b) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III⁽⁶⁾ of that Act);
- (c) wholly by means of any grant paid under regulation 3 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (Wales) Regulations 1999⁽⁷⁾;
- (d) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (e) under a transfer under Schedule 4; or
- (f) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (e);

“transfer agreement” (“*cytundeb trosglwyddo*”) means an agreement—

- (a) made between the local education authority and the trustees or the foundation body or the governing body of the school (as the case may be), and
- (b) providing for land to be transferred to, and vest in, the local education authority on the implementation date (whether or not in consideration of payment by the authority).

(2) 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.

⁽⁵⁾ 1996 c. 56. Section 201(1)(a) is repealed by Schedule 31 to the Act.

⁽⁶⁾ Chapter VI of Part III is repealed by Schedule 31 to the Act.

⁽⁷⁾ S.I. 1999/1469.

Breach of prescribed time limits

4. A failure by a local education authority or a governing body to discharge any duty within a time limit prescribed by these Regulations shall not relieve the authority or the governing body of that duty.

Restrictions on changing category of school

5.—(1) A school may not change category to become a voluntary aided school unless the governing body of the school satisfy the National Assembly that the governing body (as the governing body of a voluntary aided school) will be able to carry out their obligations under Schedule 3 to the Act for a period of at least five years following the implementation date.

(2) A foundation, voluntary aided or voluntary controlled school may not become a community school and a foundation special school may not become a community special school unless any transfer agreement and transfer of rights and liabilities agreement required by Schedule 4 has been entered into.

(3) A school's change of category under these Regulations shall not be taken as authorising a school to establish, join or leave a foundation body.

Proposals

6.—(1) Regulations 7 to 18 shall apply in relation to proposals under paragraph 2 or (as the case may be) 3 of Schedule 8 to the Act of the kind mentioned in paragraph (2).

(2) Those proposals are proposals—

- (a) by a local education authority that a community school should change category to become a foundation school or that a community special school should change category to become a foundation special school;
- (b) by a governing body that a community, foundation, voluntary aided or voluntary controlled school should change category to become a school within another of those categories (including, in the case of a voluntary aided school, proposals which the governing body are required to publish by virtue of paragraph 3 of Schedule 8 to the Act);
- (c) by a governing body that a community special school should change category to become a foundation special school or vice versa.

Application of section 28 of and Schedule 6 to the Act

7.—(1) Part I of Schedule 1 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 6.

(2) The provisions of section 28 of, and Part II of Schedule 6 to, the Act so applied are set out in Part II of Schedule 1 as so modified; and with references to the National Assembly (in whom the functions of the Secretary of State are now vested) substituted for references to the Secretary of State.

Implementation of proposals

8. On the implementation date the school shall change category in accordance with the proposals.

Transfer of staff

9. Schedule 2 has effect in relation to the transfer of staff.

Instrument of government

10.—(1) The governing body and the local education authority shall secure that by the end of the implementation period a new instrument of government is made for the school in accordance with modified Schedule 12 to the Act.

(2) The new instrument of government shall take effect from the date of making for the purpose of reconstituting the governing body but shall not affect the constitution of the governing body conducting the school pending the implementation date.

(3) For all other purposes, the new instrument of government shall take effect from the implementation date.

11.—(1) The new instrument of government for a school changing its category shall be made in the form set out in the relevant Part of Schedule 3.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the form set out in the relevant Part of Schedule 3.

12. Schedule 12 to the Act in its application to new instruments of government as mentioned in regulation 11 shall have effect with the substitution for sub-paragraphs (2) to (6) of paragraph 3 of that Schedule of the sub-paragraphs set out in Part VI of Schedule 3.

Reconstitution of governing body

13.—(1) The current governing body and the local education authority shall secure that, as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of three months beginning on the implementation date), the governing body are reconstituted in accordance with the new instrument of government and modified Schedule 12 to the Act.

(2) The current governing body shall exercise their functions under the Act and these Regulations in a manner calculated to enable the local education authority to fulfil their duties under paragraph (1).

Current governors continuing in office

14.—(1) Paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to regulation 15, a governor to whom this paragraph applies shall continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (where a corresponding category exists).

(3) A member of a current governing body who continues as a governor under paragraph (2) shall hold office for the remainder of the term for which he or she was originally appointed or elected.

(4) The proceedings of the governing body shall not be invalidated by the school having more governors of a particular category than are provided for by the new instrument of government, pending the removal of surplus governors under regulation 15.

Surplus governors

15.—(1) Where—

- (a) on or after the implementation date a school has more governors of a particular category than are required as governors of that category by the new instrument of government, and
- (b) the excess is not eliminated by resignations,

such number of that category as is required to eliminate the excess shall cease to hold office in accordance with paragraphs (2) and (3).

(2) The governors who are to cease to hold office shall be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it shall be done by drawing lots.

(4) For the purposes of this regulation, additional co-opted governors nominated by a particular category of person shall be treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors shall not apply to the reconstitution of the governing body under these Regulations.

Land

16. Schedule 4 has effect in relation to land.

Transitional provisions

17. Where a community or voluntary controlled school changes category to become a voluntary aided, or foundation school anything done before the implementation date by the local education authority as admission authority under any provision in Chapter 1 of Part III of the Act (admission arrangements) shall, from the implementation date, have effect as if done by the governing body.

18. Where a foundation or voluntary aided school changes category to become a community or voluntary controlled school anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part III of the Act (admission arrangements) shall, from the implementation date, have effect as if done by the local education authority.

19. Any period of consultation which takes place before the coming into force of these Regulations shall be counted for the purpose of determining whether the duty under section 28(5) of the Act, as it has effect with modifications by virtue of regulation 7 of and Part I of Schedule 1 to these Regulations, has been complied with.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(8).

17th July 2001

D. Elis-Thomas
The Presiding Officer of the National Assembly

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SCHEDULE 1

Regulation 7

PART I

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

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 6 with the modifications specified in this Schedule in relation to those provisions⁽⁹⁾.

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 (wherever they occur) 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 2 or 3 of Schedule 8”
Adran/section 28(5)	“the relevant body or promoters”	“the relevant body”
Atodlen/Schedule 6 paragraff/paragraph 6	“section 28, 29 or 31”	“paragraph 2 or 3 of Schedule 8”
Atodlen/Schedule 6 paragraff/paragraph 7(1)	“section 28, 29 or 31”	“paragraph 2 or 3 of Schedule 8”
Atodlen/Schedule 6 paragraff/paragraph 8(2)	“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
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-baragraff/sub-paragraph (4)

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

⁽⁹⁾ The relevant text is set out as so modified in Part II of Schedule 1.

Tabl/Table 3

Colofn/column 1	colofn/column 2
Adran/section 28(3)	<p>“(3) Proposals under paragraph 2 or 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 relevant 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 stating the current category and the proposed new category, (v) the rationale of the proposal, (vi) a statement identifying the admission authority for the school after the change of category has taken place and drawing attention to any proposed change in that admission authority, (vii) if the new category of school is a voluntary school, a statement that it is proposed that the school will— <ul style="list-style-type: none"> (a) have (or continue to have) a foundation established otherwise than under this Act, or (b) belong (or continue to belong) to a group of schools for which a foundation body acts, as the case may be, (viii) if the new category of school is a foundation school, a statement that the school will — <ul style="list-style-type: none"> (a) have (or continue to have) a foundation established otherwise than under this Act, or

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Colofn/column 1	colofn/column 2
	<ul style="list-style-type: none"> (b) belong (or continue to belong) to a group of schools for which a foundation body acts, or (c) be a foundation school not falling within either of sub-paragraphs <ul style="list-style-type: none"> (viii) (a) or (b) above; (ix) if the new category of school is a foundation special school, a statement that it is proposed that the school will have a foundation established otherwise than under this Act; (x) if it is proposed that the school will have (or continue to have) a foundation other than by belonging to a group of schools for which a foundation body acts, the identity of that foundation; (xi) if it is proposed that the school will belong (or continue to belong) to a group of schools for which a foundation body acts or will act, the identity of that body and the identity of the other schools in the group for which the foundation body performs or will perform the functions set out in section 21(4); and (xii) if at the time the proposal is published section 15 applies to the school, a statement that that section applies by virtue of subsection (1), (4) or (6) of that section, as the case may be; and (b) 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.”

Colofn/column 1	colofn/column 2
Adran/section 28(7)	<p>“(7) Where any proposals are published under paragraph 2 or 3 of Schedule 8, the relevant body shall send to the National Assembly for Wales—</p> <ul style="list-style-type: none">(a) a copy of the published 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 maintained 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 (i)), the previous school year—<ul style="list-style-type: none">(i) the lower and upper age limits of the pupils attending the school,(ii) the capacity of the school or in the case of a special school the number of pupils for whom the school is organised to make provision, and(iii) the number of pupils at the school,and a forecast of the matters specified in sub-paragraphs (ii) and (iii) for each of the subsequent five years;(e) a list of all the maintained 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) in the case of a special school—

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Colofn/column 1	colofn/column 2
	<ul style="list-style-type: none"> (i) details of the special educational needs of pupils for whom the school is organised to make provision, (ii) details of the information referred to in sub-paragraph (i) in respect of each community special or foundation special school within the radius of the school mentioned in paragraph (c), and (iii) details of all local education authorities which maintain statements of special educational needs for pupils at the school;
	(g) a breakdown of any costs involved in the change of category;
	(h) information about whether the school is a day or boarding school or a school taking both day and boarding pupils;
	(i) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996(10)(b) during the period starting three years before the date of the publication 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) if the school is a voluntary or foundation school with a religious character, a statement as to whether the school has been inspected under section 23 of the School Inspections Act 1996 during the period starting three years before the date of publication of the proposals and, where the school has been so inspected during that period, the date of the inspection and details of the outcome of the inspection;
	(k) if the proposal is that a school should become a voluntary aided school—

(10) 1996 c. 57. Subsection (3) of section 10 is amended and subsections (4A) and (4B) inserted by paragraph 6 of Schedule 6 to the Education Act 1997 (c. 44) and the section is further amended by paragraph 191 of Schedule 30 to the Act.

Colofn/column 1	colofn/column 2
	<ul style="list-style-type: none"> (i) an estimate of the probable expenses of the school for the five years commencing on the implementation date for which the governing body will be liable under Schedule 3; and (ii) a statement that the governing body for a period of at least five years commencing on the implementation date will be willing and able to carry out their obligations under Schedule 3 (upon the assumption that they will receive a grant under paragraph 5 of Schedule 3 of 85 per cent of qualifying expenditure); (l) details of the exercise in relation to the school of any power granted to the local education authority or to the National Assembly for Wales under Chapter IV of Part I during the period starting three years before the date of the publication of the proposals; (m) details of the exercise, in relation to the governing body, of any power granted to the local education authority or to the National Assembly for Wales under Schedule 15, during the period starting three years before the date of publication of the proposals; (n) 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; (o) details of any trusts on which the school premises are held or it is proposed will be held; (p) particulars of the body or authority to whom, on the date on which it is proposed that the school should change category, it is proposed that land or other property should be transferred in accordance with regulations.”

Adran/Section 28(8)

“(8) Schedule 6 has effect in relation to the procedure for dealing with proposals under paragraph 2 or 3 of Schedule 8.”

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Colofn/column 1	colofn/column 2
Adran/Section 28(10)	“(10) In this section ‘the relevant body’ means, in the case of proposals published by a local education authority, the authority, or, in the case of proposals published by a governing body, the governing body.”
Adran/Section 28(11)	“(11) In this Part ‘area’ (without more) means a local education authority area.”
Atodlen/Schedule 6 paragraff/paragraph 7(3)	“(3) Any objections under this paragraph shall be sent to the National Assembly for Wales— <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 proposals are in respect of a school to which section 15 applies.”
Atodlen/Schedule 6 paragraff/paragraph 8(1)	“(1) Proposals published under paragraph 2 or 3 of Schedule 8 require approval under this paragraph.”
Atodlen/Schedule 6 paragraff/paragraph 8(3)	“(3) Any approval given under this paragraph may be expressed to take effect only if— <ul style="list-style-type: none"> (a) a scheme relating to any charity connected with the school is made by a date specified in the approval, (b) the National Assembly for Wales gives notice under regulation 6(1) of the Education (Foundation Body) (Wales) Regulations 2001⁽¹¹⁾ (that a foundation body shall become operative and that a school shall form part of a group for which the foundation body shall act) by a date specified in the approval, (c) the National Assembly for Wales makes a declaration under regulation 21(3) of those Regulations (that the school shall form part of a group for which a foundation body acts) by a date specified in the approval, (d) the National Assembly for Wales makes a declaration under regulation 22(1) of those Regulations

⁽¹¹⁾ O.S. 2001/2709 (W.228).

Colofn/column 1	colofn/column 2
	(that the school shall leave a group for which a foundation body acts) by a date specified in the approval.”.
Atodlen/Schedule 6 paragraff/paragraph 8(5)	<p>“(5) Sub-paragraph (1) does not prevent the governing body or local education authority by whom any proposals have been published under paragraph 2 of Schedule 8 from withdrawing such proposals by notice in writing given to the National Assembly for Wales at any time before the proposals are approved under this paragraph.</p> <p>(6) Sub-paragraph (1) does not prevent the governing body by whom proposals have been published under paragraph 3 of Schedule 8 from withdrawing such proposals with the consent (in writing) of the National Assembly for Wales at any time before the proposals are approved under this paragraph.”</p>
Atodlen/Schedule 6 paragraff/paragraph 10(1)	“(1) Where any proposals published under paragraph 2 or 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)	<p>“(2) In the case of proposals published by the governing body at the request of the governing body or in the case of proposals published by the local education authority at the request of the local education authority, the National Assembly for Wales—</p> <p>(a) may modify the proposals after consulting—</p> <p>(i) in the case of proposals published by the local education authority, the governing body,</p> <p>(ii) in the case of proposals published by the governing body, the local education authority; and</p> <p>(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 event in question must occur.”</p>

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PART II

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

SECTION 28

- (3) Proposals under paragraph 2 or 3 of Schedule 8 shall—
- (a) contain the following information—
 - (i) the name of the relevant 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 stating the current category and the proposed new category,
 - (v) the rationale of the proposal,
 - (vi) a statement identifying the admission authority for the school after the change of category has taken place and drawing attention to any proposed change in that admission authority,
 - (vii) if the new category of school is a voluntary school, a statement that it is proposed that the school will—
 - (a) have (or continue to have) a foundation established otherwise than under this Act, or
 - (b) belong (or continue to belong) to a group of schools for which a foundation body acts, as the case may be,
 - (viii) if the new category of school is a foundation school, a statement that the school will—
 - (a) have (or continue to have) a foundation established otherwise than under this Act, or
 - (b) belong (or continue to belong) to a group of schools for which a foundation body acts, or
 - (c) be a foundation school not falling within either of sub-paragraphs (viii) (a) or (b) above;
 - (ix) if the new category of school is a foundation special school, a statement that it is proposed that the school will have a foundation established otherwise than under this Act;
 - (x) if it is proposed that the school will have (or continue to have) a foundation other than by belonging to a group of schools for which a foundation body acts, the identity of that foundation;
 - (xi) if it is proposed that the school will belong (or continue to belong) to a group of schools for which a foundation body acts or will act, the identity of that body and the identity of the other schools in the group for which the foundation body performs or will perform the functions set out in section 21(4); and
 - (xii) if at the time the proposal is published section 15 applies to the school, a statement that that section applies by virtue of subsection (1), (4) or (6) of that section, as the case may be; and
 - (b) 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 2 or 3 of Schedule 8, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the National Assembly for Wales.

(7) Where any proposals are published under paragraph 2 or 3 of Schedule 8, the relevant body shall send to the National Assembly for Wales—

- (a) a copy of the published 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 maintained 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 (i)), the previous school year—
 - (i) the lower and upper age limits of the pupils attending the school,
 - (ii) the capacity of the school or in the case of a special school the number of pupils for whom the school is organised to make provision, and
 - (iii) the number of pupils at the school,and a forecast of the matters specified in sub-paragraphs (ii) and (iii) for each of the subsequent five years;
- (e) a list of all the maintained 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) in the case of a special school—
 - (i) details of the special educational needs of pupils for whom the school is organised to make provision,
 - (ii) details of the information referred to in sub-paragraph (i) in respect of each community special or foundation special school within the radius of the school mentioned in paragraph (c), and
 - (iii) details of all local education authorities which maintain statements of special educational needs for pupils at the school;
- (g) a breakdown of any costs involved in the change of category;
- (h) information about whether the school is a day or boarding school or a school taking both day and boarding pupils;
- (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 publication 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) if the school is a voluntary or foundation school with a religious character, a statement as to whether the school has been inspected under section 23 of the School Inspections Act

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1996 during the period starting three years before the date of publication of the proposals and, where the school has been so inspected during that period, the date of the inspection and details of the outcome of the inspection;

- (k) if the proposal is that a school should become a voluntary aided school—
 - (i) an estimate of the probable expenses of the school for the five years commencing on the implementation date for which the governing body will be liable under Schedule 3; and
 - (ii) a statement that the governing body for a period of at least five years commencing on the implementation date will be willing and able to carry out their obligations under Schedule 3 (upon the assumption that they will receive a grant under paragraph 5 of Schedule 3 of 85 per cent of qualifying expenditure);
 - (l) details of the exercise in relation to the school of any power granted to the local education authority or to the National Assembly for Wales under Chapter IV of Part I during the period starting three years before the date of the publication of the proposals;
 - (m) details of the exercise, in relation to the governing body, of any power granted to the local education authority or to the National Assembly for Wales under Schedule 15, during the period starting three years before the date of publication of the proposals;
 - (n) 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;
 - (o) details of any trusts on which the school premises are held or it is proposed will be held;
 - (p) particulars of the body or authority to whom, on the date on which it is proposed that the school should change category, it is proposed that land or other property should be transferred in accordance with regulations.
- (8) Schedule 6 has effect in relation to the procedure for dealing with proposals under paragraph 2 or 3 of Schedule 8.
- (10) In this section ‘the relevant body’ means, in the case of proposals published by a local education authority, the authority, or, in the case of proposals published by a governing body, the governing body.
- (11) In this Part ‘area’ (without more) means a local education authority area.

SCHEDULE 6,

PART II

6. This Part of this Schedule applies to proposals published under paragraph 2 or 3 of Schedule 8, which relate to a school in Wales.

7.—(1) Any person may make objections to any proposals published under paragraph 2 or 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 proposals are in respect of a school to which section 15 applies.

8.—(1) Proposals published under paragraph 2 or 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) a scheme relating to any charity connected with the school is made by a date specified in the approval,
- (b) the National Assembly for Wales gives notice under regulation 6(1) of the Education (Foundation Body) (Wales) Regulations 2001 (that a foundation body shall become operative and that a school shall form part of a group for which the foundation body shall act) by a date specified in the approval,
- (c) the National Assembly for Wales makes a declaration under regulation 21(3) of those Regulations (that the school shall form part of a group for which a foundation body acts) by a date specified in the approval,
- (d) the National Assembly for Wales makes a declaration under regulation 22(1) of those Regulations (that the school shall leave a group for which a foundation body acts) 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) Sub-paragraph (1) does not prevent the governing body or local education authority by whom any proposals have been published under paragraph 2 of Schedule 8 from withdrawing such proposals by notice in writing given to the National Assembly for Wales at any time before the proposals are approved under this paragraph.

(6) Sub-paragraph (1) does not prevent the governing body by whom proposals have been published under paragraph 3 of Schedule 8 from withdrawing such proposals with the consent (in writing) of the National Assembly for Wales at any time before the proposals are approved under this paragraph.

10.—(1) Where any proposals published under paragraph 2 or 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) In the case of proposals published by the governing body at the request of the governing body or in the case of proposals published by the local education authority at the request of the local education authority, the National Assembly for Wales—

- (a) may modify the proposals after consulting—
 - (i) in the case of proposals published by the local education authority, the governing body,
 - (ii) in the case of proposals published by the governing body, 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 event in question must occur.

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- (3) If the National Assembly for Wales is satisfied—
- (a) that implementation of the proposals would be unreasonably difficult; or
 - (b) that circumstances have so altered since approval was given under paragraph 8 that implementation of the proposals would be inappropriate,
- it may determine that sub-paragraph (1) shall cease to apply to the proposals.

(5) Where—

- (a) any approval under paragraph 8 was given in accordance with sub-paragraph (3) of that paragraph, and
- (b) the event specified under that sub-paragraph does not occur by the date in question (whether as specified under that sub-paragraph or as specified under sub-paragraph (2) (b) above),

sub-paragraph (1) above shall cease to apply to the proposals.

(6) Where, by virtue of sub-paragraph (3) or (5), sub-paragraph (1) ceases to apply to any proposals, those proposals shall be treated for the purposes of this Schedule as if they had been rejected under paragraph 8.

SCHEDULE 2

Regulation 9

TRANSFER OF STAFF

PART I

1.—(1) Where—

- (a) a community or voluntary controlled school changes category to become a foundation or voluntary aided school; or
- (b) a community special school changes category to become a foundation special school,

the contract of employment between a person to whom this paragraph applies and the local education authority shall have effect from the implementation date as if originally made between that person and the governing body.

2. Without prejudice to paragraph 1—

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

3. Subject to paragraph 4, paragraph 1 shall apply to any person who immediately before the implementation date is employed by the local education authority to work solely at the school in question.

4. Paragraph 1 shall not apply to—

- (a) any person whose contract of employment terminates on the day immediately preceding the implementation date; or

- (b) any person employed by the local education authority to work at the school solely in connection with the provision of meals.

5. A person who before the implementation date has been appointed by the local education authority to work at the school as from the implementation date or a date thereafter shall be treated for the purposes of paragraph 3 as if that person had been employed by the local education authority immediately before the implementation date to do such work at the school as he or she would have been required to do on or after that date under his or her contract of employment with the local education authority.

6. Paragraphs 1 and 2 are without prejudice to any right of an employee to terminate the contract if a substantial change is made to the employee's detriment in his or her working conditions, but no such right shall arise by reason only of the change in employer effected by these Regulations.

PART II

7.—(1) Where—

- (a) a foundation or voluntary aided school changes category to become a community or voluntary controlled school; or
- (b) a foundation special school changes category to become a community special school,

the contract of employment between a person to whom this paragraph applies and the governing body shall have effect from the implementation date as if originally made between that person and the local education authority.

8. Without prejudice to paragraph 7—

- (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 paragraph 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 date to have been done by or in relation to the local education authority.

9. Subject to paragraph 10, paragraph 7 shall apply to any person who immediately before the implementation date is employed by the governing body to work at the school in question.

10. Paragraph 7 shall not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

11. 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 paragraph 9 as if that person had been employed by the governing body immediately before the implementation date to do such work at the school as he or she would have been required to do on or after that date under his or her contract of employment with the governing body.

12. Paragraphs 7 and 8 are without prejudice to any right of an employee to terminate the contract if a substantial change is made to the employee's detriment in his or her working conditions, but no such right shall arise by reason only of the change in employer effected by these Regulations.

PART III

13.—(1) This paragraph applies where a voluntary controlled school or a foundation school with a religious character changes category to become a voluntary aided school with a religious character.

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(2) Where immediately before the implementation date a teacher at a voluntary controlled or foundation school enjoyed, by virtue of section 60(2) of the Act, rights not conferred on him or her on or after the implementation date by section 60 as a teacher at a voluntary aided school, he or she shall continue to enjoy those rights until he or she ceases to be employed as a teacher at the voluntary aided school.

SCHEDULE 3

Regulations 11 and 12

INSTRUMENTS OF GOVERNMENT

PART I

Instrument of Government: Foundation Schools and Foundation Special Schools

1. The name of the school is
2. The category to which the school belongs is
3. The name of the governing body is
4. The governing body shall consist of:
 - (a) x parent governors;
 - (b) x LEA governors;
 - (c) x teacher governors;
 - (if applicable
 - (d) one staff governor;)
 - (if applicable
 - (e) x foundation governors;)
 - (if applicable
 - (f) x partnership governors;)
 - (g) x co-opted governors (including any governors referred to in paragraph 6 or 7 below);
 - (h) the head teacher (except at any time when he or she has given written notice to the clerk to the governing body of the school that he or she chooses not to be a governor).
5. Total number of governors (except at any time when the head teacher has given notice as above that he or she chooses not to be a governor, when the total number of governors will be).
(if applicable
6. x 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
7. One co-opted governor will be 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.)
(Where the school is to have foundation governors
8. Subject to regulation 14 of the Change of Category of Maintained Schools (Wales) Regulations 2001 which provides for the continuation in office of certain governors, set out the name of any

foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on the change of category and thereafter when there are vacancies to be filled)

(if applicable)

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

name of office

- (b) ...[or ... and ... jointly] shall 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 the 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 or her governorship exists.

Repeat 9(a) and (b) as necessary where there is to be more than one ex-officio foundation governorship.)

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

(Under regulation 15 of the Change of Category of Maintained Schools (Wales) Regulations 2001, this procedure will not apply to the reconstitution of the governing bodies).

- 11.** If the school has a religious character, describe the ethos of the school.

12. Subject to regulation 10(2) of the Change of Category of Maintained Schools (Wales) Regulations 2001, this instrument of government comes into effect on the *[insert implementation date]*.

- 13.** This instrument of government was made by order of Local Education Authority on

PART II

Instrument of Government: Voluntary Aided Schools

1. The name of the school is ...
2. The school is a voluntary aided school.
3. The name of the governing body is ...
4. The governing body shall consist of:
 - (a) x foundation governors (except at any time when the head teacher has given notice that he or she chooses not to be a governor, when the number of foundation governors will be x);
 - (b) x parent governors;
 - (c) x LEA governors;
 - (d) x teacher governors;
(if applicable)
 - (e) one staff governor);
(if applicable)
 - (f) x co-opted governors (*insert total number of governors referred to in paragraphs 6, 7 or 8 below, if any*);
 - (g) the head teacher (except at any time when he or she has given written notice to the clerk to the governing body of the school that he or she chooses not to be a governor).

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5. Total number of governors (except at any time when the head teacher has given notice as above that he or she 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. x 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 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.)

9. Subject to regulation 14 of the Change of Category of Maintained Schools (Wales) Regulations 2001, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.

(if applicable)

(a) (a) The holder of the following office shall be a foundation governor ex-officio: *name of office*

(b) ... [or ... and ... jointly] shall 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 the 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 or her governorship exists.

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

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

(Under regulation 15 of the Change of Category of Maintained Schools (Wales) Regulations 2001 this procedure will not apply to the reconstitution of governing bodies).

12. If the school has a religious character, describe the ethos of the school.

13. Subject to regulation 10(2) of the Change of Category of Maintained Schools (Wales) Regulations 2001, this instrument of government comes into effect on the [*insert implementation date*].

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

PART III

Instrument of Government: Voluntary Controlled Schools

1. The name of the school is ...

2. The school is a voluntary controlled school.

3. The name of the governing body is ...

4. The governing body shall consist of:

- (a) x parent governors;
- (b) x LEA governors;
- (c) x teacher governors;
(if applicable
- (d) one staff governor;)
- (e) x foundation governors;
- (f) x 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 or she has given written notice to the clerk to the governing body of the school that he or she chooses not to be a governor).

5. Total number of governors (except at any time when the head teacher has given notice as above that he or she 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 minor authorities in relation to the school.)
(if applicable

7. x 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.)

9. Subject to regulation 14 of the Change of Category of Maintained Schools (Wales) Regulations 2001, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.
(if applicable

- (a) (a) The holder of the following office shall be a foundation governor ex-officio: *name of office*
- (b) ... [or ... and ... jointly] shall 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 or her governorship exists.

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

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

(Under regulation 15 of the Change of Category of Maintained Schools (Wales) Regulations 2001 this procedure will not apply to the reconstitution of governing bodies).

12. If the school has a religious character describe the ethos of the school.

13. Subject to regulation 10(2) of the Change of Category of Maintained Schools (Wales) Regulations 2001 this instrument of government comes into effect on [insert implementation date].

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

PART IV

Instrument of Government: Community Schools

1. The name of the school is
2. The school is a community school.
3. The name of the governing body is
4. The governing body shall consist of:
 - (a) x parent governors;
 - (b) x LEA governors;
 - (c) x teacher governors;
 - (if applicable
 - (d) one staff governor;)
 - (e) x co-opted governors (including any governors referred to in paragraph 6, 7 or 8 below);
 - (f) the head teacher (except at any time when he or she has given written notice to the clerk to the governing body of the school that he or she chooses not to be a governor).
5. Total number of governors (except at any time when the head teacher has given notice as above that he or she 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 minor authorities in relation to the school).
(if applicable
7. x 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 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.)
9. Subject to regulation 10(2) of the Change of Category of Maintained Schools (Wales) Regulations 2001, this instrument of government comes into effect on (insert implementation date).
10. This instrument was made by order of Local Education Authority on

PART V

Instrument of Government: Community Special Schools

1. The name of the school is
2. The school is a community special school.
3. The name of the governing body is
4. The governing body shall consist of:
 - (a) x parent governors;
 - (b) x LEA governors;

- (c) x teacher governors;
(if applicable
 - (d) one staff governor;)
 - (e) x co-opted governors (including any governors referred to in paragraph 6, 7 or 8 below);
 - (f) the head teacher (except at any time when he or she has given written notice to the clerk to the governing body of the school that he or she chooses not to be a governor);
(if applicable
 - (g) one representative governor appointed by ... [or ... and ... jointly].
5. Total number of governors (except at any time when the head teacher has given notice as above that he or she chooses not to be a governor, when the total number of governors will be).
(if applicable
6. x 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
7. One co-opted governor will be 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.)
8. Subject to regulation 10(2) of the Change of Category of Maintained Schools (Wales) Regulations 2001, this instrument of government comes into effect on the [*insert implementation date*].
9. This instrument of government was made by order of Local Education Authority on

PART VI

Sub-paragraphs substituted for sub-paragraphs (2) to (6) of paragraph 3 of Schedule 12 to the Act

“(2) Where the school has, or it is proposed that it will have, foundation governors, the governing body shall not submit the draft to the local education authority unless the following persons have agreed to the contents of the draft, namely—

- (a) the existing foundation governors; or
- (b) if there are no existing foundation governors, the persons whom it is proposed will be entitled to appoint foundation governors;
- (c) any trustees under a trust deed relating to the school;
- (d) in the case of a Church in Wales School or Roman Catholic Church School, the appropriate diocesan authority.

(3) On receiving the draft the authority shall consider whether it complies with all applicable statutory provisions, and if—

- (a) the authority are content with the draft; or
- (b) there is agreement between the authority, the governing body and (if the school has foundation governors or it is proposed that the school will have foundation governors) the persons mentioned in sub-paragraph (2) that the draft should be revised to any extent,

the Instrument shall be made by order of the authority in the form of the draft or (as the case may be) in the form of the revised draft.

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(4) If, in the case of a school which has foundation governors or it is proposed should have foundation governors, there is at any time disagreement as to the contents of the draft among the bodies and persons mentioned in sub-paragraph (3)(b), any of those bodies or persons may refer the draft to the National Assembly for Wales; and on such a reference the National Assembly shall give such direction as it thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong.

(5) If neither of paragraphs (a) and (b) of sub-paragraph (3) applies in the case of a school which does not have foundation governors and it is proposed should not have such governors, the authority shall—

- (a) notify the governing body of the reasons why they are not content with the draft Instrument, and
- (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the draft;

and the Instrument shall be made by order of the authority either in the form of a revised draft agreed between the authority and the governing body or (in the absence of such agreement) in such form as the authority thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong.

(6) When taking any decision as to the name of the school the governing body, the authority and (if the school has foundation governors or it is proposed that it should have foundation governors) the persons mentioned in paragraph (2) shall have regard to any guidance given from time to time by the National Assembly for Wales.”.

SCHEDULE 4

Regulation 16

Transfer of land

Part I

Effects of transfers under this Schedule

1.—(1) Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land, and
- (b) subsisting immediately before the implementation date,

shall also be transferred to, and by virtue of these Regulations, vest in, that body.

(2) Any reference in this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.

(3) Transfers of land under this Schedule shall not affect the rights of the governing body in relation to the land under Schedule 13 to the Act.

2. In its application to transfers under this Schedule, references in Schedule 10 to the Education Reform Act 1988(12) to the transfer date shall be read as references to the implementation date.

(12) Schedule 10 is amended by section 47(a) of the Education Act 1993 (substitution of “local authority” for “local education authority”); by section 136(2) of the Act (substitution of “Education Transfer Council” for “Education Assets Board”); and by paragraphs 3 to 9 of the Act.

Part II

Rules relating to transfers

3.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a community school should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of a group for which a foundation body acts.

(2) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

(3) Sub-paragraph (4) applies where—

- (a) any proposals that a community school should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will be a member of a group for which a foundation body acts.

(4) Where this sub-paragraph applies, any land, other than land held on trust, which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

4.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a community school should become a voluntary aided school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided school) will not be a member of a group for which a foundation body acts.

(2) Where this sub-paragraph applies, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

(3) Sub-paragraph (4) applies where—

- (a) any proposals that a community school should become a voluntary aided school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided school) will be a member of a group for which a foundation body acts.

(4) Where this sub-paragraph applies, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

5.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a community school should become a voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and

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- (b) as from the implementation date the school (as a voluntary controlled school) will not be a member of a group for which a foundation body acts.
 - (2) Where this sub-paragraph applies, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.
 - (3) Sub-paragraph (4) applies where—
 - (a) any proposals that a community school should become a voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school (as a voluntary controlled school) will be a member of the group for which a foundation body acts.
 - (4) Where this sub-paragraph applies, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.
- 6.—**(1) Sub-paragraph (2) applies where any proposals that a foundation school which is not part of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.
- (2) Where this sub-paragraph applies—
 - (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
 - (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.
 - (3) Sub-paragraph (4) applies where any proposals that a foundation school which is part of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.
 - (4) Where this sub-paragraph applies—
 - (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
 - (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.
- 7.—**(1) Sub-paragraph (2) applies where—
- (a) any proposals that a foundation school which is not a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school (as a voluntary aided or controlled school) will not be a member of such a group.
- (2) Where this sub-paragraph applies any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation

school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

8.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a foundation school which is not a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or controlled school) will be a member of such a group.

(2) Where this sub-paragraph applies, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

(3) Sub-paragraph (4) applies where—

- (a) any proposals that a foundation school which is a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or voluntary controlled school) will not be a member of such a group.

(4) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

9.—(1) Sub-paragraph (2) applies where any proposals that a voluntary aided school which is not part of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(2) Where this sub-paragraph applies—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the voluntary aided school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) Sub-paragraph (4) applies where any proposals that a voluntary aided school which is a member of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(4) Where this sub-paragraph applies—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

10.—(1) Sub-paragraph (2) applies where—

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- (a) any proposals that a voluntary aided school should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act;
 - (b) the school (as a voluntary aided school) is not a member of a group for which a foundation body acts; and
 - (c) the school (as a foundation school) will not be a member of such a group.
- (2) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held by the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the governing body.
- (3) Sub-paragraph (4) applies where—
- (a) any proposals that a voluntary aided school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school (as a foundation school) will be a member of such a group.
- (4) Where this sub-paragraph applies, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.
- (5) Sub-paragraph (6) applies where—
- (a) any proposals that a voluntary aided school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.
- (6) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school or was held or used by the local education authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—
- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
 - (b) if the school has no trustees, the governing body.
- 11.—**(1) Sub-paragraph (2) applies where—
- (a) any proposals that a voluntary aided school or a voluntary controlled school which is not a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled or a voluntary aided school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school will be a member of such a group.
- (2) Where this sub-paragraph applies any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.
- (3) Sub-paragraph (4) applies where—
- (a) any proposals that a voluntary aided or a voluntary controlled school which is a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled school or a voluntary aided school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school will not be a member of such a group.

(4) Where this sub-paragraph applies any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school to be held by them on trust for the purposes of the school.

12.—(1) Sub-paragraph (2) applies where any proposals that a voluntary controlled school which is not part of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(2) Where this sub-paragraph applies—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the voluntary controlled school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) Sub-paragraph (3) applies where any proposals that a voluntary controlled school which is part of a group for which a foundation body acts should become a community school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(4) Where this sub-paragraph applies—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

13.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a voluntary controlled school should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act;
- (b) the school (as a voluntary controlled school) is not a member of a group for which a foundation body acts; and
- (c) the school (as a foundation school) will not be a member of such a group.

(2) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held by the local education authority for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the governing body.

(3) Sub-paragraph (4) applies where—

- (a) any proposals that a voluntary controlled school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(4) Where this sub-paragraph applies, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for

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the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

(5) Sub-paragraph (6) applies where—

- (a) any proposals that a voluntary controlled school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(6) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school or was held or used by the local authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

14.—(1) Sub-paragraph (2) applies where any proposals that a community special school should become a foundation special school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(2) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school shall on that date be transferred to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

15.—(1) Sub-paragraph (2) applies where any proposals that a foundation special school should become a community special school have been approved under paragraph 8 of modified Schedule 6 to the Act.

(2) Where this sub-paragraph applies—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

16.—(1) Sub-paragraph (2) applies where—

- (a) any proposals that a foundation, voluntary aided or voluntary controlled school which is a member of a group for which a foundation body acts should become (as the case may be) a foundation, voluntary aided or voluntary controlled school have been approved under paragraph 8 of modified Schedule 6 to the Act; and
- (b) as from the implementation date the school will be a member of a group for which a foundation body acts.

(2) Where this sub-paragraph applies, any land which, immediately before the implementation date, was held by the foundation body mentioned in sub-paragraph (1)(a) above for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body mentioned in sub-paragraph (1)(b) above.

Part III

Outstanding transfers

17. Where immediately before the implementation date in relation to any change of category—

- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school , but
- (b) the land has not yet been so transferred,

Part II of this Schedule shall apply to the school as if it had been so transferred by that time.

Part IV

Transfer of rights to use land

18.—(1) Where paragraph 3, 4, 5 or 14 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the trustees of the school or, if there are no trustees , the governing body .

(2) Where paragraph 6, 9, 12 or 15 applies to a school and any land held by a person or body other than the governing body of the school was, immediately before the implementation date, used for the purposes of the school, any rights and liabilities—

- (a) enjoyed or incurred by the governing body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the local education authority.

(3) Where paragraph 6, 9, 12 or 15 applies to a school and any land held by a person or body other than any trustees or foundation body who hold any land for the purposes of the school was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by any such trustees or foundation body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and vest in, the local education authority in accordance with a transfer of rights and liabilities agreement.

(4) Nothing in this paragraph applies in relation to land to which any of paragraphs 3 to 12 apply.

(5) In this paragraph—

“transfer of rights and liabilities agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (3) between the local education authority and the trustees or foundation body (as the case may be) mentioned in that sub-paragraph, and
- (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

Part V

Land excluded from transfer and restrictions on disposal of land when proposals are pending

19.—(1) Nothing in Part II of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3),
- (b) any rights or liabilities under a contract of employment,
- (c) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan, or
- (d) any liability in tort.

(2) If before the implementation date in relation to any change of category—

- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of Part II of this Schedule, and
- (b) the National Assembly has given its written approval of the agreement,

the land (and any rights or liabilities relating to it) shall be so excluded.

(3) If in default of agreement under sub - paragraph (2)—

- (a) the prospective transferee or transferor have applied to the National Assembly to exclude any land from the operation of Part II of this Schedule, and
- (b) the National Assembly has by order directed its exclusion,

the land (and any rights or liabilities relating to it) shall be excluded.

(4) An agreement under sub - paragraph (2) may provide for the land to be used or held for the purposes of the school (as a school of a new category) on such terms as may be specified in or determined in accordance with the agreement; and directions under sub- paragraph (3)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) shall have effect as if contained in such an agreement.

(5) In this paragraph—

“new category” means one of the categories set out in section 20(1) of the Act;

“the prospective transferee”, in relation to any land, means the body to whom, apart from sub - paragraph (2) or (3), the land would fall to be transferred under Part II of this Schedule; and

“the prospective transferor” shall be construed accordingly.

20.—(1) For the purposes of Part V of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered .

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or; though the motion is moved, the resolution is not passed;

- (c) if consultation is not initiated in accordance with section 28(5) of the Act as modified by these Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the said proposals are rejected by the National Assembly or withdrawn; or
- (f) on the date of implementation of such proposals.

21.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of such land,

except with the consent of the National Assembly.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category are approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972(**13**) (general power to dispose of land) or in any other enactment; and the consent required by this paragraph shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

22.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the National Assembly any action by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category are approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of sub-paragraph (1),

the provisions relating to the transfer of property shall have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

(3) In this paragraph—

(13) 1972 c. 70.

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- (a) “the provisions relating to the transfer of property” means this Schedule and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
- (b) the references to taking action include appropriating property for any purpose.

EXPLANATORY NOTE

(This note does not form part of the Regulations)

These Regulations make provision for community, voluntary controlled, voluntary aided, and foundation schools to become another category of school within those categories, and for a community special school to become a foundation special school and a foundation special school a community special school.

Regulation 2: revokes the Education (Change of Category of Maintained Schools) (Wales) Regulations 1999, subject to savings.

Regulation 3: defines a number of words and expressions used in the Regulations.

Regulation 4: provides that where the Regulations provide for duties to be carried out within a time limit, the local education authority or governing body is not relieved of that duty if they fail to carry it out within the time limit imposed.

Regulation 5: imposes restrictions on schools changing category.

Regulation 6: sets out the types of proposals to which regulations 7–18 apply.

Regulation 7: provides for how proposals for a change of school category are to be made and dealt with, by applying, with modifications, provisions of section 28 of and Schedule 6 to the School Standards and Framework Act 1998 in relation to such proposals. The modifications are set out in Part I of Schedule 1 and Part II of that Schedule shows the effect of such modifications on section 28 and Schedule 6.

Regulation 8: provides that on the implementation date the school shall change category in accordance with the proposals.

Regulation 9 and Schedule 2: deal with the transfer of staff from local education authority employment to governing body employment and vice versa.

Regulations 10–12 and Schedule 3: deal with the making of new instruments of government and prescribe standard forms to be used. Schedule 12 to the 1998 Act, in its application to new instruments of government, is modified as provided in Part VI of Schedule 3.

Regulations 13–15: provide for the reconstitution of the governing body when a school changes category. Certain governors are allowed to remain in office and provision is made for the removal of any governors who are surplus to the requirements of the new instrument of government.

Regulation 16 and Schedule 4: provide for the transfer of land and associated rights and liabilities.

Regulations 17 and 18: contain transitional provisions for cases where there is a change of admission authority when the school changes category.