
WELSH STATUTORY INSTRUMENTS

2001 No. 2709

The Education (Foundation Body) (Wales) Regulations 2001

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Foundation Body) (Wales) Regulations 2001.

(2) These Regulations shall come into force on 1st September 2001.

(3) These Regulations apply only to Wales.

Interpretation

2.—(1) In these Regulations:

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

“the Change of Category Regulations” (“*y Rheoliadau Newid Categori*”) means the Change of Category of Maintained Schools (Wales) Regulations 2001(1);

“the clerk” (“*y cleric*”) means the clerk to the foundation body appointed in accordance with regulation 14;

“community member” (“*aelod cymunedol*”) means a member of the foundation body nominated by the governing bodies of schools within the group and appointed by the governor members of the foundation body under regulation 5(b) or 8(4);

“the dissolution date” (“*y dyddiad diddymu*”) means the date, on which a foundation body is to be dissolved, specified in an order of the National Assembly in accordance with regulation 9(5) or 24(1);

“the formation date” (“*y dyddiad ffurfio*”) means the date, on which a group is to be formed, specified in writing by the National Assembly under regulation 6(1);

“governor member” (“*llywodraethwr-aelod*”) means a member of the foundation body appointed by the governing body of a school under regulation 8(1) or (3) or regulation 21(8);

“group” (“*grŵp*”) means the group of three or more schools for which a foundation body performs the following functions, namely—

(a) to hold property of those schools for the purposes of those schools, and

(b) to appoint foundation governors for those schools;

“initial governor member” (“*llywodraethwr-aelod cychwynnol*”) shall be construed in accordance with regulation 4(4);

“the joining date” (“*y dyddiad ymuno*”) means the date on which a school joins a group, specified in writing by the National Assembly under regulation 21(3);

and “the leaving date” (“*y dyddiad ymadael*”) means the date on which a school leaves a group, specified in writing by the National Assembly under regulation 22(1); and

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

(2) In these Regulations, unless the context otherwise requires, a reference to a numbered regulation or to a Schedule is a reference to a numbered regulation or, as the case may be, to a Schedule to these Regulations and a reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule.

(3) Where any land is transferred to and vests in any body in accordance with these Regulations, any rights or liabilities—

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

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

(4) Expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

Table

financial year <i>blwyddyn ariannol</i>	section 579(1) of the Education Act 1996(2)
foundation <i>gwaddoliad</i>	section 21(3) of the 1998 Act
foundation body <i>corff sefydledig</i>	section 21(4) of the 1998 Act
foundation governor <i>llywodraethwr sefydledig</i>	paragraph 2 of Schedule 9 to the 1998 Act.

(5) A reference to a category in any provision of these Regulations is a reference to one of the categories set out in section 20(1) of the 1998 Act.

Foundation bodies and groups

3.—(1) Subject to paragraph (2)—

- (a) a school may only form part of a group; and
- (b) the governing body of a school may only apply to the National Assembly for the establishment of a foundation body,

if that school is a foundation or voluntary school or if it is a community school which the governing body propose should become a foundation or voluntary school.

(2) A school which has a foundation, other than a foundation body, may not form part of a group and its governing body may not propose the establishment of a foundation body.

Establishment of foundation bodies

4.—(1) A foundation body may only be established under section 21 of the 1998 Act in accordance with the following provisions of this regulation.

(2) The governing bodies of the three or more schools which wish a particular foundation body to be established and which propose to form the group for which the foundation body will act shall together apply to the National Assembly for the establishment of that foundation body.

(3) The application shall contain—

- (a) a statement that the application has been agreed by the governing body of each school;
- (b) a draft instrument of government for the foundation body based on the model set out in Schedule 1; and

- (c) a statement containing—
 - (i) the names of the initial governor members of the foundation body to be appointed in accordance with regulation 8(1);
 - (ii) the date on which it is proposed that the foundation body will be established; and
 - (iii) the category in which it is proposed that each school will enter the group or a statement that a particular school will enter in its existing category.
- (4) If the National Assembly approves the application—
 - (a) a foundation body shall be established as a body corporate under section 21 of the 1998 Act on a date specified by the National Assembly in writing; and
 - (b) on the date of establishment, the initial governor members specified in the application, subject to any changes agreed by the National Assembly with the governing body or bodies in question, shall be the initial governor members of the foundation body.
- 5. After establishment of the foundation body and before the formation date, the initial governor members must—
 - (a) adopt the instrument of government in the form approved by the National Assembly;
 - (b) appoint community members from those nominated in accordance with regulation 8(2); and
 - (c) select persons to be appointed as foundation governors to schools in the group,

and the foundation body may only exercise its powers before that date for or in connection with those purposes.

6.—(1) If the National Assembly is satisfied that the membership of the foundation body has been properly constituted, that the instrument of government has been adopted and that the schools have or will on entering the group become schools of the category specified in the application, it shall by notice in writing provide that—

- (a) the foundation body shall perform the functions conferred on it by these Regulations for the schools in the group as from a date specified by it; and
- (b) the schools specified in the application shall on that date form the group for which the foundation body is to act.

(2) If the National Assembly is not so satisfied within what is, in its opinion, a reasonable time in all the circumstances it may by order dissolve the foundation body on such date as it may specify in the order.

(3) Where any of the schools is entering the group under a different category from its existing category, the date specified in accordance with paragraph (1) must be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(4) Subject to paragraph (5), on the date specified in accordance with paragraph (1) any land, other than land held on trust, which, immediately before that date, is held by the governing body of any school entering the group for the purposes of that school shall on that date be transferred to, and by virtue of this regulation vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(5) Paragraph (4) does not apply in relation to a school where following approval of proposals published in accordance with the Change of Category Regulations, the school is entering the group in a different category from its existing category.

7. The governing body of any school in, or to be in, the group which is not entering the group in a different category from its existing category must notify the local education authority that the

instrument of government for the school should identify the foundation body as the appointing body for the purpose of appointing foundation governors.

Membership of foundation bodies

8.—(1) The governing body of each school which proposes the establishment of the foundation body must appoint a member of the governing body to be a governor member of that foundation body.

(2) The governing bodies of the schools which propose the establishment of the foundation body must nominate persons to be community members.

(3) If a governor member ceases to hold office then—

- (a) the clerk must notify the governing bodies of all schools in the group; and
- (b) the governing body who appointed that governor member must appoint a new governor member at their next full meeting.

(4) If a community member ceases to hold office or there is a need to appoint a new community member because a school has joined the group—

- (a) the clerk must notify the governing bodies of all schools in the group; and
- (b) the governor members of the foundation body must appoint a replacement or a new community member on the basis of nominations made by the governing bodies of schools in the group.

9.—(1) The quorum for a decision of the governing body of a school under regulation 8 shall be two - thirds (rounded up to a whole number) of the governors in post who are entitled to vote.

(2) The term of office of a member of a foundation body shall be four years but a member may be re-appointed.

(3) A person may not vote for his or her own appointment or re-appointment as a member of a foundation body.

(4) Vacancies must be filled by the next meeting of the foundation body or the meeting after if the vacancy arises less than three months before the next meeting.

(5) If a vacancy of a member is not filled in accordance with paragraph (4) the National Assembly may by order on such date as it may specify in the order dissolve the foundation body and the provisions of regulation 24(1)(d) and (e) and (2) to (5) shall apply to such dissolution save that the 6 months period referred to in regulation 24(2) shall commence on such date as may be specified by the National Assembly in writing.

Eligibility and disqualification

10.—(1) A foundation governor who has been appointed to a school in the group by a foundation body may not be a governor member of that foundation body and may not vote on appointments to the foundation body.

(2) A community member must—

- (a) have business or other interests in the local community;
- (b) not be a parent of a registered pupil, a member of the governing body, a member of the teaching or non-teaching staff or a registered pupil, at any school in the group;
- (c) not be an elected member of a local education authority which maintains any school in the group or a person employed by such an authority in their capacity as a local education authority; and
- (d) have attained the age of 18 years at the date of his or her appointment.

(3) A governor member of the foundation body shall cease to hold office on ceasing to be a member of the governing body of the school which appointed him or her.

(4) A member of the foundation body may not be an employee of that body.

Disqualification for holding office

11. Schedule 2 to these Regulations shall have effect in relation to the disqualification of a person for holding, or continuing to hold, office as a member of a foundation body.

12. A member of a foundation body may resign at any time by notice in writing to the clerk.

Restrictions

13. A member of a foundation body shall receive no payment, other than reasonable and necessary out-of-pocket expenses, and may take no direct or indirect benefit from any contracts entered into by the foundation body or have any interest in any land held by the foundation body.

Clerk

14.—(1) The foundation body must appoint a person to be its clerk.

(2) A member of a foundation body may not act as clerk, but where the clerk fails to attend a meeting, the foundation body may appoint a member to be the clerk for the purposes of that meeting (without affecting his or her position as a member).

Conduct of meetings

15.—(1) The foundation body must—

- (a) elect a member as chairman at the first ordinary meeting of each year;
- (b) determine a quorum which must not be less than half (rounded up to the nearest whole number) of the total number of members of the foundation body when complete; and
- (c) keep minutes of the proceedings of meetings and make them available to the governing bodies of schools in the group on request.

(2) At the first meeting the foundation body must appoint foundation governors to schools in the group in accordance with the instruments of government of the schools in question.

Annual report

16.—(1) The foundation body must publish an annual report of its activities for the information of the governing bodies of the schools in the group setting out—

- (a) the names of each member, drawing attention to any changes since the last annual report and identifying the chairman;
- (b) a summary of the decisions and actions of the foundation body since the last annual report was published unless minutes of the foundation body's meetings are published separately;
- (c) a statement of any income and expenditure showing the balance as at the end of each financial year falling within the period of the report; and
- (d) a statement of any significant disposals, purchases or gifts and of any outstanding liabilities at the end of each financial year falling within the period of the report.

(2) The first report must be issued within two years of the formation date and may deal with a period longer than a year.

(3) Following the first report, annual reports must be issued no later than the next meeting after the end of the year being reported on.

Accounts

17.—(1) The foundation body must maintain accounts, ensure that they are audited by independent external auditors and publish in each financial year a copy of the accounts for the previous financial year as audited together with a statement that they have been audited.

(2) The foundation body must comply within 1 month with a written request from any person that he or she be supplied with a copy of the body's most recent accounts.

Information and records

18.—(1) The foundation body shall provide the National Assembly with such information as it requests from time to time.

(2) The foundation body must keep all records for at least 6 years.

Functions of foundation bodies

19. Foundation bodies shall have the following functions—

- (a) to hold land and other property of schools in the group for the purposes of those schools;
- (b) to appoint foundation governors to every school in the group; and
- (c) to promote co-operation between schools in the group.

Additional powers

20.—(1) A foundation body may in connection with its functions—

- (a) borrow such sums as the foundation body thinks fit and in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the foundation body;
- (b) accept gifts of money, land or other property, and apply it or hold it for the purposes of the schools in the group;
- (c) engage in fund raising so far as is compatible with its charitable status;
- (d) acquire and dispose of any land or property;
- (e) enter into contracts including contracts of employment;
- (f) make standing orders for the management of the foundation body and any committees and for the conduct of business of that body or any committees;
- (g) appoint committees;
- (h) delegate the exercise of any powers to individual members or to committees, except those relating to the appointment of foundation governors, the granting of any security or the disposal of any land; and
- (i) employ such staff (who cannot be members) as are necessary and to make all necessary provision for those staff.

(2) The power to borrow sums and grant security or to dispose of any land mentioned above may only be exercised with the written consent of the National Assembly.

Joining a group after the initial establishment of the foundation body

21.—(1) A school may only join a group with the agreement of the governing bodies of all the schools already in the group.

(2) An application to the National Assembly shall be made jointly in writing by the governing body of the school seeking to join the group and the foundation body and shall contain—

(a) a statement that the governing bodies of all the schools in the group agree to the school joining the group; and

(b) a statement of the category in which it is proposed that the school will enter the group or a statement that the school will enter in its existing category.

(3) The National Assembly shall, if it considers it appropriate, declare in writing that the school forms part of the group as from such date and on satisfaction of such conditions as it specifies.

(4) Where the school joining the group is doing so under a different category from its existing category, the date specified in accordance with paragraph (3) must be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(5) The foundation body shall seek approval from the National Assembly to the modification of its instrument of government.

(6) Subject to paragraph (7), on the date specified in accordance with paragraph (3) above any land, other than land held on trust, which immediately before that date is held by the governing body for the purposes of the school joining the group shall be transferred to, and by virtue of this regulation vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(7) Paragraph (6) does not apply in relation to a school where following approval of proposals published in accordance with the Change of Category Regulations, the school is joining the group in a different category from its existing category.

(8) On the date specified in accordance with paragraph (3), the governing body of the school joining the group shall appoint a member of their governing body to be a governor member of the foundation body.

(9) Where the school joining the group is not doing so under a different category from its existing category, the governing body of the school must apply to the local education authority for that authority to vary or replace the instrument of government for the school so as to name the foundation body as the appointing body for the purpose of appointing foundation governors and the local education authority shall do so in order that the appointment of foundation governors can take effect from the date that the school joins the group.

Leaving a group

22.—(1) If the governing body of a school wish that school to leave the group they shall serve a notice in writing of at least 3 months on the governing bodies of all the other schools in the group, on the foundation body and on the National Assembly, and on the expiry of that period the National Assembly may declare in writing that the school leaves the group on such date as it may specify.

(2) Where the school leaving the group is doing so under a different category from its existing category, the date specified in accordance with paragraph (1) must be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(3) Subject to paragraph (4), on the date specified in accordance with paragraph (1), any land which, immediately before that date is held by the foundation body for the purposes of the schools

in the group and used for the purposes of the school leaving the group shall be transferred to, and by virtue of this regulation vest in, the governing body of that school.

(4) Paragraph (3) does not apply in relation to a school where following approval of proposals in accordance with the Change of Category Regulations the school is leaving the group in a different category from its existing category.

(5) Where the school leaving the group is not doing so under a different category from its existing category, the governing body must apply to the local education authority for the instrument of government of the school to be varied or replaced so that references to the foundation body can be removed as from the date on which the school leaves the group.

23. If a school leaves a group or is discontinued and the group still has three or more members the foundation body shall modify its instrument of government with the approval of the National Assembly.

Winding-up of group foundation bodies

24.—(1) If membership of a group would fall below three as a result of one or more schools leaving or being discontinued then—

- (a) the clerk must inform the National Assembly that this is the case;
- (b) the notice to leave given by the school or the publication of the proposals to discontinue shall be taken as a notice of dissolution;
- (c) the foundation body shall be dissolved on such date as the National Assembly may by order specify;
- (d) the governing body of each school in the group (other than a school which is to be discontinued) must apply to the local education authority for their own instrument of government to be modified (so that references to the foundation body can be removed as from the dissolution date);
- (e) the governing body of a foundation school must replace foundation governors with partnership governors as from the dissolution date unless by that date they have either applied to join another group or applied, together with the governing bodies of two or more other schools, for the establishment of a foundation body.

(2) The governing body of a voluntary school must publish change of category proposals in accordance with the Change of Category Regulations to become a foundation or community school, if (as the case may be) within 6 months of the date of the notice to leave given by the school or within 6 months of the approval of the proposals to discontinue the school they have not—

- (a) formed or joined another group; or
- (b) established a foundation, other than a foundation body, which satisfies the National Assembly that it can meet the requirements specified from time to time under paragraph 4(2)(b) of Schedule 8 to the 1998 Act.

(3) At any time after the expiry of the relevant 6 months period referred to in paragraph (2), the National Assembly may require the governing body of a school to publish proposals for the school to change to another specified category.

(4) Subject to paragraph (5), in the case of a school which is not being discontinued, on the dissolution date any land or other property which, immediately before that date, is held by the foundation body for the purposes of the schools in the group and used for the purposes of that school shall be transferred to, and, by virtue of this regulation vest in, the governing body of the school.

(5) Paragraph (4) does not apply in relation to a school where following approval of proposals in accordance with the Change of Category Regulations it becomes, on or before the dissolution date, a school of a different category.

Resolution of Disputes

25. Where there is a dispute between the governing bodies of schools in the group or between one or more schools in the group and the foundation body then one of the parties to that dispute may apply in writing to the National Assembly for it to determine the matter.

Use of land

26. The transfer of land to a foundation body under these Regulations shall not affect the rights of the governing body in relation to that land under Schedule 13 to the 1998 Act.

Transfers of land

27. In its application to any transfer of land by virtue of regulations 6, 21, 22 or 24, references in Schedule 10 to the Education Reform Act 1988(3) to the transfer date shall be read as references to the formation date, the joining date, the leaving date or the dissolution date, as the case may be.

Revocation.

28. The Foundation Body Regulations 1999(4) are hereby revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5)

17th July 2001

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

(3) 1988 c. 40. Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the 1998 Act.

(4) S.I. 1999/1502.

(5) 1998 c. 38.