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WELSH STATUTORY INSTRUMENTS

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**2003 No. 2959 (W.277)**

**EDUCATION, WALES**

**The Education Act 2002 (Transitional Provisions and  
Consequential Amendments) (No.2) (Wales) Regulations 2003**

*Made* - - - - *18th November 2003*

*Coming into force* - - *19th November 2003*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by section 214 of the Education Act 2002(1).

**Name, commencement and application**

1.—(1) These Regulations are called the Education Act 2002 (Transitional Provisions and Consequential Amendments) (No. 2) (Wales) Regulations 2003 and come into force on 19th November 2003.

(2) These Regulations apply to Wales.

**Interpretation**

2.—(1) In these Regulations —

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(2);

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998(3);

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002.

(2) In these Regulations references to sections and Schedules are references to, respectively, sections of and Schedules to the 2002 Act.

**Financing of maintained schools**

3. Section 45A of the 1998 Act, which is inserted by section 41(1)(4), is to have effect in the period ending immediately before 1st April 2004 only for the purposes of the financing of schools in any financial year beginning on and after that date.

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(1) 2002 c. 32.

(2) 1996 c. 56.

(3) 1998 c. 31.

(4) Section 41(1) is to come into force on 4th December 2003 by virtue of S.I.2003/2961 (W.278) (C.108).

4. The amendment made by section 41(2)(5) to section 45(2) of the 1998 Act is not to apply in relation to a school's budget share for any financial year beginning before 1st April 2004.

5. Notwithstanding the coming into force of the repeal of section 46 of the 1998 Act and of the consequential amendments to sections 49(4) and 143 of that Act and to section 36 of the Learning and Skills Act 2000(6) (made by sections 41(3) and 215, and paragraphs 100(1) and (2), 113 and 125 of Schedule 21 and Part 3 of Schedule 22(7)) —

- (a) the repeal of section 46 of the 1998 Act,
- (b) the substitution of “LEA budget or schools budget” for “local schools budget” in section 49(4) of the 1998 Act,
- (c) the substitution of “section 45A(3)” for “section 46(2)” in the entry beginning “individual schools budget” in section 143 of the 1998 Act,
- (d) the repeal of the entry relating to local schools budget in section 143 of the 1998 Act, and
- (e) the substitution of “schools budget” and “Schools budget” for “local schools budget” and “Local schools budget” in subsection (1)(a) and (3) of section 36 of the Learning and Skills Act 2000,

are not to have effect in relation to any financial year beginning before 1st April 2004.

### Exclusions

6. During the period beginning on 9th January 2004 and ending immediately before the beginning of the day on which section 52(11) comes into force in relation to Wales, references in section 52(8) to a maintained school are to have effect as if they were references to a maintained school as defined by section 20(7) of the 1998 Act.

7.—(1) This paragraph applies where a pupil is excluded before 9th January 2004 by the head teacher of a maintained school or (as the case may be) the teacher in charge of a pupil referral unit.

(2) Notwithstanding the coming into force of —

- (a) section 52(1) to (6), and
- (b) the repeal of sections 64 to 68 of, and Schedule 18 to, the 1998 Act(9),

the following provisions, namely —

- (i) sections 64 to 68 of, and Schedule 18 to, the 1998 Act, and
- (ii) the Education (Pupil Referral Units) (Appeals against permanent exclusions) (Wales) Regulations 2003(10),

are to continue to have effect, as appropriate, in relation to an exclusion to which paragraph (1) applies.

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(5) Section 41(2) is modified by regulation 4 of the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, S.I. 2002/3184 (W.300). It is to come into force on 4th December 2003 by virtue of S.I. 2003/2961 (W.278) (C.108).

(6) 2000 c. 21.

(7) Sections 41(3) and 215 (in part), and paragraphs 100(1), (2), 113 (in part) and 125 of Schedule 21 and Part 3 of Schedule 22 (in part) are to come into force on 4th December 2003 by virtue of S.I. 2003/2961 (W.278) (C.108).

(8) Section 52 is to come into force in part on 9th January 2004 by virtue of S.I. 2003/2961 (W.278) (C.108).

(9) Sections 64 to 68 of, and Schedule 18 to, the 1998 Act are to be repealed by section 215 of, and Schedule 22 to, the 2002 Act, on 9th January 2004 (see S.I. 2003/2961 (W.278) (C.108)).

(10) S.I. 2003/287 (W.39).

## Independent schools

**8.**—(1) Notwithstanding the coming into force of section 165(**11**), that section (except for subsections (1), (2), (12) and (13)) is not to apply until 1st January 2006 to any school which was provisionally registered pursuant to section 465(3) of the 1996 Act on 31st December 2003.

(2) Notwithstanding the repeal of provisions of sections 10(3), (4B), 11(5), 20(3), 21(4) of the School Inspection Act 1996(**12**) and provisions of paragraph 1 of Schedule 3 to that Act, where a contract has been awarded consequent on an invitation to tender under paragraph 2 of Schedule 3 to that Act before 1st January 2004 to inspect an independent school approved by the National Assembly for Wales under section 347(1) of the 1996 Act —

- (a) the inspection may be carried out in accordance with the contract, and
- (b) where the inspection is carried out in accordance with the contract, section 10, and Chapter II of Part 1 of the School Inspection Act 1996 Act, and Schedule 3 to that Act, are to continue to apply in relation to that inspection.

(3) Notwithstanding the coming into force of section 172(**13**), the substitution of section 463 of the 1996 Act is not to apply until 1 September 2004 in relation to a children’s home within the meaning of section 1(6) of the Care Standards Act 2000(**14**) if an application for registration under section 13 of the Care Standards Act 2000 to carry on the children’s home was granted before 1st January 2004.

## Recoupment

**9.** Notwithstanding the coming into force of the repeal of section 492 of the 1996 Act(**15**), during the period beginning on 9th January 2004 and ending immediately before the beginning of the day on which regulations made by the National Assembly for Wales under section 207 come into force, the Education (Inter-authority Recoupment) Regulations 1994(**16**) are to continue to have effect in relation to Wales as though they were made by the National Assembly under section 207 and as though there were substituted for the words “the Secretary of State” in regulation 3(2)(b) the words “the National Assembly for Wales”.

## Amendment of the Education (Infant Class Sizes) (Wales) Regulations 1998

**10.**—(1) The Education (Infant Class Sizes) (Wales) Regulations 1998(**17**) are amended as follows.

(2) In regulation 2(1) omit the definition of “qualified teacher” and insert after the definition of “school” the following definition —

““school teacher” has the meaning given by section 4 of the 1998 Act(**18**)”.

(3) In regulation 3(2) and (3) substitute for the words “qualified teacher” the words “school teacher”.

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(11) Section 165 is to come into force on 1st January 2004 by virtue of S.I. 2003/2961 (W.278) (C.108).

(12) 1996 c. 57. Sections 10(3), (4B), 11(5), 20(3), 21(4), and paragraph 1 of Schedule 3 are to be repealed in part by section 215(2) of, and Part 3 of Schedule 22 to, the 2002 Act, on 1st January 2004 (see S.I. 2003/2003/2961 (W.278) (C.108)).

(13) Section 172 is to come into force on 1st January 2004 (see S.I. 2003/2961 (W.278) (C.108)).

(14) 2000 c. 14.

(15) Section 492 of the 1996 Act is to be repealed by section 215 of, and Schedule 22 to, the 2002 Act, on 9th January 2004 (see S.I. 2003/2961 (W.278) (C.108)).

(16) S.I. 1994/3251.

(17) S.I. 1998/1943.

(18) Section 4 of the 1998 Act is amended by section 215(1) of, and paragraph 88 of Schedule 21 to, the 2002 Act.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(19)

18th November 2003

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make modifications to the Education Act 2002 and make transitional provisions in connection with the bringing into force of provisions of the Act by the Education Act 2002 (Commencement No. 3) (Wales) Order 2003. They also make consequential amendments.

References below to sections and Schedules (without more) are references to sections of, and Schedules to, the Education Act 2002.

Regulations 3 to 5 make provision in connection with the coming into force of section 41 which makes new provision in relation to the financing of maintained schools and the determination of budgets. The new provisions are to have effect only in relation to financial years beginning on and after 1st April 2004.

Regulations 6 and 7 make provision in connection with the coming into force of section 52(1) to (6) which relates to the exclusion of pupils. Until section 52(11) comes into force (the effect of which is to include maintained nursery schools in the definition of maintained school), references in section 52 to a maintained school are to have effect as if they were references to a maintained school as defined in the School Standards and Framework Act 1998 (“the 1998 Act”), which does not include a maintained nursery school. In relation to pupil exclusions taking place before 9th January 2004 the relevant provisions of the 1998 Act and the Education (Pupil Referral Units) (Appeals against Permanent Exclusions) (Wales) Regulations 2003 are to continue to have effect.

Regulation 8 makes provision in connection with the coming into force of Part 10 of the Education Act 2002 which sets out a new system for regulating independent schools. The new provisions relating to action plans will not apply to schools which were provisionally registered under the Education Act 1996 until 1st January 2006. Where a contract to inspect an independent school approved under section 347 of the Education Act 1996 was awarded before 1st January 2004, provision is made allowing the inspection to be carried out under the School Inspection Act 1996 rather than under the new system. The new definition of independent school (which includes a school with one or more pupils with a statement of special educational needs or who is looked after) is not to apply until 1st September 2004 to a children’s home in relation to the carrying on of which a person was registered before 1st January 2004.

Regulation 9 makes provision in connection with the coming into force of section 207 which enables the National Assembly for Wales to make regulations providing for recoupment between local education authorities. Until new regulations are made under section 207, the Education (Inter-Authority Recoupment) Regulations 1994 are to continue in force.

Regulation 10 amends the Education (Infant Class Sizes) (Wales) Regulations 1998 so as to substitute the term “school teacher” for the term “qualified teacher”. This is consequential on the coming into force on 19th December 2002 of amendments made by Schedule 21 to sections 1 and 4 of the 1998 Act.