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WELSH STATUTORY INSTRUMENTS

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**2005 No. 3239 (W.244)**

**EDUCATION, WALES**

**The Qualifications, Curriculum and Assessment  
Authority for Wales (Transfer of Functions to the  
National Assembly for Wales and Abolition) Order 2005**

*Made* - - - - 22 November 2005  
*Coming into force* - - 1 April 2006

The National Assembly for Wales, in accordance with the powers conferred upon it by section 28 of and Schedule 4 to the Government of Wales Act 1998(1), makes the following Order:

**Title, commencement and interpretation**

1.—(1) The title of this Order is the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 and it comes into force on 1 April 2006.

(2) In this Order:

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

“ACCAC” means the Qualifications, Curriculum and Assessment Authority for Wales;

“transfer date” (“*dyddiad trosglwyddo*”) means 1 April 2006.

**Transfer of Functions of ACCAC to the National Assembly**

2. Subject to article 9, on the transfer date all the functions of ACCAC are transferred to the National Assembly.

**Transfer of staff**

3. For the purposes of the Transfer of Undertaking (Protection of Employment) Regulations 1981(2)—

(a) the transfer of functions effected by Article 2 is to be treated as a transfer of an undertaking;

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(1) 1998 c. 38.

(2) S.I.1981/1794: amended by S.I. 1987/442.

- (b) each person who was, immediately before the transfer date, employed by ACCAC under a contract of employment is to be treated as employed in the undertaking immediately before the transfer date.

#### **Transfer of property, rights and liabilities**

4.—(1) On the transfer date, all property, rights and liabilities to which ACCAC was entitled or subject immediately before the transfer date are transferred to the National Assembly.

(2) A certificate issued by the National Assembly that any property, rights or liabilities has been transferred by paragraph (1) shall be conclusive evidence of the transfer.

(3) The reference in paragraph (1) to rights and liabilities does not include rights and liabilities under a contract of employment transferred by virtue of article 3.

(4) Paragraph (1) has effect in relation to property, rights and liabilities—

- (a) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer otherwise than by this order;
- (b) without any instrument or other formality being required.

#### **Provision for continuity in the exercise of functions**

5. Anything done by or in relation to ACCAC which has effect immediately before the transfer date shall so far as it is required for continuing its effect on and after the transfer date have effect as if done by or in relation to the National Assembly.

#### **Abolition of ACCAC**

6. On the transfer date ACCAC ceases to exist.

#### **Transitional provisions etc**

7.—(1) Nothing in this Order affects the validity of anything done by or in relation to ACCAC before the transfer date.

(2) There may be continued by or in relation to the National Assembly anything (including legal proceedings) which is in the process of being done by or in relation to ACCAC before the transfer date.

(3) On or after the transfer date so far as is necessary or appropriate, references to ACCAC in any instruments, contracts or legal proceedings are to be treated as references to the National Assembly.

(4) Until the coming into force of section 189 of the Education Act 2002 to the extent that it relates to paragraph 5(5) of Schedule 17 to that Act, section 29 of the Education Act 1997 (functions of ACCAC in relation to curriculum and assessment) shall have effect as if for subsection (4) there was substituted—

“(4) The National Assembly for Wales may exercise any function of a designated body within the meaning of Chapter 1 of Part 4”.

#### **Accounts**

8.—(1) The National Assembly must—

- (a) prepare a statement of accounts for the period from the date of the last statement of accounts prepared by ACCAC to the transfer date;
- (b) send a copy of the statement to the Auditor General for Wales before the end of the period of 6 months beginning with the transfer date;

- (2) The Auditor General for Wales must—
- (a) examine, certify and report on the statement received under this article;
  - (b) lay a copy of the report on the statement before the National Assembly.

**Consequential amendments to Acts and other legislation**

9.—(1) The Acts specified in Schedule 1 are amended in accordance with that Schedule.

(2) The subordinate legislation specified in Schedule 2 is amended in accordance with that Schedule.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(3).

22 November 2005

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

SCHEDULE 1

Article (1)

**Consequential Amendments to Primary Legislation**

**Superannuation Act 1972 (c. 11)**

1. In Schedule 1 to the Superannuation Act 1972 (kinds of employment etc. referred to in Section 1 of that Act), in the list of other bodies omit “The Qualifications, Curriculum and Assessment Authority for Wales”.

**House of Commons Disqualification Act 1975 (c. 24)**

2. In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) omit “Any member of the Qualifications, Curriculum and Assessment Authority for Wales constituted under section 27 of the Education Act 1997 in receipt of remuneration.”

**Race Relations Act 1976 (c. 74)**

3. In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons added after commencement of general statutory duty) omit “The Qualifications, Curriculum and Assessment Authority for Wales.”

**Charities Act 1993 (c. 10)**

4. In Schedule 2 to the Charities Act 1993 (exempt charities) omit paragraph (f).

**Education Act 1996 (c. 56)**

5. In section 391(10)(b) of the Education Act 1996, (functions of advisory councils) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”.

**Education Act 1997 (c. 44)**

6. The Education Act 1997 is amended as follows.

7. In section 24 (functions of the Qualifications and Curriculum Authority in relation to external vocational and academic qualifications) omit subsection (3).

8. For the heading to Chapter 2, substitute “Functions of the National Assembly for Wales”.

9. Omit section 27 (the Qualifications, Curriculum and Assessment Authority for Wales), and the cross-heading immediately before it.

10. In the cross-heading immediately preceding section 28 and in the heading to section 28 for “Authority” substitute “National Assembly for Wales”.

11. In section 28 (general functions of Authority to advance education and training)—

(a) in subsection (1)—

(i) for “Qualifications, Curriculum and Assessment Authority for Wales” substitute “National Assembly for Wales”;

(ii) for “the Authority” substitute “the National Assembly for Wales”.

(b) in subsection (2)—

(i) for “The Authority” substitute “The National Assembly for Wales”;

- (ii) for “their functions” substitute “its functions”;
  - (iii) for “they have” substitute “it has”.
- 12. In the heading to section 29, for “Authority” substitute “National Assembly for Wales.”
- 13. In section 29 (functions of the Authority in relation to curriculum and assessment)—
  - (a) in subsection (1) for “The Qualifications, Curriculum and Assessment Authority for Wales” substitute “The National Assembly for Wales.”
  - (b) in subsection (2)—
    - (i) omit paragraph (b);
    - (ii) omit paragraph (c).
- 14. In the heading to section 30, for “Authority” substitute “National Assembly for Wales”.
- 15. In section 30 (functions of the Authority in relation to external vocational and academic qualifications)—
  - (a) for subsection (1) substitute—

“This section applies for the purposes of the following functions with respect to external qualifications in relation to Wales—

    - (i) to keep under review all aspects of such qualifications;
    - (ii) to provide support and advice to persons providing courses leading to such qualifications with a view to establishing and maintaining high standards in the provision of such courses;
    - (iii) to publish and disseminate, and assist in the publication and dissemination of, information relating to such qualifications;
    - (iv) to develop and publish criteria for the accreditation of such qualifications;
    - (v) to accredit, where they meet such criteria, any such qualifications submitted for accreditation;
    - (vi) to make arrangements (whether or not with others) for the development, setting or administration of tests or tasks which fall to be undertaken with a view to obtaining such qualifications and which fall within a prescribed description.”;
  - (b) after subsection (1) insert—

“(1A) In subsection (1) (d)— “criteria” includes criteria that are to be applied for the purpose of ensuring that the number of different accredited qualifications in similar subject areas or serving similar functions is not excessive; and paragraph (e) of that subsection is to be construed accordingly.”;

(1B) Subject to subsection (2), with respect to external qualifications other than National Vocational Qualifications, the functions set out in subsection (1) are exercisable solely by the National Assembly for Wales.

(1C) Subject to subsection (2), with respect to National Vocational Qualifications—

    - (i) the functions specified in subsections (1)(a) to (d) are exercisable concurrently by the National Assembly for Wales and the Qualifications and Curriculum Authority;
    - (ii) the functions specified in subsection 1(e) and (f) are exercisable solely by the Qualifications and Curriculum Authority.”
  - (c) for subsection (2) substitute—

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- “(2) The National Assembly for Wales may by order prescribe that—
- (i) a function specified in subsection (1) which is for the time being exercisable solely by the Assembly shall be exercised concurrently by the Assembly and the Qualifications and Curriculum Authority;
  - (ii) such a function which is for the time being exercisable solely by the Qualifications and Curriculum Authority shall be exercised either concurrently by that Authority and the Assembly or solely by the Assembly;
  - (iii) such a function which is for the time being exercisable concurrently by the Qualifications and Curriculum Authority and the Assembly shall be exercised solely by the Assembly.”

(d) omit subsection (4).

**16.** Omit section 31 (Other functions of the Authority).

**17.** In the heading to section 32, for “Authority of their functions” substitute “the National Assembly for Wales of its functions”.

**18.** In section 32 (supplementary provisions relating to discharge by Authority of their functions)

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- (a) in subsection (1)—
    - (i) for “their functions” substitute “its functions”;
    - (ii) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”;
    - (iii) omit paragraphs (a) and (b);
  - (b) in subsection (2)—
    - (i) for “the Authority” substitute “the National Assembly for Wales”;
    - (ii) for “to them” substitute “to it”.
  - (c) in subsection (3)—
    - (i) for “their functions” substitute “its functions”;
    - (ii) for “the Authority accredit” substitute “the Assembly accredits”;
    - (iii) in both places for “they may” substitute “it may”;
  - (d) in subsection (3A)—
    - (i) for “the Authority accredit” substitute “the National Assembly for Wales accredits”;
    - (ii) in both places for “they may” substitute “it may”;
  - (e) in subsection (4)(b)—
    - (i) for “the Authority” substitute “the National Assembly for Wales”;
    - (ii) for “themselves” substitute “itself”.
  - (f) after subsection (4) insert—

“(4A) Where authorised to do so under paragraph 2(3) of Schedule 4, the National Assembly for Wales may act as agent for the Qualifications and Curriculum Authority in connection with the exercise of any of that Authority’s functions in relation to Wales.”.
  - (g) omit subsection (5).

**19.** In the heading to section 32A, for “Authority” substitute “National Assembly for Wales”.

**20.** In section 32A (power of authority to give directions)—

- (a) in subsection (1)—
    - (i) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”;
    - (ii) for “the Authority” in each place substitute “the National Assembly for Wales”.
  - (b) in subsection (3) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales.”
- 21.** In section 35 (transfer of staff) in subsection (1)(b)—
- (a) omit “, or (as the case may be) the Qualifications, Curriculum and Assessment Authority for Wales,”;
  - (b) for “the Authority as respects which he is designated by the order” substitute “the Qualifications and Curriculum Authority”.
- 22.** In the heading to section 36, for “Authority” substitute “body”.
- 23.** In section 36 (levy on bodies awarding qualifications accredited by relevant Authority)—
- (a) in subsection (1) for “Authority” in both places, substitute “body”;
  - (b) in subsection (2)(c) for “Authority” substitute “body”;
  - (c) in subsection (3)—
    - (i) for “the relevant Authority” substitute “the relevant body”;
    - (ii) for “that Authority” substitute “that relevant body”;
  - (d) in subsection (4)—
    - (i) for “relevant Authority” substitute “relevant body”;
    - (ii) in paragraph (b) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”;
    - (iii) in paragraph (b) for “that Authority” substitute “the Assembly”.
- 24.** Schedule 4 is amended as follows—
- (a) in paragraph 2(3) for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”;
  - (b) for paragraph 15(1)(b) substitute—
    - “(b) a representative of the National Assembly for Wales,”;
  - (c) in paragraph 15(2) for “the chairman of the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”.
- 25.** Omit Schedule 5.

#### **Government of Wales Act 1998 (c. 38)**

- 26.** The Government of Wales Act 1998 is amended as follows.
- 27.** In section 118(2) (meaning of “Welsh public records”) omit paragraphs (b) and (j).
- 28.** In Part 1 of Schedule 4 (bodies which may lose or gain functions) omit paragraph 9.

#### **Care Standards Act 2000 (c. 14)**

- 29.** In Schedule 2A to the Care Standards Act 2000 (persons subject to review by the Children’s Commissioner under section 72B) omit paragraph 18.

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**Learning and Skills Act 2000 (c. 21)**

30. In section 99 of the Learning and Skills Act 2000 (approved qualifications: Wales) omit subsections (7) and (8).

**Freedom of Information Act 2000 (c. 36)**

31. In Part 6 of Schedule 1 to the Freedom of Information Act 2000, (other public bodies and offices: general) omit “The Qualifications, Curriculum and Assessment Authority for Wales.”

**Education Act 2002 (c. 32)**

32. In section 111 of the Education Act 2002 (development work and experiments)—

(a) in subsection (3)—

(i) omit “on an application”;

(ii) in paragraphs (a) and (b) insert at the beginning “on an application”;

(iii) in paragraph (c) for “by the Qualifications, Curriculum and Assessment Authority for Wales with” substitute “on a proposal by the National Assembly for Wales with”.

(b) in subsection (4) omit “by the Qualifications, Curriculum and Assessment Authority for Wales”.

SCHEDULE 2

Article 9(2)

**The Education Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997 (SI 1997/1468)**

1. In paragraph 4 in Part 2 of Schedule 2 to the Education Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997 for “the Qualifications, Curriculum and Assessment Authority for Wales” substitute “the National Assembly for Wales”.

**The Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Functions) Order 1997 (SI 1997/2140)**

2. The Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Functions) Order 1997 is revoked.

**The Education (School Information) (Wales) Regulations 1999 (SI 1999/1812)**

3. In regulation 3 of the Education (School Information) (Wales) Regulations 1999 in the definition of “NQF” omit “the Qualifications, Curriculum and Assessment Authority for Wales,” and insert “the Assembly”.

**The Race Relations Act 1976 (General Statutory Duty) Order 2001 (SI 2001/3457)**

4. In the Schedule (part 2 bodies and other persons added after commencement of general statutory duty) to the Race Relations Act 1976 (General Statutory Duty) Order 2001 omit “the Qualifications, Curriculum and Assessment Authority for Wales.”



**The Education (External Qualifications) (Description of Tests) (Wales) Regulations 2001 (SI 2001/3901)(W.319)**

5. In the Education (External Qualifications) (Description of Tests) (Wales) Regulations 2001:
- (a) In article 2:
    - (i) omit the definition of “ACCAC”;
    - (ii) insert, following the definition of “the 1997 Act” (“*Deddf 1997*”), “the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales”.
  - (b) In article 3 for “ACCAC” substitute “the National Assembly”.

**The Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Functions) Order 2001 (SI 2001/3907)(W.320)**

6. The Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Functions) Order 2001 is revoked.

**The Education (National Curriculum) (Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002 (SI 2002/45)(W.4)**

7. In the Education (National Curriculum) (Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002:
- (a) In article 3(1) omit the words ““the Authority” (“*yr Awdurdod*”) means the authority known as the Qualifications, Curriculum and Assessment Authority for Wales;”;
  - (b) In article 7 for “the Authority” substitute “the National Assembly”.

**The Freedom of Information Act 2000 (Commencement No 2) Order 2002 (SI 2002/2812)**

8. In Part 1 of Schedule 1 (other public bodies and offices: general) to the Freedom of Information Act 2000 (Commencement No 2) Order 2002 delete “the Qualifications, Curriculum and Assessment Authority for Wales.”.

**National Assembly for Wales (Disqualification) Order 2003 (SI 2003/437)**

9. In Part 2 of the Schedule (other disqualifying offices) to the National Assembly for Wales (Disqualification) Order 2003 omit “any member, not being also an employee, of the Qualifications, Curriculum and Assessment Authority for Wales.”.

**The Education (School Organisation Plans) (Wales) Regulations 2003 (SI 2003/1732)(W.190)**

10. In regulation 5 of the Education (School Organisation Plans) (Wales) Regulations 2003 (publication of draft plan) omit subparagraph (1)(v).

**The Education (Individual Pupil Information) (Prescribed Persons) (Wales) Regulations 2004 (SI 2004/549)(W.53)**

11. In regulation 3 of the Education (Individual Pupil Information) (Prescribed Persons) (Wales) Regulations 2004:
- (a) omit subparagraph (4)(b).
  - (b) omit subparagraph 5 (c).

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**The Education (School Performance Information) (Wales) Regulations 2004 (SI 2004/1025) (W.122)**

12. In the Education (School Performance Information) (Wales) Regulations 2004 in regulation 2:

- (a) omit “ACCAC” (“ACCAC”) means the Qualifications, Curriculum and Assessment Authority for Wales or Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru;”;
- (b) in the definition of “external marking agency” (“*asiantaeth farcio allanol*”) omit “nominated by ACCAC and”.
- (c) in the definition of “Statutory Assessment and Reporting Arrangements guidance” (“*Canllawiau ar yr Asesu Stadudol a'r Trefniadau Adrodd*”) for “ACCAC” substitute “the National Assembly”.

**The Education (Pupil Information) (Wales) Regulations 2004 (SI 2004/1026)(W.123)**

13. In regulation 2 of the Education (Pupil Information) (Wales) Regulations 2004:

- (a) omit “ACCAC” (“ACCAC”) means the Qualifications, Curriculum and Assessment Authority for Wales or Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru;”;
- (b) in the definition of “external marking agency” (“*asiantaeth farcio allanol*”) omit “nominated by ACCAC and”.

**The National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order (SI 2004/2915)(W.254)**

14. In the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004:

- (a) In article 3 omit “the Authority” (“*yr Awdurdod*”) means the authority known as the Qualifications, Curriculum and Assessment Authority for Wales;”;
- (b) In article 7 for “Authority” substitute “National Assembly”.

**The National Curriculum (Key stage 3 Assessment Arrangements) (Wales) Order 2005 (SI 2005/108)**

15. In the National Curriculum (Key stage 3 Assessment Arrangements) (Wales) Order 2005:

- (a) In article 3 omit “the Authority” (“*yr Awdurdod*”) means the authority known as the Qualifications, Curriculum and Assessment Authority for Wales;”;
- (b) In article 8 for “Authority” substitute “National Assembly”.

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**EXPLANATORY NOTE**

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

Section 28 of the Government of Wales Act 1998 gives the National Assembly for Wales (“the National Assembly”) powers with respect to the structure of certain public bodies in Wales listed in Schedule 4 to that Act.

It provides that the National Assembly may transfer the functions of some of those bodies to another such body, to a Welsh local authority or to itself; and that it may abolish such bodies where all their functions have been transferred.

This Order transfers the functions of the Qualifications, Curriculum and Assessment Authority for Wales (“ACCAC”) to the National Assembly, provides for the transfer of staff from ACCAC to the National Assembly and makes appropriate consequential, incidental, transitional and supplementary provisions.

Article 2 provides for the transfer of ACCAC’s functions to the National Assembly.

Article 3 provides for the transfer of ACCAC’s staff and applies the Transfer of Undertakings (Protection of Employment) Regulations 1981.

Article 4 provides for the transfer of property, rights and liabilities.

Article 5 provides for continuity in the exercise of functions.

Article 6 provides that upon the transfer of the functions, ACCAC is abolished.

Articles 7 and 8 make certain transitional provisions including in relation to the preparation by the National Assembly of accounts for ACCAC for the financial year 2005— 2006.

Article 9 provides for consequential amendments to primary and subordinate legislation.

A regulatory appraisal has been prepared and copies are available from the National Assembly for Wales, Cathays Park, Cardiff.