WELSH STATUTORY INSTRUMENTS

2008 No. 136 (W.18)

EDUCATION, WALES

The Control of School Premises (Wales) Regulations 2008

Made - - - -	*23 January 2008*
Laid before the National Assembly for Wales - -	*24 January 2008*
Coming into force - -	*31 March 2008*

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 31 and 210(7) of the Education Act 2002 and now vested in them(**1**) make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is The Control of School Premises (Wales) Regulations 2008 and they come into force on 31 March 2008.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations unless the context otherwise requires —

"the Act" ("*y Ddeddf*") means the Education Act 2002;

"community use" ("*defnydd cymunedol*") means the use of school premises (when not required by or in connection with the school) for charitable purposes by pupils at the school or their families, or people who live or work in the locality in which the school is situated;

"school hours" ("*oriau ysgol*") means any time during a school session or during a break between school sessions on the same day;

"school session" ("*sesiwn ysgol*"), in relation to any school, means a school session beginning and ending at such times as may from time to time be determined in that school in accordance with section 32 of the Act.

(**1**) 2002 c. 32. The functions of the National Assembly for Wales under those sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Control of school premises: community and community special schools and maintained nursery schools

3.—(1) The occupation and use of the premises of a community or community special school or maintained nursery school (both during and outside school hours) are under the control of the governing body, subject to —

(a) any directions given by the local authority under paragraph (2);

(b) any transfer of control agreement entered into by the governing body under regulation 4; and

(c) any requirements of an enactment other than the Act or regulations made under the Act.

(2) The local authority may give such directions as to the occupation and use of the premises of a community or community special school or maintained nursery school as it thinks fit.

(3) In exercising control of the occupation and use of the premises of the school outside school hours the governing body must have regard to the desirability of those premises being made available for community use.

Transfer of control agreements: community and community special schools and maintained nursery schools

4.—(1) Subject to paragraph (2), the governing body of any community or community special school or maintained nursery school may enter into a transfer of control agreement with any body or person if their purpose (or one of their purposes) in doing so is to promote community use of the whole or any part of the school premises.

(2) The governing body may not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless it has first obtained the local authority's consent to the agreement insofar as it makes such provision.

(3) A transfer of control agreement is taken to include the following terms, namely —

(a) that the governing body must notify the controlling body of any directions given to the governing body under regulation 3(2);

(b) that the controlling body, in exercising control of the use of any premises subject to the agreement —

(i) must do so in accordance with any directions from time to time notified to that body in pursuance of sub-paragraph (a);

(ii) must have regard to the desirability of the premises being made available for community use; and

(c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then —

(i) the use of the specified premises at those times is to be under the control of the governing body, and

(ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

even though their use at those times would, apart from this paragraph, be under the control of the controlling body.

(4) Paragraph (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control

of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.

(5) In such a case sub-paragraph (c) of paragraph (3) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that sub-paragraph.

(6) Where the governing body enters into a transfer of control agreement, the governing body must so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions as are notified to that body in pursuance of paragraph (3)(a).

(7) In this regulation —

"the controlling body" ("*y corff rheoli*") means the body or persons (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question; and

"transfer of control agreement" ("*cytundeb i drosglwyddo rheolaeth*") means an agreement which (subject to paragraph (3)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Control of school premises: foundation and foundation special schools

5.—(1) The occupation and use of the premises of a foundation or foundation special school (both during and outside school hours) are under the control of the governing body, subject to —

(a) any transfer of control agreement entered into by the governing body under regulation 6;

(b) any requirements of an enactment other than the Act or regulations made under it.

(2) In exercising control of the occupation and use of the premises of the school outside school hours the governing body must have regard to the desirability of those premises being made available for community use.

(3) Where the school has a trust deed which provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under regulation 6) the use of those premises is or would be under the control of such a person —

(a) this regulation, and

(b) regulation 6,

have effect in relation to the school with the substitution of references to that person for references to the governing body.

Transfer of control agreements: foundation and foundation special schools

6.—(1) Subject to paragraph (2), the governing body of any foundation or foundation special school may enter into a transfer of control agreement with any body or person if their purpose (or one of their purposes) in doing so is to promote community use of the whole or any part of the school premises.

(2) Paragraph (1) applies even where the school has a trust deed that would (apart from this paragraph) expressly or impliedly preclude the governing body from entering into a transfer of control agreement with the body or person concerned or from conferring control on the controlling body in question.

(3) However, the governing body may not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with

any such requirements, prohibitions or restrictions imposed by any such trust deed as would apply if control was being exercised by the governing body.

(4) The governing body may not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless it has first obtained the consent of the Welsh Ministers to the agreement insofar as it makes such provision.

(5) A transfer of control agreement is taken to include the following terms, namely —

(a) that the controlling body, in exercising control of the use of any premises subject to the agreement, must have regard to the desirability of the premises being made available for community use; and

(b) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then —

(i) the use of the specified premises at those times is to be under the control of the governing body, and

(ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

even though their use at those times would (apart from this paragraph) be under the control of the controlling body.

(6) Paragraph (7) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.

(7) In such a case sub-paragraph (b) of paragraph (5) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school and the term that would otherwise be included by virtue of that sub-paragraph.

(8) In this regulation —

"the controlling body" ("*y corff rheoli*") means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question; and

"transfer of control agreement" ("*cytundeb i drosglwyddo rheolaeth*") means an agreement which (subject to paragraph (5)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Control of school premises: voluntary schools

7.—(1) The occupation and use of the premises of a voluntary school (both during and outside school hours) are under the control of the governing body, subject to —

(a) any directions given by the local authority —

(i) (in the case of a voluntary controlled school) under paragraph (2), or

(ii) (in the case of a voluntary aided school) under regulation 9(3);

(b) any transfer of control agreement entered into by the governing body under regulation 8; and

(c) any requirements of an enactment other than the Act or regulations made under it.