WELSH STATUTORY INSTRUMENTS

2005 No. 3238 (W.243)

EDUCATION, WALES

The National Council for Education and Training 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) This Order is called the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 and comes into force on 1 April 2006.

(2) In this Order:

"the Council" ("*y Cyngor*") means the National Council for Education and Training for Wales;

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

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

Transfer of Functions of the Council to the National Assembly

2. Subject to article 9, on the transfer date all the functions of the Council 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;

(**1**) 1998 c. 38. Schedule 4 amended by Section 149 of Learning and Skills Act 2000 (c. 21).
(**2**) S.I. 1981/1794: amended by S.I. 1987/442.

(b) each person who was, immediately before the transfer date, employed by the Council 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 the Council 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 the Council 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 the Council

6. On the transfer date the Council ceases to exist.

Transitional Provisions

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

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

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 the Council to the transfer date;

(b) send a copy of the statement to the Auditor General for Wales before the end of the period 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**).

D. Elis-Thomas
22 November 2005 The Presiding Officer of the National Assembly

(**3**) 1998 c. 38.

SCHEDULE 1 Article 9(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) omit "National Council for Education and Training 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 (offices disqualifying for membership) omit "Any member of the National Council for Education and Training for Wales in receipt of remuneration.".

Sex Discrimination Act 1975 (c. 65)

3. The Sex Discrimination Act 1975 is amended as follows.

4. In section 23A (discrimination by Further Education and Higher Education Funding Councils):

(a) omit "the National Council for Education and Training for Wales";

(b) insert "and for the National Assembly for Wales in carrying out it's functions under Part 2 of the Learning and Skills Act 2000" after "2000".

5. In section 25A (general duty: post-16 education and training etc.)—

(a) in subsection (1) for "and the National Council for Education and Training for Wales" substitute "and the National Assembly for Wales";

(b) in subsection (2) for "or the National Council for Education and Training for Wales" substitute "or the National Assembly for Wales by virtue of its functions under Part 2 of the Learning and Skills Act 2000" .

(c) for subsection (3) substitute—

"(3) The provisions of section 25 of the Learning and Skills Act 2000 shall be the only sanction for breach of the general duty in subsection (1) by the Learning and Skills Council for England."

(4) There shall be no sanction for breach of the general duty in subsection (1) by the National Assembly for Wales.

(5) Subsections (3) and (4) are without prejudice to the enforcement of section 23A under section 66 or otherwise (where the breach is also a contravention of that section)."

Race Relations Act 1976 (c. 74)

6. The Race Relations Act 1976 is amended as follows.

7. In section 18A (Further Education and Higher Education Funding Councils), omit "the National Council for Education and Training for Wales,".

8. In Schedule 1A (bodies and other persons subject to general statutory duty) in Part 2 omit "The National Council for Education and Training for Wales."

Education (Fees and Awards) Act 1983 (c. 40)

9. In section 1(3)(g) of the Education (Fees and Awards) Act 1983 (fees at universities and further education establishments) for "National Council for Education and Training for Wales" substitute "National Assembly for Wales".

Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

10. In section 5(9) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (disabled persons leaving special education) in the definition of "the responsible authority"—

(a) in paragraph (c), for "the National Council for Education and Training for Wales" substitute "the National Assembly for Wales";

(b) at the end of paragraph (c) insert "or the National Assembly as the case may be".

Employment Act 1988 (c. 19)

11. In section 26(1A) of the Employment Act 1988 (status of trainees etc), for "National Council for Education and Training for Wales" substitute "National Assembly for Wales".

Education Reform Act 1988 (c. 40)

12. In section 128(1)(b)(v) of the Education Reform Act 1988 (dissolution of higher education corporations) for "National Council for Education and Training for Wales" substitute "National Assembly for Wales".

Further and Higher Education Act 1992 (c. 13)

13. The Further and Higher Education Act 1992 is amended as follows.

14. In section 19 (supplementary powers of a further education corporation)—

(a) in subsection (4B) for "National Council for Education and Training for Wales" substitute "National Assembly for Wales in the discharge of its functions under Part 2 of the Learning and Skills Act 2000";

(b) in subsection (4C) for "concerned" substitute "or the National Assembly for Wales (as the case may be)";

(c) in subsection (5) for "appropriate council" substitute "appropriate body".

15. In section 22 (subsequent instruments and articles)—

(a) in subsection (1) for "appropriate council" substitute "appropriate body";

(b) in subsection (3)(b) for "appropriate council" substitute "appropriate body";

(c) after subsection (6) insert—

"(7) Nothing in this section requires the National Assembly for Wales to consult itself.".

16. In section 27 (dissolution of further education corporations)—

(a) for subsection (3)(a) substitute—

"(a) the Learning and Skills Council for England, in the case of a further education corporation in England";

(b) in subsection (7)(b) in both places for " council" substitute " body";

(c) after subsection (7) insert—

"(8) Nothing in this section requires the National Assembly to consult itself."