WELSH STATUTORY INSTRUMENTS

2005 No. 2912 (W.209)

EDUCATION, WALES

The New Maintained Schools (Wales) Regulations 2005

Made - - - -	*18 October 2005*
Coming into force - -	*31 October 2005*

The National Assembly for Wales, in exercise of the powers in sections 72(1) and 138(7) of the School Standards and Framework Act 1998(**1**) and sections 34(5) and (6), 210(7) and 214 of the Education Act 2002 (**2**), makes the following Regulations:

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the New Maintained Schools (Wales) Regulations 2005 and they come into force on 31 October 2005

(2) These regulations apply in relation to Wales.

Revocation, savings and transitional provisions

2.—(1) The Education (Government of New Schools on Transition to New Framework) Regulations 1998(**3**) are revoked in relation to Wales.

(2) Parts I to V, VII and VIII of the Education (New Schools) (Wales) Regulations 1999(**4**) ("the 1999 Regulations") are revoked save as provided in paragraphs (3) and (4).

(3) Part I of the 1999 Regulations continue to have effect in so far as it relates to Part VI.

(4) Parts I to IV of the 1999 Regulations continue to have effect in relation to any temporary governing body established prior to the coming into force of these Regulations.

(**1**) 1998 c. 31. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the powers on the Secretary of State conferred by these provisions are exercisable in relation to Wales by the National Assembly for Wales.
(**2**) By virtue of section 212(2) of the 2002 Act the powers conferred by these provisions are exercisable by the National Assembly for Wales only in relation to Wales.
(**3**) S.I. 1998/3097.
(**4**) S.I. 1999/2243 (W.3).

Interpretation

3.—(1) In these Regulations—

"the 1996 Act" ("*Deddf 1996*") means the Education Act 1996(**5**);

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

"the 2000 Act" ("*Deddf 2000*") means the Learning and Skills Act 2000(**6**);

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002;

"the Government Regulations" ("*y Rheoliadau Llywodraethu*") means the Government of Maintained Schools (Wales) Regulations 2005(**7**);

"head teacher" ("*pennaeth*") includes a person who has been appointed as the head teacher of a new school but who has not yet taken up the post;

"local education authority" ("*awdurdod addysg lleol*") means the local education authority by which a maintained school is, or a proposed such school is to be, maintained;

"new school" ("*ysgol newydd*") has the meaning given by section 72(3) of the 1998 Act;

"pupil" ("*disgybl*") has the meaning given by section 3 of the Education Act 1996(**8**); and

"school teacher" ("*athro neu athrawes ysgol*") has the meaning given by section 122 of the 2002 Act.

(2) In these Regulations, references to a school having a delegated budget are to be interpreted in accordance with section 39(2) of the 2002 Act.

(3) In these Regulations the "general modifications" mean the following modifications to the Government Regulations—

(a) "new school" is substituted for "school" and "maintained school";

(b) "temporary" is inserted before the words "governing body", "governor" and "governorship";

(c) references to a particular category of governor are to be read as references to the corresponding categories of temporary governor set out in Part 3 of these Regulations; and

(d) references to a head teacher are to include a person who has been appointed as the head teacher of a new school but who has not yet taken up the post.

(4) Any reference in these Regulations to—

(a) a committee is a reference to a committee established by the temporary governing body to which the temporary governing body has delegated any of its statutory functions;

(b) a temporary governing body is a reference to the temporary governing body of any school or proposed school in respect of which the provision applies;

(c) a temporary governor of a particular category is to be interpreted in accordance with Part 3.

(5) Unless the context otherwise requires, any reference in these Regulations to—

(a) a numbered regulation is a reference to the regulation bearing that number in these Regulations;

(b) a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference appears; and

(c) a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in the paragraph in which the reference appears.

(**5**) 1996 c. 56.
(**6**) 2000 c. 21.
(**7**) S.I. 2005/2914 (W. 211).
(**8**) Section 3 was amended by paragraph 34 of Schedule 21 to the Education Act 2002.

Service of notices

4. Any notice required to be served by or under these Regulations must be served in accordance with section 572 of the 1996 Act.

PART 2

Arrangements for the Incorporation of Temporary Governing Bodies

Arrangements made in anticipation of approval of proposals

5.—(1) Where any proposals to establish a maintained school have been published under any enactment(**9**), the local education authority may make arrangements under section 34 of the 2002 Act in anticipation of approval of the proposals(**10**) or in anticipation of a determination by the authority that the proposals should be implemented(**11**).

(2) If proposals are to establish a voluntary controlled school, the local education authority must consult the promoters—

(a) as to whether the power given to the local education authority in paragraph (1) above should be exercised; and

(b) if the local education authority proposes to exercise it, as to the date on which the arrangements should be made.

(3) If proposals are to establish a voluntary aided or foundation school, the local education authority and the promoters must consider—

(a) whether the power given to the local education authority in paragraph (1) above should be exercised, and

(b) where they agree that it should, on what date the arrangements should be made.

(4) Where in a case falling within paragraph (3) the local education authority and the promoters fail to agree on the question referred to in sub-paragraph (a) or on that referred to in sub-paragraph (b), either of them may refer the matter to the National Assembly for Wales and on a reference under this paragraph the National Assembly for Wales must give such direction as it thinks fit.

Agreements necessary for arrangements

6.—(1) Where proposals to establish a foundation school or a voluntary school have been published by promoters, a local education authority must not make arrangements in respect of the school without the agreement of the promoters as to any provision to be made in relation to the temporary foundation governors.

(2) In the event of any disagreement between the local education authority and the promoters in respect of the provision referred to in paragraph (1), either of them may refer the issue to the National Assembly for Wales and, on a reference under this paragraph the National Assembly for Wales, must give such direction as it thinks fit.

(**9**) Proposals may be published under section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act or section 113A of the 2000 Act.
(**10**) Under paragraph 8 of Schedule 6 or paragraph 13 of Schedule 7 to the 1998 Act or section 113A(5)(a) of the 2000 Act.
(**11**) Under paragraph 9 of Schedule 6 to the 1998 Act.

Termination of arrangements

7. Any arrangements made under regulation 5 must come to an end as soon as reasonably practicable if—

(a) the proposals are withdrawn;

(b) the proposals are rejected under paragraph 8 of Schedule 6 or paragraph 14 of Schedule 7 to the 1998 Act;

(c) in the case of proposals not requiring approval under paragraph 8 of Schedule 6 to the 1998 Act, the body or promoters by whom the proposals were published determine under paragraph 9 of Schedule 6 to the 1998 Act not to implement them; or

(d) the National Assembly for Wales determine under paragraph 10(3) of Schedule 6 to the 1998 Act that paragraph 10(1) of that Schedule should cease to apply to the proposals.

PART 3

Categories of Temporary Governor

Interpretation of this Part

8. In this Part—

(a) "the first case" means that of a new school that is or will be a community, voluntary controlled, community special or foundation special school, a maintained nursery school or a foundation school proposals for the establishment of which were published by a local education authority, and

(b) "the second case" means that of a new school that is or will be a voluntary aided school, or a foundation school proposals for the establishment of which were published by promoters.

Temporary parent governors

9.—(1) A "temporary parent governor" is a person appointed to be a member of the temporary governing body of a new school by—

(a) the local education authority, in the first case; or

(b) the promoters, in the second case.

(2) Where one or more maintained schools have been, or are to be, discontinued ("the discontinued schools"), and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to a new school,

(a) the local education authority, in the first case, or

(b) the promoters, in the second case,

may provide for the governing body of the discontinued school or schools to appoint some or all of the temporary parent governors of the new school.

(3) No person may be appointed as a temporary parent governor of a voluntary controlled school by a local education authority, and no provision referred to in paragraph (2) above may be made in respect of a voluntary controlled school, unless the local education authority has first consulted the promoters.

(4) Subject to paragraphs (5) and (6), no person may be appointed as a temporary parent governor of a new school unless—

(a) he or she is the parent of a child who is or is likely to become a registered pupil at the school; or

(b) where it is not reasonably practicable to appoint such a person, he or she is the parent of a child of compulsory school age, or in the case of a new maintained nursery school, the parent of a child of or under compulsory school age.

(5) No person may be appointed as a temporary parent governor of a school which is or will be a community or foundation special school not established in a hospital unless he or she is—

(a) the parent of a child who is or is likely to become a registered pupil at the school;

(b) the parent of a child of compulsory school age with special educational needs;

(c) the parent of a person of any age with special educational needs; or

(d) a parent of a child of compulsory school age.

(6) A person referred to in sub-paragraphs (b), (c) or (d) of paragraph (5) may only be appointed if it is not reasonably practicable to appoint a person referred to in the provision in that sub-paragraph which immediately precedes it.

(7) A person is disqualified from appointment as a temporary parent governor if he or she is—

(a) an elected member of the local education authority;

(b) employed by the local education authority in connection with its functions as a local education authority; or

(c) paid, or likely to be paid, to work at the school for more than 500 hours in any twelve month period commencing on 1 August and finishing on 31 July.

(8) A person is not disqualified from continuing to hold office as a temporary parent governor when he or she ceases to fulfil any of the requirements set out in paragraphs (5) and (6), unless he or she is otherwise disqualified under these Regulations.

Temporary staff governors

10.—(1) A "temporary staff governor" is a person appointed to be a member of a temporary governing body of a new school in accordance with this regulation.

(2) The local education authority in the first case and the promoters in the second case must—

(a) determine whether a temporary staff governor should be included on the temporary governing body of the new school in accordance with the Government Regulations (as modified by these Regulations) and, if they so determine,

(b) appoint a temporary staff governor.

(3) No person may be appointed under paragraph (2) unless he or she is employed to work at a maintained school, other than as a school teacher, at the time when he or she is appointed.

(4) A temporary staff governor at a new school is, upon ceasing to be employed at a maintained school, disqualified from continuing to hold office as such a governor

Temporary teacher governors

11.—(1) A "temporary teacher governor" is a person who is appointed to be a member of the temporary governing body of a new school in accordance with this regulation.

(2) In the first case, a temporary teacher governor must be appointed by the temporary governing body.

(3) In the second case, a temporary teacher governor must be a person nominated by the promoters and appointed by the local education authority.

(4) Where one or more maintained schools have been, or are to be, discontinued and the registered pupils of the school or schools, or a substantial number of them, are expected to transfer to a new school,