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WELSH STATUTORY INSTRUMENTS

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**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.

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(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<sup>(5)</sup>;
- “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<sup>(6)</sup>;
- “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<sup>(7)</sup>;
- “head teacher” (“*penmaeth*”) 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<sup>(8)</sup>; 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.

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<sup>(5)</sup> 1996 c. 56.

<sup>(6)</sup> 2000 c. 21.

<sup>(7)</sup> S.I. 2005/2914 (W. 211).

<sup>(8)</sup> 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<sup>(9)</sup>, the local education authority may make arrangements under section 34 of the 2002 Act in anticipation of approval of the proposals<sup>(10)</sup> or in anticipation of a determination by the authority that the proposals should be implemented<sup>(11)</sup>.

(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.

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<sup>(9)</sup> 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.

<sup>(10)</sup> 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.

<sup>(11)</sup> 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,

- (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 teacher governors of the new school.

(5) No provision referred to in paragraph (4) above may be made in respect of a voluntary controlled school unless the local education authority has first consulted the promoters.

(6) No person may be nominated or appointed as a temporary teacher governor unless he or she is a school teacher employed at a maintained school.

(7) A temporary teacher governor is, upon ceasing to work at a maintained school, disqualified from continuing to hold office as such a temporary governor.

### **Temporary LEA governors**

**12.—**(1) A “temporary LEA governor” is a person appointed to be a member of the temporary governing body of a new school by the local education authority.

(2) A person is disqualified from appointment as a temporary LEA governor of a school if he or she is eligible to be a temporary staff governor or a temporary teacher governor of a school.

### **Temporary community governors**

**13.—**(1) A “temporary community governor” is a person who is appointed to be a member of the temporary governing body of a new school by the temporary governing body and who is:

- (a) a person who lives or works in the community served, or to be served, by the new school; or
- (b) a person who, in the opinion of the temporary governing body, is committed to the good government and success of the new school.

(2) A person is disqualified from appointment as a temporary community governor if he or she:

- (a) is or is likely to become a registered pupil at the new school;
- (b) is eligible to be a temporary staff governor or temporary teacher governor of the new school; or
- (c) is an elected member of the local education authority.

### **Additional temporary community governors**

**14.—**(1) A “additional temporary community governor” is a person who is appointed to be a member of the temporary governing body of a new school by the temporary governing body having been nominated in accordance with regulation 20 of the Government Regulations as modified by these Regulations.

(2) Regulation 13(2) does not apply to additional temporary community governors.

### **Temporary foundation governors**

**15.—**(1) A “temporary foundation governor” is a person who is appointed as a member of the temporary governing body of a new school, otherwise than by the local education authority, and who:

- (a) where the new school has, or the proposals for its establishment indicate that it will have, a particular religious character designated or intended to be designated by order under section 69(3) of the 1998 Act, is appointed for the purpose of securing that the character is established and developed;

- (b) where the new school has or will have a trust deed, is appointed for the purpose of securing that new school is established and conducted in accordance with that deed; or
  - (c) where the new school does not have, nor will have, either a particular religious character or a trust deed, is appointed as a temporary foundation governor of the new school.
- (2) An “*ex officio* temporary foundation governor” is a temporary foundation governor who is the holder of an office by virtue of which he or she is entitled to be a temporary foundation governor.
- (3) An *ex officio* temporary foundation governor is, upon ceasing to hold the office from which his or her temporary governorship derives, disqualified from continuing to hold office as such a temporary governor.

### **Temporary partnership governors**

- 16.—(1) A “temporary partnership governor” is—
- (a) in the case of a new foundation school or a new foundation special school proposals for the establishment of which were published by a local education authority, a person appointed as such by the local education authority;
  - (b) in any other case, a person nominated as such by the promoters and appointed as such by the local education authority.
- (2) A person who nominates a person for appointment as, or appoints a person as, a temporary partnership governor must be satisfied that the nominee or appointee appears to be—
- (a) from the community which the new school serves or will serve; or
  - (b) committed to the good government and success of the school.
- (3) A person is disqualified from nomination or appointment as a temporary partnership governor of a new school if he or she:
- (a) is a parent of a child who is or is likely to become a registered pupil at the new school;
  - (b) is or is likely to become a registered pupil at the new school;
  - (c) is eligible to be a temporary staff governor or temporary teacher governor of the new school;
  - (d) is an elected member of the local education authority; or
  - (e) is employed by the local education authority in connection with its functions as a local education authority.

### **Temporary representative governors**

17. A “temporary representative governor” is a person appointed in accordance with paragraphs (4) or (5) of regulation 15 of the Government Regulations as modified by these Regulations.

### **Temporary sponsor governors**

- 18.—(1) A “temporary sponsor governor” is a person appointed to be a member of a temporary governing body of a new school in accordance with paragraph (3).
- (2) “Sponsor” in relation to a school means:
- (a) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to a statutory obligation; or
  - (b) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school.

(3) Where a new school has one or more sponsors, the temporary governing body may appoint one or two temporary sponsor governors, nominated in accordance with paragraph (4).

(4) Where the temporary governing body intends to appoint temporary sponsor governors, it must seek nominations for such appointments from the school's sponsor or, as the case may be, from one or more of the school's sponsors.

### **Experience required of temporary governors**

**19.**—(1) Any person responsible for the appointment of a person as a temporary governor must have regard to the desirability of that person being suitably experienced.

(2) A person is suitably experienced for the purposes of paragraph (1)—

- (a) if he or she has served as a governor or a temporary governor of a maintained school; and
- (b) in a case where registered pupils at a school which has been, or is to be, discontinued are expected to transfer to a new school to which the appointment relates, if he or she has served as a governor or a temporary governor of the school which has been, or is to be discontinued.

### **Joint appointments**

**20.** If a temporary governor is to be appointed by persons acting jointly, and those persons fail to make an agreed appointment, the appointment must be made by, or in accordance with a direction given by the National Assembly for Wales.

## **PART 4**

### **Constitution of Temporary Governing Bodies**

#### **Application of the Government Regulations**

**21.**—(1) Subject to paragraphs (2) to (4), the temporary governing body of a new school must be constituted in accordance with such of regulations 13 to 20 of the Government Regulations as are applicable, having regard to the category of school or proposed school, save that staff governors are required to be included on a temporary governing body of a new school only if the local education authority or promoters, as the case may be, have so determined under regulation 10(2)(a).

(2) Where such of regulations 13 to 20 of the Government Regulations as are applicable provide a discretion as to the number of governors of a particular category to be included on the governing body, the number of temporary governors of the corresponding category included on the temporary governing body must be the lower number permitted under those provisions.

(3) For the purposes of calculating the number of temporary foundation governors required at a voluntary aided school, it must be assumed that a head teacher has been appointed and is a member of the temporary governing body.

(4) For the purposes of the constitution of a temporary governing body, the Government Regulations apply subject to the general modifications and the following modifications—

- (a) references to a school being established in a hospital (or not established in a hospital) include references to a school which it is proposed to establish in a hospital (or otherwise than in a hospital);
- (b) the reference in regulation 15(5) of the Government Regulations to “matters in respect of which the school is specially organised” is treated as a reference to the matters in respect of it is proposed that the school will be specially organised;



- (c) regulation 19(4) of the Government Regulations does not apply; and
- (d) in relation to the constitution of the temporary governing body of a new school, the new school is treated as having as registered pupils the number of pupils determined from the proposals for the establishment of the school.

## **PART 5**

### **Tenure of Office and Qualifications**

#### **Resignation**

**22.**—(1) Any member of a temporary governing body may resign his or her governorship by giving written notice to the clerk to the temporary governing body of the school.

(2) An *ex officio* temporary foundation governor may resign as a temporary governor either permanently or temporarily but his or her resignation does not prejudice the temporary governorship of his or her successor in the office from which the *ex officio* temporary governorship derives.

(3) The head teacher may withdraw his or her resignation at any time by giving written notice to the clerk to the temporary governing body.

#### **Removal**

**23.**—(1) Any temporary governor of a new school may be removed from office by the person or persons who appointed him or her.

(2) In the case of the removal from office of a temporary governor mentioned in regulation 24(1), the governing body must follow the procedure set out in that regulation, and in all other cases the person removing the temporary governor from office must give written notice thereof to the clerk to the temporary governing body and to the governor so removed.

#### **Procedure for removal of temporary governors by the temporary governing body**

**24.**—(1) This regulation applies in relation to the removal from office of:

- (a) a temporary parent governor appointed by the temporary governing body,
- (b) a temporary teacher governor appointed by the temporary governing body, or
- (c) a temporary sponsor governor.

(2) A resolution to remove a temporary governor from office which is passed at a meeting of the temporary governing body does not have effect unless—

- (a) before the temporary governing body resolve to remove the temporary governor from office, the temporary governor or governors proposing his or her removal, at that meeting, state their reasons for doing so and the governor whom it is proposed be removed is given an opportunity to make a statement in response;
- (b) the matter of the temporary governor's removal from office is specified as an item of business on the agenda for the meeting.

(3) After a resolution to remove a governor from office has been passed, the temporary governing body must inform the person removed from office of the reasons for the removal in writing.

#### **Qualifications and disqualifications**

**25.** Schedule 5 to the Government Regulations applies, subject to the general modifications, for the purpose of setting out the circumstances in which a person is qualified or disqualified for holding

or continuing to hold office, or for being appointed or nominated as a temporary governor of a new school.

### **Expenses**

**26.** Where a temporary governing body is constituted for a new school the local education authority is under the same duty to defray the expenses incurred in relation to the temporary governing body as they would be if the relevant proposals had been implemented and the temporary governing body were the governing body of the school<sup>(12)</sup>.

### **Explanatory information**

**27.** The local education authority must secure that the members of the temporary governing body of a new school are, on being appointed, provided (free of charge) with such information as the authority consider they require to enable the temporary governing body to discharge its functions effectively.

## **PART 6**

### **General Conduct of New Schools**

#### **Interpretation and application of Part 6**

**28.** In this Part “proposed school” means a school which has not yet opened for which there is a temporary governing body constituted in accordance with arrangements under section 34 of the 2002 Act.

**29.** This Part does not apply to any committee established by the temporary governing body to exercise functions relating to the appointment, grievance, conduct and discipline, capacity, suspension or dismissal of individual members of the school staff.

#### **Conduct of the school before the school opening date**

**30.—(1)** Subject to paragraph (2), section 61 of the 1998 Act and sections 27 and 28 of, and Schedule 1 to, the 2002 Act apply in relation to a proposed school<sup>(13)</sup> with the following modifications—

- (a) references to a governing body are treated as references to a temporary governing body;
- (b) references to a maintained school are treated as including a reference to a proposed maintained school;
- (c) references to the instrument of government are treated as references to the instrument of government whether or not it has taken effect; and
- (d) section 61(3)(b) and (7) of the 1998 Act and paragraph 2(2) and (3) of Schedule 1 to the 2002 Act do not apply.

(2) The temporary governing body of a proposed school which does not have a delegated budget may not exercise any of the powers set out in paragraph 3 (3)(b) to (f) of Schedule 1 to the 2002 Act (as modified) without the prior agreement in writing of—

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<sup>(12)</sup> See the Education (Governor Allowances) (Wales) Regulations 2005, [S.I. 2005/2915 \(W.212\)](#).

<sup>(13)</sup> Section 34(7) of the 2002 Act provides that for the purposes of section 30(3) of that Act and sections 495 to 498 of the 1996 Act, the temporary governing body is to be treated as if it was the governing body at any time before the school opening date.

- (a) the local education authority in the case of a proposed school which 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; or
- (b) the promoters in the case of a proposed school which will be a voluntary aided school or a foundation school, proposals for the establishment of which were published by promoters.

### **Conduct of the school on or after the school opening date**

**31.**—(1) During the period—

- (a) beginning with the school opening date; and
- (b) ending with the time when the governing body are constituted for the school under an instrument of government,

Schedule 1 to the 2002 Act applies<sup>(14)</sup> with the modifications set out in paragraph (2).

(2) The modifications are as follows—

- (a) for references to “governing body” there are substituted references to “temporary governing body”;
- (b) in paragraph 2(1) of Schedule 1 to the 2002 Act, the words “as for the time being set out in the school’s instrument of government” are omitted; and
- (c) paragraph 2(2) and (3) of Schedule 1 to the 2002 Act does not apply.

### **Execution of documents by the temporary governing body**

**32.**—(1) Only the chair of the temporary governing body, or where that is not reasonably practicable the vice-chair, may make and issue instruments on behalf of the temporary governing body.

(2) Every document purporting to be an instrument made or issued by or on behalf of the temporary governing body and to be signed or executed by the chair or vice chair of the temporary governing body must be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### **Preparation of the curriculum**

**33.**—(1) The head teacher of a proposed school must, in preparing to discharge his or her functions under Part 7 of the 2002 Act in relation to the curriculum for the school, consult the temporary governing body and the local education authority.

(2) Any local education authority who have been consulted under paragraph (1) must inform the head teacher of the resources which are likely to be made available to the school, and the head teacher must have regard to any such information given.

### **School terms, holidays and sessions**

**34.**—(1) In the case of a proposed school which will be a community, voluntary controlled, community special school or maintained nursery school—

- (a) the local education authority must determine the dates when the school terms and holidays are to begin and end; and

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<sup>(14)</sup> Under section 34(7) of the 2002 Act, the temporary governing body of a school is to be treated for the purposes of the Education Acts as if it was the governing body during the period beginning with the school opening date and ending with the time the governing body is constituted under an instrument of government; subject to section 34(8) under which Schedule 1 does not apply to temporary governing bodies unless provided for in regulations made under section 34(5).

- (b) the temporary governing body must determine the times of the school sessions after consultation with the local education authority.
- (2) In the case of a proposed school which will be a foundation, voluntary aided or foundation special school, the temporary governing body must determine—
  - (a) the dates and times when the school terms and holidays are to begin and end; and
  - (b) the times of the school sessions.
- (3) In this regulation “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

### **Reports and Information**

- 35.**—(1) The temporary governing body of a new school must provide the local education authority with such reports in connection with the discharge of its functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of the authority’s functions.
- (2) The head teacher of a new school must provide the temporary governing body or the local education authority with such reports in connection with the discharge of his or her functions as that body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.
- (3) Where a requirement under paragraph (2) is imposed on the head teacher by the authority—
  - (a) the authority must notify the temporary governing body of that requirement; and
  - (b) the head teacher must give the temporary governing body a copy of any report made by him or her in complying with it.

### **Consultation on expenditure by a local education authority**

**36.** Where the proposed school does not have a delegated budget, the local education authority must consult the temporary governing body and the head teacher on the authority’s proposed expenditure on books, equipment and stationary for the school.

## **PART 7**

### **Officers, meetings, proceedings, committees and conflicts of interest**

#### **Appointment, functions and removal of officers**

**37.** Part 7 of the Government Regulations applies to new schools subject to the general modifications and regulations 38 and 39.

**38.**—(1) The first clerk to the temporary governing body of a new school which will be a community, voluntary controlled, or community special school, or a foundation or foundation special school proposals for the establishment of which were published by the local education authority, is to be appointed by the local education authority.

(2) The promoters of the school are to appoint the first clerk to the temporary governing body of a new school which will be a voluntary aided or foundation school or a foundation special school proposals for the establishment of which were published by promoters.

**39.**—(1) The first meeting of a temporary governing body is to be called by the clerk.

(2) The temporary governing body must elect a chair and vice-chair at that first meeting.

(3) Where the clerk fails to call a meeting within such period as the local education authority consider reasonable, the local education authority must call it.

### **Meetings and proceedings of temporary governing bodies**

**40.**—(1) Part 8 of the Government Regulations applies to new schools subject to the general modifications and paragraph (2).

(2) Where two or more schools are to be discontinued (“the discontinued schools”) and the registered pupils at those schools, or a substantial number of those pupils are expected to transfer to a new school, the head teachers of the discontinued schools are entitled to attend any meeting of the temporary governing body of the new school until a head teacher is appointed for that new school.

### **Committees of temporary governing bodies**

**41.**—(1) Part 9 of the Government Regulations applies to new schools subject to the general modifications and paragraph (2).

(2) Where two or more schools are to be discontinued (“the discontinued schools”) and the registered pupils at those schools, or a substantial number of those pupils are expected to transfer to a new school, the head teachers of the discontinued schools are entitled to attend any meeting of a committee of the temporary governing body of the new school until a head teacher is appointed for that new school.

### **Restrictions on persons taking part in proceedings**

**42.** Part 10 of the Government Regulations applies to new schools subject to the general modifications.

## **PART 8**

### **Transition from a Temporary Governing Body to a Governing Body**

#### **Making of instrument of government and constitution of the governing body**

**43.**—(1) The local education authority must secure that an instrument of government has been made for each new school in accordance with regulations 32 to 34 of the Government Regulations before the school opening date.

(2) The instrument of government takes effect from the date of making for the purpose of constituting the governing body but does not affect the constitution or name of the temporary governing body conducting the new school.

(3) For the purposes of this Part, in relation to any new school, the incorporation date is the date the local education authority notifies in writing to the governing body which must be a date as soon as reasonably practicable after the school opening date but in any event no later than the last day of the term in which the school first admits pupils.

(4) The local education authority must secure that appointments or elections of governors required by the instrument of government for a new school take place in accordance with that instrument before the incorporation date and take effect from that date.

(5) For all other purposes, the instrument of government takes effect from the incorporation date.

(6) On the incorporation date the governing body of a new school must be constituted under the instrument of government.

(7) The temporary governing body must exercise its functions under the 1998 Act, the 2002 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil its duties under this regulation.

### **New governors**

**44.**—(1) In the case of the appointment of any governor referred to in regulation 43(4), the local education authority must give written notice to the person who is to make the appointment under the instrument of government, unless that person has already notified it of an appointment to fill the vacancy.

(2) Where any person makes an appointment referred to in paragraph (1), he or she must give written notice of the appointment to the local education authority and to the clerk to the temporary governing body, specifying the name and usual place of residence of the person appointed.

### **Appointment or election of new governors**

**45.**—(1) The following paragraphs apply in relation to the appointment or election of governors required to constitute the governing body pursuant to regulation 43(4).

(2) Any parent governor must be either—

- (a) elected (after the school opening date) by the parents of registered pupils at the new school and must himself or herself be such a parent at the time when he or she is elected; or
- (b) appointed (after the school opening date) in accordance with Schedule 1 to the Government Regulations.

(3) After the school opening date—

- (a) any staff or teacher governor must be elected in accordance with regulations 5 and 6 of and Schedule 2 to the Government Regulations;
- (b) any partnership governor must be nominated and appointed in accordance with regulation 10 of and Schedule 3 to the Government Regulations
- (c) any community governor or additional community governor must be appointed in accordance with regulations 8 and 20 of the Government Regulations.

(4) If—

- (a) the instrument of government of a new school provides for one or more of the governors to be appointed by persons acting jointly, and
- (b) those persons fail to make an agreed appointment,

the appointment must be made by, or in accordance with a direction given by, the National Assembly for Wales.

### **Property, rights and liabilities**

**46.** On the incorporation date—

- (a) all land and other property which, immediately before the incorporation date, was vested in the temporary governing body, and
- (b) all rights and liabilities of the temporary governing body subsisting immediately before that date,

are, by virtue of this regulation, transferred to and vest in the governing body constituted under the instrument of government.

### **Rights and liabilities under a contract of employment**

47. Without prejudice to the generality of regulation 46, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract has effect from the incorporation date as if originally made between the employee and the governing body constituted under the instrument of government, and
- (b) without prejudice to paragraph (a), anything done before that date by or in relation to the temporary governing body in respect of that contract or the employee is deemed from that date to have been done by or in relation to the governing body constituted under the instrument of government,

but no right of the employee to terminate his or her contract of employment if a substantial change is made to his or her detriment in his or her working conditions arises by reason only of the change of employer effected by that regulation.

### **Information for successors**

48.—(1) Immediately before the incorporation date, the temporary governing body must prepare, for the purpose of assisting the governing body who will succeed it, a brief report of the action which it has taken in the discharge of its functions relating to the new school.

(2) All minutes and papers of a temporary governing body relating to the new school, including the report prepared under paragraph (1), must be made available to its successors.

## **PART 9**

### **Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998**

#### **Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998**

49.—(1) Regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998 is amended in relation to Wales as set out in paragraphs (2) and (3).

(2) In paragraph (2) of regulation 9, insert before “Church of England”, the words “new school which is intended to be a”.

(3) In paragraph (6)(a) of regulation 9, for “(within the meaning of Part III of the Education (New Schools) (Wales) Regulations 1999 or the 1996 Act, as the case may be)” substitute “within the meaning of Part 3 of the New Maintained Schools (Wales) Regulations 2005”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(15)

18 October 2005

*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 relate to the government of new maintained schools in Wales.

Part 1 provides for the Regulations to come into force, sets out those Regulations that are to be revoked or amended and contains interpretation provisions. It also deals with the service of notices.

Part 2 relates to the making of arrangements for temporary governing bodies. Regulation 5 enables arrangements to be made in anticipation that proposals will be approved and regulation 6 requires the agreement of promoters to arrangements relating to temporary foundation governors.

Part 3 describes the various categories of temporary governor. Regulation 9 deals with the appointment of temporary parent governors by either the local education authority or a new school's promoters.

Regulation 10 deals with temporary staff governors, which includes non-teaching staff only. Regulation 11 deals with teacher governors. The head teacher is a temporary governor by virtue of his or her position but may resign his or her temporary governorship (or withdraw his or her resignation) at any time.

Regulation 12 deals with the appointment of temporary LEA governors.

Regulations 13 and 14 apply to temporary community governors and additional temporary community governors.

Regulation 15 makes provision as to the appointment of temporary foundation governors, including *ex officio* temporary governors and regulation 16 deals with the nomination and appointment of temporary partnership governors. Regulation 17 applies to temporary representative governors in community special schools. Regulation 18 makes provision for temporary sponsor governors, the appointment of whom is optional.

Regulation 19 specifies the experience required of temporary governors and regulation 20 makes provision in respect of joint appointments.

Part 4 deals with the composition of temporary governing bodies by applying regulations 13 to 20 of the Government of Maintained Schools (Wales) Regulations 2005 ("the Government Regulations") to temporary governing bodies with some modifications.

Part 5 deals with the tenure of office and qualifications of temporary governors. Regulation 22 sets out how a temporary governor can resign and regulations 23 and 24 deal with the removal of temporary governors.

Regulation 25 makes provision for the circumstances in which a temporary governor is disqualified from being appointed or continuing in office as a temporary governor by applying Schedule 5 of the Government Regulations, with modifications.

Part 5 also contains provisions relating to expenses incurred in relation to temporary governing bodies and the provision of information to temporary governors.

Part 6 deals with the conduct of new schools with temporary governing bodies and gives temporary governing bodies general powers and duties. In addition, regulation 32 provides for the execution of documents by the temporary governing body.

Regulation 33 requires the head teacher to consult the temporary governing body and the local education authority regarding the curriculum and regulation 34 provides for the determination of dates for the school term and holidays and the times of school sessions. Regulation 35 deals with



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reports and information to be provided to LEAs and regulation 36 for consultation by LEAs in relation to expenditure where temporary governing bodies do not have delegated budgets.

Part 7 deals with the appointment, functions and removal of officers, meetings and proceedings of temporary governing bodies, committees of temporary governing bodies and conflicts of interest. The relevant provisions of the Government Regulations are applied to new schools with modifications.

Part 8 deals with the transition from a temporary governing body to a permanent governing body constituted under an instrument of government. The local education authority must secure that an instrument of government is made before the school opening date.

The local education authority determines the date when the governing body will be constituted under the instrument of government. This is the incorporation date, which must be as soon as reasonably practicable after the opening date but no later than the last day of the first term.

Regulations 44 and 45 deal with the appointment and election of governors required by the instrument of government.

Regulations 46 to 48 provide for transfers of property, staff and other rights and liabilities from the temporary to the permanent governing body and for the preparation of a report by the temporary governing body.

Part 9 makes some amendments relating to new schools to the Religious Character of Schools (Designation Procedure) Regulations 1998.

A regulatory appraisal has been prepared and placed on the National Assembly for Wales website ([www.wales.gov.uk](http://www.wales.gov.uk)). Copies can be obtained from the Welsh Assembly Government Schools Management Division, Crown Buildings, Cathays Park, Cardiff CF10 3NQ.