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WELSH STATUTORY INSTRUMENTS

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**2005 No. 2916 (W.213)**

**EDUCATION, WALES**

**The Change of Category of Maintained Schools  
(Wales) (Amendment) Regulations 2005**

*Made* - - - - 18 October 2005

*Coming into force* - - 31 October 2005

In exercise of the powers conferred upon the Secretary of State by sections 138(7) and 144 of, and paragraph 5 of Schedule 8 to, the School Standards and Framework Act 1998<sup>(1)</sup> and now vested in the National Assembly for Wales<sup>(2)</sup>, and in exercise of the powers conferred on it by sections 19, 20, 210(7) and 214 of the Education Act 2002<sup>(3)</sup> the National Assembly for Wales makes the following Regulations:

**Title, commencement, interpretation and application**

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

(2) In these Regulations—

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

“the 2005 Regulations” (“*Rheoliadau 2005*”) means the Government of Maintained Schools (Wales) Regulations 2005<sup>(4)</sup>;

“the Principal Regulations” (“*y Prif Reoliadau*”) means the Change of Category of Maintained Schools (Wales) Regulations 2001<sup>(5)</sup>.

(3) These Regulations apply in relation to Wales.

**Amendment of the Principal Regulations**

2. The Principal Regulations are amended as follows.

3. In regulation 3(1)—

(a) before the definition of “the Act” insert the following definition—

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(1) 1998 c. 31. For the definition of “regulations”, see section 142(1).

(2) See the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672.

(3) 2002 c. 32. For the definition of “regulations”, see section 212(1).

(4) S.I. 2005/2914 (W.211).

(5) S.I. 2001/2678 (W.219).

“the 2005 Regulations” (“*Rheoliadau 2005*”) means the Government of Maintained Schools (Wales) Regulations 2005;”;

- (b) substitute for the definition of “modified Schedule 12 to the Act” the following definition—

“the modified 2005 Regulations” (“*y Rheoliadau 2005 addasedig*”) means the 2005 Regulations as they have effect with modifications by virtue of regulation 12 of and Schedule 3 to these Regulations;”.

4. In regulation 10(1), substitute the words “the modified 2005 Regulations” for the words “modified Schedule 12 to the Act”.

5. Substitute for regulation 11 the following—

“11. The new instrument of government must be made in accordance with, and conform to, the requirements of Part 5 of the modified 2005 Regulations.”.

6. Substitute for regulation 12 the following—

“12. The 2005 Regulations apply to the new instrument of government referred to in regulation 11 with the modifications set out in Schedule 3.”.

7. In regulation 13(1), substitute the words “the modified 2005 Regulations” for the words “modified Schedule 12 to the Act”.

8. In regulation 15(4), substitute the words “sponsor governors” for the words “additional co-opted governors”.

9. After regulation 15, insert the following—

“15A. For the purposes of regulations 14 and 15, where the local education authority has not made an instrument of government for the current governing body in accordance with the 2005 Regulations, the corresponding categories of governor are as follows—

<i>Category of current governor</i>	<i>Category of governor under the 2005 Regulations</i>
Co-opted governor	Community governor
Representative governor	Representative governor
Foundation governor (including <i>ex officio</i> foundation governor)	Foundation governor
LEA governor	LEA governor
Parent governor	Parent governor
Partnership governor	Partnership governor
Staff governor	Staff governor
Teacher governor	Teacher governor
Head teacher ( <i>ex officio</i> governor)	Head teacher ( <i>ex officio</i> governor)”

10. For Schedule 3 substitute the revised Schedule 3 set out in the Schedule to these Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(6).

18 October 2005

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

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## SCHEDULE

Regulation 10

## “SCHEDULE 3

Provisions of the 2005 Regulations modified in relation to Instruments of Government as are mentioned in Regulations 10, 11 and 12 of the Principal Regulations

The regulations in the 2005 Regulations specified in the left hand column of the table below have effect in relation to instruments of government such as are mentioned in regulations 10, 11 and 12 with the modifications specified in the right hand column of the table.

<i>Provision</i>	<i>Modification</i>
Regulation 33(1)(b)	That sub-paragraph has effect as if the words “or will belong” were inserted after “the school belongs”.
Regulation 33(1)	That paragraph has effect as if the following were inserted after regulation 33(1)(g)— “(gg) where the school will become a foundation school or foundation special school, a voluntary aided school or a voluntary controlled school, subject to regulation 14 of the Change of Category of Maintained Schools (Wales) Regulations 2001, the name of any foundation body or person entitled to appoint foundation governors and, if there is more than one such person entitled to appoint, the basis upon which such appointments are made both on the change of category and thereafter when there are vacancies to be filled;”.
Regulation 33(2)	That paragraph has effect as if for the words “the school belongs” there were substituted the words “it is proposed the school should belong”.
Regulation 34 if—	That regulation has effect as if that regulation were omitted and the following substituted— <p>“34.—(1) This regulation applies in connection with the making of an instrument of government for a school changing its category in accordance with Schedule 8 to the 1998 Act.</p> <p>(2) The governing body must prepare a draft of the new instrument of government and submit it to the local education authority.</p> <p>(3) Where the school has foundation governors or it is proposed that the school</p>

<i>Provision</i>	<i>Modification</i>
	<p>should have foundation governors, the governing body must not submit the draft to the local education authority unless it has been approved by—</p> <ul style="list-style-type: none"><li>(a) the existing foundation governors;</li><li>(b) if there are no existing foundation governors, the persons whom it is proposed will be entitled to appoint foundation governors;</li><li>(c) any trustees of any trust relating to the school;</li><li>(d) in the case of a Church in Wales school or Roman Catholic Church school, the appropriate diocesan authority; and</li><li>(e) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.</li></ul> <p>(4) On receiving the draft the local education authority must consider whether it complies with all applicable statutory provisions, and</p> <ul style="list-style-type: none"><li>(a) it is content that the draft so complies, or</li><li>(b) there is agreement between it, the governing body and (if the school has foundation governors or it is proposed that the school should have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent and the revised draft complies with all the applicable statutory provisions,</li></ul> <p>the instrument of government must be made by it in the form of the draft or (as the case may be) in the form of the revised draft.</p> <p>(5) If, in the case of a school which has foundation governors or it is proposed should have foundation governors, at any time the persons listed in paragraph (3) disagree with the draft, any of those</p>

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<i>Provision</i>	<i>Modification</i>
	<p>persons may refer it to the National Assembly for Wales which must give such direction as it thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong.</p> <p>(6) If neither of sub-paragraphs (a) and (b) of paragraph (4) applies in the case of a school which does not have foundation governors or it is not proposed should have foundation governors, the local education authority must—</p> <ul style="list-style-type: none"> <li>(a) inform the governing body of the reasons why it is not content with the draft instrument of government, and</li> <li>(b) give the governing body a reasonable opportunity to reach agreement with it on revising the draft;</li> </ul> <p>and the instrument of government must be made by it either in the form of a revised draft agreed between it and the governing body or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong.</p> <p>(7) When taking any decision as to the name of the school the governing body, the local education authority and (if the school has foundation governors or it is proposed should have foundation governors) the persons mentioned in paragraph (3), must have regard to any guidance given from time to time by the National Assembly for Wales.”.</p>
Regulation 35(4)	That paragraph has effect as if for “regulation 34(2)” there were substituted “regulation 34(3) as modified”.
Regulation 35(5)(b)	That sub-paragraph has effect as if for “regulation 34(2)” there were substituted “regulation 34(3) as modified”.
Regulation 35(6)	That paragraph has effect as if for “regulation 34(2)” there were substituted “regulation 34(3) as modified” and as if for “the school belongs” there were substituted “it is proposed the school should belong”.

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<i>Provision</i>	<i>Modification</i>
Regulation 35(7)	That paragraph has effect as if for “the school belongs” there were substituted “it is proposed the school should belong”.
Regulation 37	Regulation 37 is omitted.”

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### **EXPLANATORY NOTE**

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

These Regulations amend the Change of Category of Maintained Schools (Wales) Regulations 2001 (the “Principal Regulations”). The Principal Regulations make provision for a community, voluntary controlled, voluntary aided or foundation school to become another category of school within those categories, for a community special school to become a foundation special school and for a foundation special school to become a community special school. These Regulations also modify the Government of Maintained Schools (Wales) Regulations 2005 (“the 2005 Regulations”).

These amendments and modifications are consequential on the repeal of Schedule 12 to the School Standards and Framework Act 1998 by the Education Act 2002 and the making of the 2005 Regulations.

Regulations 3 to 9 make minor amendments to the modifications in the Principal Regulations relating to the constitution of governing bodies of schools which change category.

Regulation 10 and the Schedule set out the modified provisions in the 2005 Regulations which relate to the making and the content of the instruments of government of schools which change category. The Schedule substitutes a new Schedule 3 to the Principal Regulations.