
WELSH STATUTORY INSTRUMENTS

2005 No. 2912

The New Maintained Schools (Wales) Regulations 2005

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.