
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the control by governing bodies of the occupation and use of school premises. They replicate provision made in Schedule 13 to the School Standards and Framework Act 1998, which is repealed by the Education Act 2002.

Regulation 3 provides that it is the governing body of a community school, community special school and maintained nursery school that is responsible for the occupation and use of the school premises, both during and outside school hours. This is subject to any directions by the local authority as to how the premises must be occupied and used, to any transfer control agreement and to any other legal requirements. Governing bodies must have regard to the desirability of making the premises available for use by the community.

Regulation 4 enables the governing body to enter into a transfer of control agreement if its purpose is to promote community use of the school premises. The agreement may only make provision for use of the school premises during school hours if the governing body has obtained the consent of the local authority. All transfer of control agreements are taken to contain certain terms such as the requirement that the body to whom control of the premises has been transferred acts in accordance with any local authority directions, that it will have regard to the desirability of the premises being made available for community use, and that the governing body may take back control of the premises by giving reasonable written notice.

Regulations 5 and 6 make similar provision in relation to foundation and foundation special schools, except in the following respects. There is no provision for a local authority to make directions. Regulation 5(3) provides that where the school's trust deed gives control to a person other than the governing body, references to that person are substituted for references to the governing body for the purposes of regulations 5 and 6. Under regulation 6(2) and (3) the governing body may enter into a transfer of control agreement despite anything in the school's trust deed to the contrary, but in all other respects the requirements of the trust deed must be met. Regulation 6(4) provides that if the governing body wishes to enter into a transfer of control agreement making provision for use of the school premises during school hours, it must first obtain the consent of the Welsh Ministers.

Regulations 7 and 8 make similar provision in relation to voluntary schools to that made in relation to community schools, except in the following respects. In the case of a voluntary controlled school, the governing body's control of the premises is subject to any directions given by the local authority as to how the school's premises must be occupied and used, and in the case of voluntary aided school, it is subject to directions given by the local authority to the governing body to provide free accommodation at the school for a purpose connected with education or with the welfare of young persons. Regulation 7(3) makes provision similar to that in regulation 5(3) and regulation 8(2) and (3) makes provision similar to that in regulation 6(2) and (3).

Regulation 9 makes provision in relation to the control of the premises of voluntary schools outside school hours. The governing body of a voluntary controlled school controls the use of the premises on Saturdays if they are not required for the school or by the local authority for the purposes connected with education or with the welfare of young persons. The foundation governors of voluntary controlled schools control the use of the premises on Sundays.

Regulation 10 provides that a governing body's control of school premises is subject to arrangements made under provisions in the Education Reform Act 1988 or the Further and Higher Education Act 1992.