

2008 No. 136 (W.18)

EDUCATION, WALES

**The Control of School Premises
(Wales) Regulations 2008**

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 They replicate provision made in Schedule 13 to the School Standards and Framework Act 1998, which is repealed by the Education Act 2002.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.

2008 No. 136 (W.18)

EDUCATION, WALES

**The Control of School Premises
(Wales) Regulations 2008**

Made 23 January 2008

Laid before the National

Assembly for Wales 24 January 2008

Coming into force 31 March 2008

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 31 and 210(7) of the Education Act 2002 and now vested in them⁽¹⁾ make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is The Control of School Premises (Wales) Regulations 2008 and they come into force on 31 March 2008.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations unless the context otherwise requires —

“the Act” (“*y Ddeddf*”) means the Education Act 2002;

“community use” (“*defnydd cymunedol*”) means the use of school premises (when not required by or in connection with the school) for charitable purposes by pupils at the school or their families, or people who live or work in the locality in which the school is situated;

⁽¹⁾ 2002 c.32. The functions of the National Assembly for Wales under those sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

“school hours” (*“oriau ysgol”*) means any time during a school session or during a break between school sessions on the same day;

“school session” (*“sesiwn ysgol”*), in relation to any school, means a school session beginning and ending at such times as may from time to time be determined in that school in accordance with section 32 of the Act.

Control of school premises: community and community special schools and maintained nursery schools

3.—(1) The occupation and use of the premises of a community or community special school or maintained nursery school (both during and outside school hours) are under the control of the governing body, subject to —

- (a) any directions given by the local authority under paragraph (2);
- (b) any transfer of control agreement entered into by the governing body under regulation 4; and
- (c) any requirements of an enactment other than the Act or regulations made under the Act.

(2) The local authority may give such directions as to the occupation and use of the premises of a community or community special school or maintained nursery school as it thinks fit.

(3) In exercising control of the occupation and use of the premises of the school outside school hours the governing body must have regard to the desirability of those premises being made available for community use.

Transfer of control agreements: community and community special schools and maintained nursery schools

4.—(1) Subject to paragraph (2), the governing body of any community or community special school or maintained nursery school may enter into a transfer of control agreement with any body or person if their purpose (or one of their purposes) in doing so is to promote community use of the whole or any part of the school premises.

(2) The governing body may not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless it has first obtained the local authority’s consent to the agreement insofar as it makes such provision.

(3) A transfer of control agreement is taken to include the following terms, namely –

- (a) that the governing body must notify the controlling body of any directions given to the governing body under regulation 3(2);
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement —
 - (i) must do so in accordance with any directions from time to time notified to that body in pursuance of sub-paragraph (a);
 - (ii) must have regard to the desirability of the premises being made available for community use; and
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then —
 - (i) the use of the specified premises at those times is to be under the control of the governing body, and
 - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

even though their use at those times would, apart from this paragraph, be under the control of the controlling body.

(4) Paragraph (5) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.

(5) In such a case sub-paragraph (c) of paragraph (3) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that sub-paragraph.

(6) Where the governing body enters into a transfer of control agreement, the governing body must so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions as are notified to that body in pursuance of paragraph (3)(a).

(7) In this regulation —

“the controlling body” (“*y corff rheoli*”) means the body or persons (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question; and

“transfer of control agreement” (“*cytundeb i drosglwyddo rheolaeth*”) means an agreement which (subject to paragraph (3)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Control of school premises: foundation and foundation special schools

5.—(1) The occupation and use of the premises of a foundation or foundation special school (both during and outside school hours) are under the control of the governing body, subject to —

- (a) any transfer of control agreement entered into by the governing body under regulation 6;
- (b) any requirements of an enactment other than the Act or regulations made under it.

(2) In exercising control of the occupation and use of the premises of the school outside school hours the governing body must have regard to the desirability of those premises being made available for community use.

(3) Where the school has a trust deed which provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under regulation 6) the use of those premises is or would be under the control of such a person —

- (a) this regulation, and
- (b) regulation 6,

have effect in relation to the school with the substitution of references to that person for references to the governing body.

Transfer of control agreements: foundation and foundation special schools

6.—(1) Subject to paragraph (2), the governing body of any foundation or foundation special school may enter into a transfer of control agreement with any body or person if their purpose (or one of their purposes) in doing so is to promote community use of the whole or any part of the school premises.

(2) Paragraph (1) applies even where the school has a trust deed that would (apart from this paragraph) expressly or impliedly preclude the governing body

from entering into a transfer of control agreement with the body or person concerned or from conferring control on the controlling body in question.

(3) However, the governing body may not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by any such trust deed as would apply if control was being exercised by the governing body.

(4) The governing body may not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless it has first obtained the consent of the Welsh Ministers to the agreement insofar as it makes such provision.

(5) A transfer of control agreement is taken to include the following terms, namely —

- (a) that the controlling body, in exercising control of the use of any premises subject to the agreement, must have regard to the desirability of the premises being made available for community use; and
- (b) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then —
 - (i) the use of the specified premises at those times is to be under the control of the governing body, and
 - (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

even though their use at those times would (apart from this paragraph) be under the control of the controlling body.

(6) Paragraph (7) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.

(7) In such a case sub-paragraph (b) of paragraph (5) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school and the term that would otherwise be included by virtue of that sub-paragraph.

(8) In this regulation —

“the controlling body” (“*y corff rheoli*”) means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question; and

“transfer of control agreement” (“*cytundeb i drosglwyddo rheolaeth*”) means an agreement which (subject to paragraph (5)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Control of school premises: voluntary schools

7.—(1) The occupation and use of the premises of a voluntary school (both during and outside school hours) are under the control of the governing body, subject to —

- (a) any directions given by the local authority —
 - (i) (in the case of a voluntary controlled school) under paragraph (2), or
 - (ii) (in the case of a voluntary aided school) under regulation 9(3);
- (b) any transfer of control agreement entered into by the governing body under regulation 8; and
- (c) any requirements of an enactment other than the Act or regulations made under it.

(2) The local authority may give directions as to the occupation and use of the premises of a voluntary controlled school as it thinks fit (subject to regulation 9(1) and (2)).

(3) Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement made under regulation 8) the use of those premises is or would be under the control of such a person —

- (a) this regulation, and
- (b) regulations 8 and 9,

have effect in relation to the school with the substitution of references to that person for references to the governing body.

Transfer of control agreements: voluntary schools

8.—(1) Subject to paragraph (2), the governing body of any voluntary school may enter into a transfer of control agreement with any body or person if their purpose (or one of their purposes) in doing so is to

promote community use of the whole or any part of the school premises.

(2) Paragraph (1) applies even where the trust deed for the school would (apart from this paragraph) expressly or impliedly preclude the governing body from entering into such a transfer of control agreement with the body or person concerned or from conferring control on the controlling body in question.

(3) However, the governing body may not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would apply if control were being exercised by the governing body.

(4) The governing body may not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours unless it has first obtained the local authority's consent to the agreement insofar as it makes such provision.

(5) A transfer of control agreement is taken to include the following terms, namely —

- (a) that the governing body must notify the controlling body of —
 - (i) any directions given to the governing body under regulation 7(2) (in the case of a voluntary controlled school) or regulation 9(3) (in the case of a voluntary aided school); and
 - (ii) any determination made by the foundation governors under regulation 9(2) (in the case of a voluntary controlled school);
- (b) that the controlling body, in exercising control of the use of any premises subject to the agreement —
 - (i) must do so in accordance with any directions or determinations from time to time notified to that body in pursuance of sub-paragraph (a); and
 - (ii) must have regard to the desirability of the premises being made available for community use;
- (c) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then —

- (i) the use of the specified premises at those times is to be under the control of the governing body, and
- (ii) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice,

even though their use at those times would, apart from this paragraph, be under the control of the controlling body.

(6) Paragraph (7) applies where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement.

(7) In such a case sub-paragraph (c) of paragraph (5) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of that sub-paragraph.

(8) Where the governing body enters into a transfer of control agreement, the governing body must so far as reasonably practicable secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of paragraph (5)(a).

(9) In this regulation —

“the controlling body” (“*y corff rheoli*”) means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question; and

“transfer of control agreement” (“*cytundeb i drosglwyddo rheolaeth*”) means an agreement which (subject to paragraph (5)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Voluntary schools: control of use of premises outside school hours

9.—(1) The governing body may determine the use to which the premises of a voluntary controlled school (or any part of them) are put on Saturdays when not required —

- (a) for the purposes of the school, or
- (b) for any purpose connected with education or with the welfare of young persons for which

the local authority desires to provide accommodation on the premises (or on the part in question).

(2) The foundation governors may determine the use to which the premises of a voluntary controlled school (or any part of them) are put on Sundays.

(3) If the local authority –

(a) wishes to provide accommodation for any purpose connected with education or with the welfare of young persons, and

(b) is satisfied that there is no suitable alternative accommodation in its area for that purpose,

it may direct the governing body of a voluntary aided school to provide accommodation free of charge for that purpose on the school premises (or any part of them) on any week day when not needed for the purposes of the school.

(4) The local authority may not exercise its power under paragraph (3) so as to direct the governing body to provide accommodation on more than three days in any week.

(5) In exercising control of the occupation and use of the premises of a voluntary school outside school hours the governing body must have regard to the desirability of those premises being made available for community use.

Savings

10. The power of the governing body of a maintained school to control the occupation and use of the premises of the school is subject to any arrangements made under or by virtue of –

(a) any agreement made under paragraph 1 or 2 of Schedule 10 to the Education Reform Act 1988⁽¹⁾; or

(b) an agreement made under paragraph 1 or 2⁽²⁾ of Schedule 5 to the Further and Higher Education Act 1992 or a determination made in accordance with paragraph 3 or 4⁽³⁾ of that Schedule.

⁽¹⁾ 1988 (c.40), substituted by paragraph 3 of Schedule 29 to the School Standards and Framework Act 1988 (c.31).

⁽²⁾ Amended by section 136(2) of the School Standards and Framework Act 1998.

⁽³⁾ Amended by section 136(1) of the School Standards and Framework Act 1998.

Jane Hutt

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