

## 26. Control and Community Use of School Premises

This chapter explains:

- the governing body's role in the control of the school premises;
- the circumstances under which LAs can direct the governing body as to how premises should be used;
- Transfer of Control Agreements (TofCAs);
- how the governing body must comply with minimum standards for school premises; and
- requirements of special educational needs (SEN) and disability discrimination legislation.

### Control of Premises

1. At maintained schools the governing body controls the use of premises both during and outside school hours. There may be exceptions to this at voluntary aided, voluntary controlled and foundation or foundation special schools if a trust deed says that someone else has control of the use of premises. Also, at community, community special and voluntary controlled schools the governing body has to follow any general rules (directions) set by the LA (see paragraph 9, below). Further exceptions occur with all schools where a Transfer of Control Agreement (TofCA) has been made (see paragraphs 25-30). Governing bodies must be sympathetic to the needs of the local community when deciding out-of-hours use. (see [The Control of School Premises \(Wales\) Regulations 2008](#), as amended by [The Control of School Premises \(Wales\) \(Amendment\) Regulations 2008](#)).

2. Most schools accommodate extended school and community services to some degree, such as after-school clubs, adult education, out-of-school childcare, sport and youth clubs, and so on. Some schools offer facilities to voluntary organisations.

3. Out of school hours childcare takes place outside of the school day. Out of school childcare clubs (oshc) provide safe, affordable and accessible childcare at either end of the school day, often during the school holidays and sometimes at weekends, and underpin the Childcare Strategy for Wales (WG, 2005). Out of school hours childcare clubs usually take place every day and enable parents to go to work or attend training. Children and young people may also attend these clubs for social reasons or to provide respite care for parents and carers. They often run on school premises but this is not always the case. Provision may take place in local community centres or other appropriate community locations.

4. Out of school hours childcare clubs may be provided for children and young people from 3-14 years (16 in the case of children with specific needs). Provision for children under 8 years which takes place for 2 hours or more is regulated and must be registered with the Care and Social Service

Inspectorate Wales. Out of school childcare clubs for children and young people over 8 years do not need to be registered, as they are not subject to regulation. There is usually a fee structure for oshc provision, however this can sometimes be subsidised depending on the type of provision, location and funding etc. Parents/carers whose children attend registered provision may be able to claim the childcare element of Working Families Tax Credit to help meet the fee cost.

5. Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. While there is no statutory definition of the term, and so ultimately its meaning is for the courts to determine, the WG's view is that the term "purposes of the school" could be construed as embracing all activities that bring an educational benefit to pupils at the school, or to pupils registered at other maintained schools. Governing bodies may charge some organisations more so that the extra funds can be used to subsidise other users. Overall, community use must at least cover its own costs. Profits raised through community use of schools belong to the LA on whose land the profits were made, but LAs may allow schools to keep the income that they generate. LAs are encouraged to make provisions for this in their Local Management of Schools schemes (again also see chapter 27 entitled Community Focused Schools).

6. Schools do, however, play an important and pivotal role in the community. Schools not only provide education for pupils and create a community spirit amongst parents, but they also have the opportunity and often the facilities to reach out to the whole community. A community focused school is one that provides a range of services and activities, often beyond the school day, to help meet the needs of its pupils, their families and the wider community. For information on community focused schools, see the following chapter.

7. Many schools have sports and other facilities that the community could use cheaply - even at a small profit. Governing bodies and LAs can apply to the Sports and Arts Councils for Wales for funding, including National Lottery funding, for sports and arts facilities which will be made available for community use.

8. The LA can give the governing bodies of community, community special and voluntary controlled schools directions as to how school premises should be used. These directions do not take away the governing body's responsibility, but they can cover matters such as:

- regular bookings for the youth service or for adult education;
- security and caretaking;
- what costs should be covered by charges;
- the use of a central booking system; and

- making sure that community use of the school's facilities does not affect the day-to-day use of the facilities by pupils, for example by making sure that outdoor sports pitches are not overused.

9. The LA may give a direction to the governing body of a voluntary aided school as to how the premises should be used on weekdays, for up to three days a week. The LA may do this where it wishes to provide accommodation for the education or welfare of young people, if the LA is satisfied that there is no other suitable accommodation available. When making such a direction, the LA may direct the governing body to provide the accommodation free of charge.

10. Directions given by LAs should be reasonable and not interfere too much with the governing body's control. For example, the LA should not demand that the premises be made available to it if this would force the governing body to break booking agreements.

### **Standards for School Premises**

11. Governing bodies should note that minimum standards for the premises of all maintained schools in England and Wales are contained in the [Education \(School Premises\) Regulations 1999](#). These cover school facilities, structural and environmental requirements, aspects of health and safety, and the provision of team-game playing fields.

### **Making Premises Suitable For Disabled Pupils and Those with Additional Learning Needs (ALN), and Avoiding Discrimination**

12. The Disability Discrimination Act [1995](#) (DDA) has applied to schools since 1996, in respect of [Part 2](#), Employment, and [Part 3](#), Provision of Goods and Services (which had exemptions for education). The [Special Educational Needs and Disability Act 2001](#) amends the DDA, lifting the exemption for education from Part 3, and provides [Part 4](#), Education, including schools from September 2003. The DDA 1995, as amended by the [Disability Discrimination Act 2005](#), made it unlawful for any organisation or person that provides a service to discriminate against disabled people.

13. The [Special Educational Needs and Disability Act 2001](#) ("the Act") introduced new duties on LAs and schools in relation to disabled pupils and prospective pupils. A person has a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. The two tracts of discrimination are not to treat disabled pupils less favourably and to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage.

14. LAs and schools are required to prepare accessibility strategies and accessibility plans respectively for increasing, over time, the accessibility of schools for disabled pupils. This is known as the planning duty. See [The Disability Discrimination \(Prescribed Periods for Accessibility Strategies and Plans for Schools\) \(Wales\) Regulations 2003 SI No 2531 \(W246\)](#).

15. The objectives of the accessibility strategy or plan are to:
- increase the extent to which disabled pupils can participate in the school curriculum;
  - improve the physical environment of schools to increase the extent to which disabled pupils can take advantage of education and associated services; and
  - improve the delivery to disabled pupils of information, which pupils who are not disabled receive in written form (this should be done within a reasonable period of time and in formats that take account of views expressed by the pupils or parents about their preferred means of communication).

16. The Act provides for Estyn inspections of LAs and schools to cover the discharge of their responsibilities to prepare, revise, review and implement their strategies or plans, and in respect of an accessibility plan, the publication of the plan. Estyn monitors the planning duty through its inspections of LAs and schools. The Welsh Ministers can intervene where a LA or school is not complying with the planning duty and can direct a LA or school to do so.

17. The planning duty came into force on 1 September 2003. LAs and schools were required to have their written strategies and plans in place by 1 April 2004. These Regulations ensured that strategies and plans ran for an initial three-year period, and were then reviewed and amendments made where necessary. The same process should be followed at the end of each three-year cycle.

18. [Part 3](#) of the DDA (Goods, facilities and services) applies to the governing body where, as service provider, it makes the school sports facilities, the school hall or other school accommodation available for use by members of the public or a section of the public. Providers of services must not refuse to provide a service to disabled people, provide it at a lower standard, or offer the service on less favourable terms to disabled people.

19. A person discriminates against a disabled person if, for a reason which relates to a disabled person's disability, they treat him or her less favourably than they treat or would treat others to whom that reason does not or would not apply, and they cannot show that the treatment in question is justified. A person will also discriminate against a disabled person if they fail to comply with section 28C (pupils to be substantially disadvantaged). Any less favourable treatment for a disability-related reason is justified only where, in the landlord's or manager's opinion, one or more "conditions" are satisfied and it is reasonable, given all the circumstances of the case, for him or her to hold that opinion.

20. Whether discrimination in an education setting for pupils is justified, as dealt with by section [28b in Part 4 of the DDA](#), (as inserted by the Special Educational Needs and Disability Act 2001). For further information relating to disability discrimination see Chapter 9 headed Equal Opportunities and School Governors.

21. Since 1 October 1999 providers of services have had to make “reasonable adjustments” for disabled people, such as providing extra help or making changes to the way they provide their services.

22. Since 1 October 2004 service providers have had to make other reasonable adjustments in relation to the physical features of their premises to overcome physical barriers that make it impossible or unreasonably difficult for a disabled person to access their services. The DDA, does however, recognise the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, service providers are required only to make adjustments that are reasonable given all the circumstances.

23. Factors that may be taken into account in determining what may be reasonable include the cost of the adjustment, its practicability and the extent of the service provider’s financial and other resources.

24. Governing bodies, as providers of services, are also subject to Section 20 of the Race Relations Act 1976 and Section 29 of the Sex Discrimination Act 1975.

### **Transfer of Control Agreement (TofCA)**

25. The governing bodies of any community or community special school or maintained nursery school may enter into a transfer of control agreement (TofCA) 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.

26. The other body, known as the “controlling body”, will continue the occupation and use of the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can enable school facilities to be used without needing ongoing management or administrative time from the school staff.

27. 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 LA’s consent to the agreement.

28. The contents of a TofCA are outlined in [The Control of School Premises \(Wales\) Regulations 2008](#), Paras 4 and 5.

F  
FS 29. In a foundation or foundation special school, where the school has a trust deed which provides for any person other than the governing body to be entitled to control occupation and use of the school premises to any extent, then the TofCA must make reference to that person.

VC  
V 30. The governing body of a voluntary school may enter into an agreement as long as the use to which the premises will be put conform with any such requirements, prohibitions or restrictions imposed by the trust deed of the school.

## The Law

The School Standards and Framework Act 1998: [Schedule 13](#)

The [Education \(School Premises\) Regulations 1999](#)

[The Maintained Schools \(Partnership Agreements\) \(Wales\) Regulations 2007](#)

[The Control of School Premises \(Wales\) Regulations 2008,](#)

[The Control of School Premises \(Wales\) \(Amendment\) Regulations 2008\).](#)

The [Disability Discrimination Act 1995: Part 3:](#)

The [Disability Discrimination Act 2005](#)

[The Disability Discrimination \(Prescribed Periods for Accessibility Strategies and Plans for Schools\) \(Wales\) Regulations 2003 SI No 2531 \(W246\)](#)

The [Special Educational Needs and Disability Act 2001](#)

## Guidance

[Community Focused Schools](#) – NafW Circular 34/2003; and

[Guidance on the Welsh Assembly Government Community Focused Schools Grant](#) - NafW Circular 31/05

[Disability Rights Commission: Code of Practice for Schools](#)