

REGULATORY APPRAISAL

EDUCATION, WALES

THE STAFFING OF MAINTAINED SCHOOLS (MISCELLANEOUS AMENDMENTS) (WALES) REGULATIONS 2007

Background

1. Governing bodies of all maintained school and maintained nursery schools in Wales with delegated budgets are responsible for the conduct and discipline, capability, staff grievance, appointment, dismissal and suspension of school staff (teaching and non teaching). The Staffing of Maintained Schools (Wales) Regulations 2006 provide a framework within, which governing bodies can fulfil their role and responsibilities and discharge these functions effectively. This framework replaced the framework that was in place in accordance with provisions in Schedules 16 and 17 of the School Standard and Framework Act 1998.
2. However, the Staffing of Maintained Schools (Wales) Regulations 2006 contain cross references to other Regulations, which are incorrect and do not allow governing bodies to properly carry out their responsibilities for staff appointments.

Purpose and intended effect of the measure

3. These Regulations correct these cross referencing errors and correct references in the School Teacher Appraisal (Wales) Regulations 2002 to legislation in the School Standards and Framework Act 1998, which are no longer in force.
4. The effect of these amendments is as follows:
 - Regulation 2 substitutes references to paragraph 22 of Schedule 16 and paragraph 23 of Schedule 17 of the School Standards and Framework Act 1998 in the School Teacher Appraisal (Wales) Regulations 2002, with Regulation 6 of the Staffing of Maintained Schools (Wales) Regulations 2006;
 - Regulation 3(1) and 3(2) amends the Government of Maintained Schools (Wales) Regulations 2005 to clarify that governing bodies of all maintained schools cannot delegate the appointment of headteachers and deputy headteachers to anyone other than a selection panel; and
 - Regulation 4 amends the Staffing of Maintained Schools (Wales) Regulations 2006 by:
 - inserting the definition of a governing body;
 - clarifying the numbering of the Regulations;
 - clarifying that both Local Education Authorities (LEAs) and governing bodies have respective roles to play in the staffing of schools;

- defining the types of schools to which the provisions in the 2006 staffing Regulations apply;
 - amending the cross references in regulation 12 to allow governing bodies to recruit teachers on a short term basis of four months or less, where there is a vacancy and to fill posts on a temporary basis and where the person holding the post is absent; and
 - amending the cross references to other Regulations:
 - in regulation 21 to allow the chief education officer at an Local Education Authority (LEA) to be entitled to attend meetings and give advice to governing bodies on filling temporary vacancies for headteachers and deputy headteachers where the person holding the post is absent, and to remove these entitlements in respect of filling teacher vacancies;
 - in regulation 26 to allow a governing body to fill a temporary teacher vacancy where the person holding the post is absent without the need to refer the matter to the LEA;
 - in regulation 33 - to ensure that if a headteacher and deputy headteacher appointment in schools of a Roman Catholic religious order is not secured under this regulation, the governing body completes the appointment process set out in regulation 24(7); and
 - in regulation 34 to clarify that if a headteacher or deputy headteacher appointment is made using the whole governing body as an appointment panel the whole governing body has a vote.
5. These Regulations also introduce a requirement that all new appointments to the school workforce should be subject to an enhanced Criminal Records Bureau (CRB) check prior to, or as soon as practicable after appointment. An individual's right to work in the UK must be confirmed and further checks must be carried out on those who have lived overseas, if a CRB check is insufficient to establish their suitability to work in a school.
6. The same requirements apply to staff appointed by a local education authority to work in schools as well as those provided by supply agencies.
7. Prior to supply staff beginning work, these Regulations prescribe that the school must:
- receive written notification from the supply agency that it has carried out the checks the school is required to make for its own staff before appointment. That notification should confirm that the agency has applied for or obtained a CRB certificate. Where the agency has received a CRB certificate, whether or

not the CRB certificate included any disclosed information or whether any information was provided to the agency alongside the certificate; and

- receive a copy of the Criminal Records Bureau (CRB) certificate, together with any disclosed information on the CRB certificate, and any information provided to the agency alongside the CRB certificate.
8. Schools will be able to place agencies under an obligation to provide the written notification and certificate identified above, through their contracts or other arrangements with them. Schools must also carry out their own identity checks to confirm that the individual arriving at the school is the individual the agency is intending to supply.
 9. In line with current guidance and practice, individuals who take up a new post but within the previous three months have worked in a school or an institution within the further education sector and that post brought them regularly into contact with children, those individuals are subject to the pre-appointment checks outlined above save for the check with the CRB.

Risk Assessment

10. If the technical amendments are not made governing bodies of maintained schools in Wales will not be able to properly discharge their responsibilities for making headteacher and deputy headteacher appointments, as some of the regulation referencing in the Staffing of Maintained Schools (Wales) Regulations 2006 is incorrect. Governing bodies will also not be able to fill teacher vacancies on a short term basis, and chief education officers in Local Education Authorities (LEAs) will have no right to attend meetings and give advice to governing bodies on filling temporary headteacher and deputy headteacher vacancies.
11. If the requirements for introducing Criminal Records Bureau checks on all newly appointed school staff and staff engaged by schools through supply agencies is not introduced, there would be no mandatory requirement and standardised practice in schools throughout Wales, which could lead to pupils being put at risk and not being safeguarded.

Options

Option 1: Do Nothing

12. If these Regulations are not implemented then governing bodies would not be able to properly and effectively discharge their responsibilities for making staff appointments. Also chief education officers in LEAs would have no automatic right to advise governing bodies on the filling of temporary headteacher and deputy headteacher vacancies.
13. Furthermore, the lack of a statutory requirement to undertake appropriate pre-appointment checks would lead to inconsistent practice and would do nothing to improve the existing safeguarding regime. The Safeguarding Vulnerable Groups Act 2006 is scheduled to be introduced in 2008. The Welsh Assembly Government has concluded that the system needs to be strengthened in advance of the vetting and barring scheme established by that Act. Leaving the

current system untouched is not an option. Implementing these commitments will help to strengthen the existing system, further help safeguard children from harm and help maintain public confidence in the system.

Option 2: Make the Legislation

14. Implementing this legislation will ensure that governing bodies of maintained schools in Wales will be able to make headteacher/deputy headteacher and teacher appointments and properly fill temporary vacancies. It will also provide for the Local Education Authority (LEA) to be present at all governing body meetings for headteacher/deputy headteacher appointments to advise the governing body on the two most important posts in a school.
15. The requirement for Criminal Records Bureau (CRB) checks for school staff will strengthen the existing framework. Through the Regulations, what has been good practice and previously strongly recommended in guidance, will become mandatory. This will support greater consistency across the workforce, helping to ensure that schools and educational establishments are implementing recruitment processes to help minimise the risk of harm to children. This is the preferred option and should help to provide reassurance that robust measures are in place to help protect children from harm.

Benefits

16. The amendments will amend cross referencing in the Staffing of Maintained Schools (Wales) Regulations 2006 to ensure that all governing bodies in Wales correctly follow an appropriate and fair procedure to make permanent and temporary staff appointments and receive appropriate and timely advice on senior appointments from the maintaining LEA. The Regulations will also provide greater consistency to pre-employment processes across the workforce as well as public reassurance in recruitment procedures.

Costs

17. There are no additional costs anticipated for the Assembly or employers in respect of the provisions for checking staff. CRB Disclosures are already strongly recommended in the National Assembly for Wales Circular 34/2002 and these regulatory changes serve to strengthen and clarify the requirements on employers. Estyn's survey of vetting practice in schools confirmed that staff, including supply staff, are already subject to these practices.
18. There are no cost implications for the Assembly, governing bodies or LEAs in implementing the technical and clarifying amendments.

Consultation

With Stakeholders

19. On 24 January 2006, the Minister for Education, Lifelong Learning and Skills wrote to key stakeholders in the school and further and higher education sectors in Wales announcing her intentions to bring forward Regulations to ensure that CRB checks are compulsory across the whole school workforce. A copy of that letter was sent to the recipients listed at Annex A as well as all Assembly Members. No responses opposing this approach have been received.

20. Criminal Records Bureau (CRB) checks are only one element of any robust pre-appointment procedure. These Regulations make statutory those “strongly advised” pre-appointment procedures outlined in Guidance Circular 34/2002. Those procedures are also identified within the draft statutory guidance, which will issue for consultation in March, which will set out how local education authorities and governing bodies of schools and further education institutions should exercise their functions with a view to safeguarding and protecting children.
21. There has been no consultation on the proposed technical and clarifying amendments as they are entirely technical and only clarify the intention of, or amend cross references in the Staffing of Maintained Schools (Wales) Regulations 2006 and other Regulations, to ensure the policy intention for school staff appointments is met. They do not introduce new policy.

With Subject Committee

22. The Regulations were notified to the Education, Lifelong Learning and Skills Committee, via the list of forthcoming legislation, on 7 December 2006 (ELLS(2)-16-06(p.6), item no: ELL 40-06). The Regulations were then entitled The Staffing of Maintained Schools (Wales) (Amendment) (No.) Regulations 2007. The Regulations have remained on the list ever since. The Regulations were not identified for detailed scrutiny.
23. The Minister for Education, Lifelong Learning and Skills also indicated her intention to introduce Regulations for mandatory CRB checks for the school workforce, as part of her response to Estyn’s “Survey Of Vetting Practice In Schools”, which was discussed at the Education, Lifelong Learning and Skills Committee on 3 May 2006 and 7 June 2006. Committee Members would have also received a copy of the Minister’s letter of 24 January 2006, referred to in paragraph 19.

Review

24. Once introduced, the provisions regarding CRB checks for school staff in the Regulations will be monitored and if over time it is evident that there is a need for further change this would be considered subject to further consultation. The Safeguarding Vulnerable Groups Act 2006 received Royal Assent in November 2006 and is scheduled for implementation by Autumn 2008. The Act makes revised provision for the establishment of a vetting and barring scheme across the children and vulnerable adult workforce.
25. Once the amendments to the Staffing of Maintained Schools (Wales) Regulations 2006 have been introduced they will be monitored and if there is evidence of a need for change this would be considered in light of such evidence and further consultation.

Summary

26. These Regulations introduce technical amendments to correct references to legislation in the School Standard and Framework Act 1998, which are no longer in force. They also clarify definitions and correct cross referencing errors in the

Staffing of Maintained Schools (Wales) Regulations 2006, the School Teacher Appraisal (Wales) Regulations 2002 and the Government of Maintained Schools (Wales) Regulations 2005.

27. The Regulations also introduce a requirement that all new appointments to the schools workforce are subject to a number of checks to ensure an individual has not been prohibited from working with children as they have been deemed unsuitable, and that similar requirements will apply to staff appointed by a local education authority to work in schools as well as those provided by supply agencies.

Annex A

List of stakeholders in receipt of letter dated 24 January 2006 from Minister for Education, Lifelong Learning and Skills

Headteachers of Schools in Wales	Chair of Governors of Schools in Wales
Directors of Education	Diocesan Directors of Education
Cabinet Members responsible for Education	Teaching Unions in Wales
Governors Wales	General Teaching Council for Wales
Children's Commissioner for Wales	Teacher Supply Agencies
Independent Schools in Wales	Welsh Independent Schools Council
Welsh Secondary Schools Association	Welsh Primary Schools Association
PTA Association	Initial Teacher Training Providers.
Universities Council for the Education of Teachers	Chief Inspector for Training and Education in Wales
FENTO	FFORWM
Association of Director of Education in Wales	Careers Wales
Further Education Institutions	Further Education Institutions
Higher Education Institutions	Initial Teacher Training Institutions
General Teaching Councils	Confederation of British Industry Wales
UWIC	Free Churches Education Unit
Council for Industry and Higher Education	Federation of Small Businesses
The Methodist Church	Commission for Racial Equality Wales Office
Equal Opportunities Commission	Disability GAP Wales
The Headmasters and Headmistresses Conference	Welsh Association of Foundation / Aided Schools
Welsh Language Board	Welsh Joint Education Committee
Department for Education and Skills	All Wales Ethnic Minority Association (AWEMA)
Wales Women's National Coalition	Lesbian Gay Bisexual Forum
Welsh Supply Agencies	NSPCC Cymru
Disability Rights commission	Disability Wales
National Association of Educational Inspectors Advisors and Consultants	Heads of Higher Education Wales Governors Wales
North Wales Open College Network	Education Recruitment Network
Society of Education Officers (Wales)	Audit Commission LEA Inspection
Women in Education Network	The Teaching Awards Trust
Acorn Business Centre	Institute of Directors
Further Education National Training Organisation	Welsh Association of Standing Advisory Councils on Religious Education
National Association for Special Educational Needs	National Council for Education and Training for Wales
Wales Council for Voluntary Action	Churches Joint Education Policy Committee
Welsh Local Government Association	Church in Wales
Wales TUC Cymru	Roman Catholic Church in Wales
Association of Directors of Social Services in Wales	(Confederation of School Governors Associations in Wales)
Capita Education Resources	