

REGULATORY APPRAISAL

EDUCATION, WALES

THE GOVERNMENT OF MAINTAINED SCHOOLS (WALES) REGULATIONS 2005

Purpose and intended effect of the measure

1. All maintained schools in Wales are required to have a governing body, consisting of governors representing the interests of the key stakeholders in schools, i.e. teachers, school staff, parents, the Local Education Authority (LEA), the community and the trustees or Diocese (where a school has a foundation). The purpose of these Regulations is to provide a more flexible regulatory framework within which governing bodies operate to enable them to be effective in discharging their duties and responsibilities.
2. The Education (School Government) (Wales) Regulations 1999 provide the existing framework in which governing bodies operate and conduct their business. They include provisions for the constitution and membership of the governing body; proceedings for governing body and committee meetings; clerks to committees; powers of delegation, disqualifications and other issues relating to the way in which a governing body operates.
3. These new Regulations, as far as possible, mirror the provisions in the 1999 Regulations, but also introduce minimal changes where these would be beneficial. These changes would introduce some flexibility as regards the delegations of governing body functions and responsibilities; and the way in which the governing body elects their officers and conducts their business. They also offer more structure, consistency of approach and clarification of matters in areas where the 1999 Regulations were considered ambiguous.
4. The main changes are:
 - The Regulations now include provision for the categories of governors and the constitution of governing bodies, which had previously been set out in Schedule 9 to the Schools Standards and Framework Act 1998;
 - The Regulations now include provisions for the governing body's Instrument of Government, which had previously been set out in Schedule 12 of the Schools Standards and Framework Act 1998;
 - Co-opted and additional co-opted governors to be called community and additional community governors to better reflect their constituency base;
 - Functions of the clerk are now included;
 - The quorum for governing body and committee meetings (excluding statutory committees) now standardised at 50% excluding vacancies;
 - Appointed parent governors (not elected parent governors) and partnership governors can now be removed by the governing body;

- The process for removal of governors and officers is reduced to one meeting not two;
- The deadline for submission of governing body agendas and papers has changed to 5 days instead of 7 (unless the removal of a governor is to be discussed when 7 days notice is required);
- The procedures for electing chairs of governors are no longer prescriptive and have been relaxed to allow governing bodies to make their own arrangements;
- More flexibility has been introduced to allow governing bodies to delegate more functions to committees or individuals if they wish;
- A new provision has been introduced covering the suspension of governors for up to 6 months, where the governors are a member of staff and have been suspended in relation to their employment; or the governor is subject to any court proceedings, the outcome of which may be that they are disqualified from continuing to hold office; or the governor is acting in a way that could bring the school or his office into disrepute; or the governor is in breach of duty of confidentiality;
- A new disqualification has been introduced that a governor cannot hold office if they refuse a request from the governing body to have a Criminal Records Bureau check;
- There is provision for the establishment of governing bodies for nursery schools;
- There is new provision requiring foundation primary schools to have an additional community governor (formerly known as minor authority governors), if the school falls in a community council area. This brings foundation schools in line with other categories of primary schools; and
- The governing body no longer has the power to decide whether or not to remove an additional community governor representing a minor authority, at the request of the minor authority who is the nominating authority. Instead the nominating authority itself is given the power to remove the governor.

Risk Assessment

5. If these Regulations are not in place there will be no regulatory framework governing the way governing bodies operate and conduct their business.

Options

Option 1: Do Nothing

6. If these Regulations are not made governing bodies will not have a regulatory framework within which to operate and there will be no consistency of approach. Details and advice reflecting the Regulations could be set out in guidance but unless this is statutory, governing bodies would not be obliged to have regard to it and they would be free to make their own arrangements for the constitution, membership and proceedings of their governing body and there would be no way of requiring that governing bodies carried out their statutory functions.

Option 2: Make the Legislation

7. These Regulations will provide a regulatory framework governing the way governing bodies operate and conduct their business.

Benefits

8. The benefits from the Regulations are:
- to provide a more flexible regulatory framework within which governing bodies operate, to enable them to be effective in discharging their duties and responsibilities;
 - offer more structure and consistency of approach in the way governing bodies operate;
 - to also clarify matters where the 1999 Regulations were considered ambiguous; and
 - to introduce more accountability for maintained nursery schools by requiring them to have governing bodies.

Costs

9. There are no additional financial implications associated with these Regulations for the Assembly, LEAs, schools or governing bodies.

Consultation

With Stakeholders

10. In October 2002 the Assembly established the Education Act Reference Group whose members had the necessary expertise to help them inform Assembly policy on the implementation of the school governance issues arising out of the 2002 Act. Membership consisted of representatives from key stakeholders – the teacher unions, Governors Wales, LEAs, diocesan authorities, Welsh Local Government Association, ACCAC and Estyn. The Reference Group was closely involved in the development of the policy on the school governance provisions.
11. On 30 January 2004 the Assembly consulted widely with the key partners mentioned above, all local and national education organisations and 10% of Schools on the proposed changes to the Education (Governors' Allowances) (Wales) Regulations 1999. The consultation period ended on 26 March 2004. Respondees to the consultation indicated support for our proposals especially as essentially they replicate the existing Regulations with some minor changes, which are aimed at giving governing bodies a greater degree of flexibility in relation to the delegation of some of their functions, whilst offering more structure and clarification of matters where the 1999 Regulations were ambiguous.
12. A further electronic consultation was carried out on these Regulations with respondees to the first consultation and key partners between 20 May 2005 and 1 July 2005, where further support for the proposals was received.

With Subject Committee

13. The Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation (ELL 2 16-04(p.5) item No: ELL- 21-04) on 1 December 2004 and has remained ever since. The Regulations were not identified for detailed scrutiny.

Review

14. The working of the Regulations will be monitored following implementation and if over time it is evident that there is a need for further change this would be considered and subject to consultation at that time.

Summary

15. There are no costs to schools, governing bodies or LEAs in implementing these Regulations. The benefit of having these Regulations in place is that they provide a regulatory framework within which all governing bodies operate, they will give greater flexibility and clarity than the current provisions and will help to ensure governing bodies carry out their statutory duties, functions and discharge their responsibilities effectively.