WELSH STATUTORY INSTRUMENTS

2010 No. 638 (W.64)

EDUCATION, WALES

The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010

Made - - - -	*7 March 2010*
Laid before the National Assembly for Wales - -	*9 March 2010*
Coming into force - -	*12 April 2010*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State in sections 21(5) and (6), and 138(7) and (8) of the School Standards and Framework Act 1998(**1**), and in exercise of the powers conferred on the National Assembly for Wales in sections 19(2), (3) and (8), 20(2), (3) and (4), 24, 25, 34(5), 35(4) and (5), 36(4) and (5), 210(7), and 214 of the Education Act 2002 and now vested in them(**2**) make the following Regulations:

PART 1

INTRODUCTION

Title, commencement and application

1.—(1) The title of these Regulations is the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 and they come into force on 12 April 2010.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 1996 Act" ("*Deddf 1996*") means the Education Act 1996(**3**)

(**1**) 1998 c. 31. The functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) 2002 c. 32. The functions of the National Assembly for Wales under these sections were transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) 1996 c. 56.

"the 1998 Act" ("*Deddf 1998*") means the School Standards and Framework Act 1998(**4**);

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002;

"acting head teacher" ("*pennaeth dros dro*") means a person appointed to carry out the functions of the head teacher of the school, pending the appointment of head teacher or in the absence of the head teacher;

"appropriate diocesan authority" ("*awdurdod esgobaethol priodol*") has the meaning given by section 142(1) and (4) of the 1998 Act;

"appropriate religious body" ("*corff crefyddol priodol*") in relation to a school designated under section 69(3) of the 1998 Act as having a religious character that is not a Church in Wales school or a Roman Catholic Church school, means the body that the Welsh Ministers consider appropriate in relation to the religion or religious denomination to which the school belongs;

"day" ("*diwrnod*") means school day as defined by section 579 of the 1996 Act;

"the federation date" ("*y dyddiad ffedereiddio*") means the date on which governing bodies federate;

"governing body" ("*corff llywodraethu*") means a governing body incorporated under section 19(1) of the 2002 Act or these Regulations as appropriate;

"the Government of Maintained Schools Regulations" ("*y Rheoliadau Llywodraethu Ysgolion a Gynhelir*") means the Government of Maintained Schools (Wales) Regulations 2005(**5**);

"local authority" ("*awdurdod lleol*") means the local education authority in Wales by which a maintained school is, or a proposed school is to be, maintained; and where a federation includes schools maintained by different local education authorities in Wales, "relevant local authority" ("*awdurdod lleol perthnasol*") means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

"the New Maintained Schools Regulations" ("*y Rheoliadau Ysgolion a Gynhelir Newydd*") means the New Maintained Schools (Wales) Regulations 2005(**6**);

"new school" ("*ysgol newydd*") has the same meaning as in regulation 3 of the New Maintained Schools Regulations;

"pupil" ("*disgybl*") has the meaning given by section 3 of the 1996 Act;

"school council" ("*cyngor ysgo*l") means a council established in accordance with regulation 3 of the School Councils Regulations;

"the School Council Regulations" ("*y Rheoliadau Cynghorau Ysgol*") means the School Councils (Wales) Regulations 2005(**7**);

"school teacher" ("*athro neu athrawes ysgol*") is to be interpreted in accordance with section 122 of the 2002 Act;

"the Staffing Regulations" ("*y Rheoliadau Staffio*") means the Staffing of Maintained Schools (Wales) Regulations 2006(**8**) and;

(**4**) 1998 c. 31.
(**5**) S.I. 2005/2914 (W.211) as amended by the School Councils (Wales) Regulations 2005 (S.I.2005/3200 (W.236)); and by the Staffing of Maintained Schools (Wales) Regulations 2006 (S.I. 2006/873 (W.81)) and by the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007 (S.I. 2007/944 (W.80)), and by the Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009 (S.I. 2009/2544 (W.206)).
(**6**) S.I. 2005/2912 (W.209).
(**7**) S.I. 2005/3200 (W.236).
(**8**) S.I. 2006/873 (W.81) as amended by the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007 (S.I. 2007/944 (W.80)) and by the Staffing of Maintained Schools (Amendment) (Wales) Regulations 2009 (S.I. 2009/2708 (W.226)) and by the Staffing of Maintained Schools (Amendment No. 2) (Wales) Regulations 2009 (S.I. 2009/3161 (W.275)).

"working day" ("*diwrnod gwaith*") means any day other than a Saturday, a Sunday or a day which is a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**9**).

(2) Any reference in these Regulations to—

(a) the governing body or governors of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation; and

(b) the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation.

PART 2

ESTABLISHING OR JOINING A FEDERATION

Prescribed cases

3.—(1) Regulations 4 to 7 apply where at least two but no more than five governing bodies propose to federate in accordance with section 24 of the 2002 Act.

(2) Regulations 8 and 9 apply where it is proposed to establish a new school and either—

(a) the temporary governing body wish to federate with one or more governing bodies; or

(b) the local authority or, where the school is to be a foundation or voluntary school proposals for the establishment of which were published by promoters, the promoters propose that the school should be a federated school.

Procedure for schools wishing to federate

4.—(1) Where a governing body is considering federation, they must first consider a report on the proposal.

(2) The report must be specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 54(4).

5.—(1) Where a governing body propose that they should federate with the governing body of a federation, they must give notice of the proposal to the governing body of the federation.

(2) Upon receipt of the notice, the governing body of the federation must consider whether they should—

(a) give preliminary consent to the governing body joining the federation ("preliminary consent"); or

(b) determine that the governing body should not join the federation.

6.—(1) Where a governing body decide that they should federate with one or more other governing bodies and, where necessary, preliminary consent has been given, they must jointly with the other governing body or bodies publish proposals for federation.

(2) The proposals must contain the following—

(a) the name or names of the governing body or bodies with which the governing body propose to federate and confirmation that the governing body, or those governing bodies, have resolved likewise to federate;

(b) the proposed size of the governing body of the federation;

(**9**) 1971 c. 80.

(c) the proposed number of governors for each category of governor;

(d) the proposed arrangements for staffing the schools within the federation;

(e) the proposed federation date;

(f) the identity of the admission authority or authorities for the schools within the federation;

(g) the date, not less than six weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent; and

(h) such other matters as the governing bodies consider appropriate.

(3) The governing bodies proposing to federate must publish the proposals by sending them to—

(a) the relevant local authorities;

(b) the head teacher of each school;

(c) in the case of any school with a foundation—

(i) the foundation governors; and

(ii) any trustees of a trust relating to the school;

(d) where any of the schools are designated under section 69(3) of the 1998 Act as having a religious character, the appropriate diocesan authority in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school;

(e) all staff paid to work at any of the schools;

(f) every person known by them to be a parent of a registered pupil at any of the schools;

(g) every trade union known to them to have members paid to work at any of the schools; and

(h) such other persons as the governing bodies consider appropriate.

(4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

(5) The proposed federation date in paragraph (2)(e) must be not less than 125 days following the publication of the proposals for federation by the governing body pursuant to paragraph (1).

7.—(1) The governing bodies proposing to federate must jointly consider any responses to the proposals and each governing body must determine whether–

(a) to proceed with the proposals for federation as published;

(b) to proceed with the proposals for federation with such modifications as the governing body consider appropriate; or

(c) not to proceed with the proposals for federation.

(2) The modifications referred to in paragraph (1)(b) must not include a change in the identity of the governing bodies proposing to federate.

(3) All the governing bodies that have determined to proceed must jointly give notice of that fact to the relevant local authority or local authorities.

New schools wishing to federate

8.—(1) Where it is proposed that a new school should federate with one or more schools or a federation, paragraph (2) or (3) applies as appropriate.

(2) Where a temporary governing body has been established, regulations 4 to 7 have effect as if references to a governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 4 to 7 have effect as if–

(a) references to the governing body proposing to federate were references to the local authority or, where proposals are to establish a foundation or voluntary school proposals for the establishment of which were published by promoters, the promoters;

(b) regulation 4(2) were omitted; and

(c) in regulation 6(2)(a) for "the governing body propose to federate" there were substituted "the local authority or the promoters propose that the temporary governing body of the new school should federate".

9.—(1) Parts 1 to 3 and 5 to 7 of the New Maintained Schools Regulations are to apply to a temporary governing body constituted pursuant to this regulation.

(2) Where it is proposed that two or more new schools should federate, with or without one or more other schools or other federation, the local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(3) Where the proposed federation includes schools which are maintained by two or more local authorities, those local authorities must agree amongst themselves which local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(4) Where one or more of the new schools referred to in paragraph (2) is to be a foundation or voluntary school proposals for the establishment of which were published by promoters, the local authority must consult the promoters—

(a) as to whether the power given to the local authority in paragraph (2) should be exercised; and

(b) if the local authority proposes to exercise it, as to the date on which the arrangements should be made.

(5) Schedule 1 applies to a temporary governing body constituted pursuant to this regulation.

Incorporation of governing bodies of federations and dissolution of former governing bodies

10.—(1) On the federation date—

(a) the governing bodies of the federating schools or federations are dissolved;

(b) the governing body of the federation is incorporated;

(c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and

(d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation be transferred to the governing body of the federation.

(2) Section 198 of the Education Reform Act 1988(**10**) (which, with Schedule 10 to that Act, makes further provision in relation to transfers of property, rights and liabilities) applies in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

(**10**) 1988 c. 40.