WELSH STATUTORY INSTRUMENTS

2006 No. 873 (W.81)

EDUCATION, WALES

The Staffing of Maintained Schools (Wales) Regulations 2006

Made - - - - 21 March 2006

Coming into force In accordance with regulation 1 (1)

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on the Secretary of State by sections 72 and 138(7) of the School Standards and Framework Act 1998(**1**) and now vested in the National Assembly for Wales and the powers conferred on the National Assembly for Wales by sections 19(3), 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002(**2**):

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is The Staffing of Maintained Schools (Wales) Regulations 2006 and they come into force on 1 April 2006, except for regulations 7(3) and 7(4) which come into force on 1 September 2006.

(2) These Regulations apply in relation to Wales.

Revocation

2. The following are revoked in relation to Wales—

(a) The Education (School Meals Staff) (Wales) Regulations 1999(**3**), and

(b) Part VI of The Education (New Schools) (Wales) Regulations 1999(**4**).

(**1**) 1998 c. 31. *See* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).
(**2**) 2002 c. 32. *See* section 212 for the definition of "regulations". By virtue of that definition these regulations made by the National Assembly for Wales apply only to Wales.
(**3**) S.I. 1999/2802 (W.15).
(**4**) S.I. 1999/2243 (W.3).

Interpretation

3.—(1) In these Regulations—

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

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

"authority" ("*awdurdod*") means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

"dismissal" ("*diswyddo*") is to be interpreted in accordance with sections 95 and 136 of the Employment Rights Act 1996(**5**);

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"support staff" ("*staff cymorth*") means any member of a school's staff other than a teacher;

"teacher" ("*athro neu athrawes*") means a person who is a school teacher for the purposes of section 122 of the 2002 Act and includes a person who would be regarded as a teacher but for the fact the other party to the contract is not an authority or a governing body of a school falling within Part 3 of these Regulations.

(2) References to a vacancy in any post include a prospective vacancy in the post and references to a person's absence are to his or her absence, or prospective absence, from the school.

(3) A person is to be treated as meeting any staff qualification requirements if he or she—

(a) fulfils any requirements with respect to qualifications or registration which apply to him or her as a result of regulations made under sections 132 to 135 of the 2002 Act(**6**), regulations made under section 19 of the Teaching and Higher Education Act 1998(**7**) and regulations made under section 218(1)(a) of the Education Reform Act 1988(**8**),

(b) meets any conditions with respect to health and physical capacity which apply to him or her as a result of the Education (Health Standards) (Wales) Regulations 2004(**9**), and

(c) is not subject to any direction made under section 142 of the 2002 Act, that he or she may not carry out work to which that section applies.

(4) References to support staff include staff engaged to provide community facilities and services under section 27 of the 2002 Act.

Staffing of schools

4.—(1) At any school there must be employed, or engaged otherwise than under contracts of employment, a staff suitable and sufficient in numbers for the purpose of securing the provision of education appropriate to the ages, abilities, aptitudes and needs of the pupils having regard to any arrangements for the utilisation of the services of staff employed or engaged otherwise than at the school in question.

(2) Regulation 4 of The Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999(**10**) is amended as follows—

(**5**) 1996 c. 18.
(**6**) The Education (School Teachers' Qualifications) (Wales) Regulations 2004, S.I. 2004/1729 (W.173) and The Education (Specified Work and Registration) (Wales) Regulations 2004, S.I. 2004/1744 (W.183) and the Head Teachers' Qualifications and Registration (Wales) Regulations 2005, S.I. 2005/1227 (W.85).
(**7**) 1998 c. 30; the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2003, S.I. 2003/543 (W.77) as amended by S.I. 2004/872 (W.87), S.I. 2004/1745 (W.184) and revoked by S.I. 2005, S.I. 2005/1818 (W.146).
(**8**) 1988 c. 40; section 218(1)(a) is repealed by sections 146 and 215(2) of, and Part 3 of Schedule 22 to, the 2002 Act, but which are not yet in force. *See* regulations 11 to 14 of The Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, S.I. 1999/2817 (W.18).
(**9**) S.I. 2004/2733 (W.240).
(**10**) S.I. 1999/2817 (W. 18) amended by S.I. 2002/1663 (W.158), 2002/2938 (W.279), 2003/140 (W.12), 2003/2458 (W.240) and revoked in large part by S.I. 2004/1729 (W.173), 2004/1744 (W.183) and 2004/2733 (W.240).

(a) In paragraph (1) delete the words "school or" in the two places they appear and the words "pupils or".

(b) Delete paragraph (2)(a).

(c) In paragraph (3) delete the words "schools and", the words "Part IV of these Regulations and" and the word "respectively".

Delegation of authority

5.—(1) The governing body may delegate its functions under regulations 12, 15, 26 and 27.

(2) Any such delegation may be to—

(a) the head teacher,

(b) one or more governors, or

(c) one or more governors and the head teacher.

(3) Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings and such advice must be considered by the governor or governors to whom the delegation has been made.

Performance of the head teacher

6.—(1) Where the authority has any serious concerns about the performance of the head teacher of a school—

(a) it must make a written report of its concerns to the chair of the governing body of the school, at the same time sending a copy to the head teacher; and

(b) the chair of the governing body must notify the authority in writing of the action he or she proposes to take in the light of the report.

(2) In determining whether to make a report under this regulation the authority must have regard to any guidance given from time to time by the National Assembly.

Conduct and discipline and capability of staff

7.—(1) The regulation of conduct and discipline in relation to the staff of the school, and any procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment, is to be under the control of the governing body.

(2) The governing body must establish procedures—

(a) for the regulation of the conduct and discipline of staff at the school;

(b) by which staff may seek redress for any grievance relating to their work at the school; and

(c) for dealing with lack of capability on the part of staff at the school

and must take such steps as appear to the governing body to be appropriate for making them known to members of the staff.

(3) Where allegations are made against a member of the school's staff that involve issues of child protection the governing body must appoint an independent investigator to investigate the allegations prior to the hearing of any proceedings relating to those allegations.

(4) A person appointed by the governing body as an independent investigator under paragraph (3) is to be regarded as independent in the following circumstances—

(a) where the person is not a governor of the school in question;

(b) where the person is not a parent of a current or former pupil at the school in question;

(c) where the person is not a current or former member of staff at the school in question;

(d) where the person is not currently employed by the local education authority that maintains the school in question.

(5) Where the implementation of any determination made by the governing body in operation of the procedures requires any action which—

(a) is not within the functions exercisable by the governing body by or under the 2002 Act, but

(b) is within the power of the authority,

the authority must take that action at the request of the governing body.

(6) In determining the capability of members of the staff the governing body must have regard to any guidance given from time to time by the National Assembly.

Amendment of The Government of Maintained Schools (Wales) Regulations 2005

8.—(1) Regulation 50(1) of The Government of Maintained Schools (Wales) Regulations 2005(**11**) is replaced by—

"(1) Subject to regulation 51 of these Regulations, regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998(**12**), regulation 7 of the School Government (Terms of Reference) (Wales) Regulations 2000(**13**) and regulations 12 and 21 of the School Staffing (Wales) Regulations 2005, the governing body may delegate any of its functions to—

(a) a committee;

(b) any governor; or

(c) the head teacher (whether or not he or she is a governor).".

(2) In regulation 51(1) of the Government of Maintained Schools (Wales) Regulations 2005 replace the words "paragraph 6 of Schedule 16 and paragraphs 7 and 30 of Schedule 17 to the 1998 Act" with the words "regulations 10 and 24 of The Staffing of Maintained Schools (Wales) Regulations 2006".

(3) Regulation 55 is amended as follows—

(a) In paragraph (1)(i) delete the words "paragraph 25 of Schedule 16 to the 1998 Act" with the words "regulation 17(1) of The Staffing of Maintained Schools (Wales) Regulations 2006".

(b) For paragraphs (3) and (4) substitute—

"(3) The staff disciplinary committee must include not less than three governors, but where allegations are made against a member of staff that involve issues of child protection the committee must include not less than two governors and an independent person who is not a governor.

(4) The disciplinary appeal committee must include no fewer governors than the staff disciplinary committee whose decision is subject to appeal and where allegations are made against a member of staff that involve issues of child protection the committee must include an independent person who was not involved in the staff disciplinary committee's decision.

(4A) For the purposes of paragraphs (3) and (4) a person is to be regarded as independent in the following circumstances—

(a) where the person is not a governor of the school in question;

(**11**) S.I. 2005/ 2914 (W.211).
(**12**) S.I. 1998/2535.
(**13**) S.I. 2000/3027 (W.195).

(b) where the person is not a parent of a current or former pupil at the school in question;

(c) where the person is not a current or former member of staff at the school in question;

(d) where the person is not currently employed by the local education authority that maintains the school in question.".

(c) In paragraph (8) after the words "in question" add ", save for the independent member of each committee appointed in accordance with paragraph (3) or (4)".

(d) Delete paragraph (9).

(4) In each of regulations 59(3) and 63(1)(b) replace the words "Schedules 16 or 17 to the 1998 Act" with the words "The Staffing of Maintained Schools (Wales) Regulations 2006".

PART 2

Provisions relating to community, voluntary controlled, community special and maintained nursery schools

Interpretation of Part 2

9. This Part applies to community, voluntary controlled and community special schools and, once they have established governing bodies, maintained nursery schools(**14**).

Appointment of head teacher and deputy head teacher

10.—(1) The governing body must notify the authority in writing of a vacancy in the post of head teacher or deputy head teacher of the school before taking any of the steps mentioned in paragraphs (2) to (19).

(2) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with paragraphs (8) to (19) before the date on which it falls vacant, the governing body must either—

(a) recommend a person for appointment as acting head teacher, or

(b) exercise its power under paragraph (6).

(3) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with paragraphs (8) to (19) before the date on which it falls vacant, the governing body may—

(a) recommend a person for appointment as acting deputy head teacher, or

(b) exercise its power under paragraph (6).

(4) If the governing body recommends a person for appointment as acting head teacher or acting deputy head teacher, the local education authority must appoint the person recommended unless he or she does not meet any staff qualification requirements which are applicable in relation to his or her appointment.

(5) If the authority declines to appoint a person recommended by the governing body for appointment as acting head teacher because they do not meet staff qualification requirements which

(**14**) But only to such schools with delegated budgets as defined by section 39(2) of the 2002 Act, in accordance with section 35(7) of the 2002 Act.