
WELSH STATUTORY INSTRUMENTS

2006 No. 873

The Staffing of Maintained Schools (Wales) Regulations 2006

PART 3

Provisions relating to foundation, voluntary aided and foundation special schools

Interpretation of Part 3

20. This Part applies to foundation, voluntary aided and foundation special schools⁽¹⁾.

Advice of chief education officer on appointments of teachers

21.—(1) The chief education officer of the local education authority, or his or her representative, is entitled to attend, for the purpose of giving advice—

- (a) all proceedings (including interviews) of the governing body, and of any selection panel appointed under regulation 24(8), relating to appointments or engagements to which any of the provisions of regulations 24 or 26(12) to (16), and
- (b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body under regulation 26 are delegated, relating to appointments or engagements to which any of the provisions of regulation 26 apply.

(2) The chief education officer, or his or her representative, is entitled to offer such advice as he or she considers appropriate with respect to—

- (a) the appointment of a head teacher or deputy head teacher or the appointment or engagement of an acting head teacher or an acting deputy head teacher, or
 - (b) any matter arising in connection with any such appointment or engagement.
- (3) Any advice given by the chief education officer, or his or her representative, to—
- (a) the governing body,
 - (b) any selection panel appointed under regulation 24(8), or
 - (c) any persons to whom any functions of the governing body under regulation 26 are delegated,

with respect to any matter which relates to an appointment or engagement and falls to be determined by them must be considered by them before determining that matter, whether or not the advice was given at their request.

Advice of head teacher on appointments of teachers

22. Except in relation to the appointment of a head teacher—

(1) But where a school does not have a delegated budget as defined by section 39(2) of the 2002 Act, Part 3 of these Regulations has effect subject to the provisions of Part 2 of Schedule 2 to the 2002 Act, in accordance with section 36(7) of the 2002 Act.

- (a) regulation 21(1) applies in relation to the head teacher (if not otherwise entitled to be present at the proceedings there mentioned) as it applies in relation to the chief education officer, and
- (b) regulation 21(3) applies in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer.

Advisory rights for appropriate diocesan authorities

23.—(1) This regulation applies to a voluntary aided or foundation school which is a Church of England, Church in Wales or Roman Catholic Church school.

(2) If the school is a voluntary aided school, the appropriate diocesan officer has the same advisory rights in relation to the appointment, engagement or dismissal of teachers at the school as are exercisable by the chief education officer in accordance with regulations 21 and 30(1) and (2).

(3) If the school is a foundation school, the governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer—

- (a) with respect to all teachers at the school, or
- (b) with respect to any particular description of such teachers,

the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer in accordance with regulations 21 and 30(1) and (2).

(4) The agreement of the governing body for the purposes of paragraph (3) must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority.

(5) In regulations 21 and 30(1) and (2), as they apply to a school within paragraph (2) or (3), references to the chief education officer accordingly include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by him or her under this regulation.

(6) In this regulation “the appropriate diocesan officer” (“*y swyddog esgobaethol priodol*”) means such person as the appropriate diocesan authority may nominate.

Appointment of head teacher and deputy head teacher

24.—(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 (18).

(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 (7) to (18) before the date on which it falls vacant, the governing body must either—

- (a) appoint a person as acting head teacher, or
- (b) exercise its power under paragraph (5).

(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 (7) to (18) before the date on which it falls vacant, the governing body may—

- (a) appoint a person as acting deputy head teacher, or
- (b) exercise its power under paragraph (5).

(4) A person must not be appointed under paragraph (2) or (3) unless he or she meets all the staff qualification requirements which are applicable in relation to his or her appointment.

(5) Instead of making an appointment under paragraph (2) or (3) the governing body may for the purpose of filling the vacancy—

(a) engage, or
(b) make arrangements for the engagement of,
a person to provide his or her services as acting head teacher, or (as the case may be) acting deputy head teacher, otherwise than under a contract of employment.

(6) No person is to be engaged under paragraph (5) unless he or she meets all the staff qualification requirements applicable in relation to the head teacher or (as the case may be) deputy head teacher at the school.

(7) The governing body must advertise any such vacancy in such publications circulating throughout England and Wales as it considers appropriate.

(8) Subject to paragraph (12) the governing body must appoint a selection panel consisting of at least three but no more than seven members, to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected,
- (b) interview such of those applicants as attend for the purpose, and
- (c) where the panel considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by the panel.

(9) The selection panel must elect a chair from among their number.

(10) A governor who is paid to work at the school or who is a pupil at the school is not eligible to be a chair of the selection panel.

(11) The governing body may remove the chair to any selection panel from office at any time.

(12) The membership of a selection panel may include persons who are not governors and the extent to which such members are entitled to vote is to be determined by the governing body.

(13) The majority of members on any selection panel must be governors.

(14) Where there is an equal division of votes the chair or as the case may be, the person who is acting as chair for the purposes of the meeting (provided that such person is a governor), has a second or casting vote.

(15) Any decision of the selection panel must be taken by a vote representing an absolute majority of all the members of the panel (whether or not taking part in the vote).

(16) If within a period of fourteen days beginning with the date when it receives notification under paragraph (8)(a), the authority makes written representations to the selection panel that any of the applicants is not a suitable person for the appointment, the selection panel must—

- (a) consider those representations, and
- (b) where it decides to recommend for appointment the person about whom the representations have been made—
 - (i) notify the authority in writing of its reasons, and
 - (ii) supply the governing body with a copy of those representations and a copy of the panel's response to them.

(17) The governing body may appoint the person recommended by the selection panel to the vacancy or the post to be filled, subject to the person meeting all relevant staff qualification requirements.

(18) If—

- (a) the selection panel does not recommend a person to the governing body, or
- (b) the governing body declines to appoint the person selected by the selection panel,

the selection panel may select another person for appointment in accordance with this regulation (but this does not prevent the selection of an existing applicant).

(19) In determining whether a person is suitable for appointment as head teacher the governing body must have regard to any guidance given from time to time by the National Assembly.

(20) In paragraph (2) the reference to paragraphs (7) to (18) includes a reference to regulation 33 or 34; and in paragraph (3) the reference to paragraphs (7) to (18) includes a reference to regulation 34.

25.—(1) The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher of the school, take either of the steps mentioned in sub-paragraphs (a) and (b) of paragraph (2) or (as the case may be) (3) of regulation 24.

(2) For the purposes of this regulation—

- (a) regulation 24(4) applies in relation to any recommendation made by virtue of paragraph (1) as it applies in relation to any recommendation made by virtue of regulation 24(2) or (3); and
- (b) regulation 24(5) and (6) apply in connection with any such absence as is mentioned in paragraph (1) as they apply for the purpose of filling any such vacancy as is mentioned in regulation 24(2) or (3).

Appointment of other teachers

26.—(1) Subject to paragraphs (2) to (6), paragraphs (7) to (16) apply in relation to the filing of a vacancy in any teaching post (whether full-time or part-time) at the school, other than the post of head teacher or deputy head teacher.

(2) Paragraphs (7) to (16) do not apply in relation to any temporary appointment or engagement to fill a vacancy in any such post as is mentioned in paragraph (1)—

- (a) for a period not exceeding four months, or
- (b) where it appears to the governing body that the period for which the person appointed or engaged will act in the post in question will not exceed four months.

(3) Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment as is mentioned in paragraph (2) to be made, they may appoint a person to the post on such terms as to the duration of the appointment as they think fit.

(4) A person must not be appointed under paragraph (3) unless he or she meets all the staff qualification requirements which are applicable in relation to his or her appointment.

(5) Where it appears to the governing body in the case of any post that it would be appropriate for such an engagement as is mentioned in paragraph (2) to be made, the governing body may—

- (a) engage, or
- (b) make arrangements for the engagement of,

a person to provide his or her services as a teacher at the school otherwise than under a contract of employment.

(6) Any engagement under paragraph (5) is to be on such terms as to the duration of the engagement as the governing body may specify; but no person is to be engaged under that paragraph unless he or she meets all the staff qualification requirements applicable in relation to a teacher in the post in which he or she would be acting as a temporary teacher.

(7) Before taking any of the steps mentioned in paragraphs (8) to (16), the governing body must—

- (a) determine a specification for the post in consultation with the head teacher, and
- (b) send a copy of the specification to the local education authority.

(8) The local education authority may nominate for consideration for appointment to the post any person who appears to it to be qualified to fill it and who at the time of his or her nomination either—

- (a) is an employee of the authority's or has been appointed to take up employment with the authority at a future date, or
- (b) is employed by the governing body of a foundation, voluntary aided or foundation special school maintained by the authority.

(9) No person who is employed at any school maintained by the authority is to be nominated by the authority under paragraph (8) without the consent of the governing body of that school.

(10) The governing body may advertise the vacancy at any time after it has sent a copy of the specification for the post to the local education authority in accordance with paragraph (7), and must do so unless it appoints to the post either—

- (a) a person nominated by the local education authority under paragraphs (8) and (9), or
- (b) a person who is already employed to work at the school.

(11) Where the governing body advertises the vacancy, it must do so in a manner likely in its opinion to bring it to the notice of persons (including employees of the authority) who are qualified to fill it.

(12) Where the governing body advertises the vacancy, it must—

- (a) interview such applicants for the post and such of the persons (if any) nominated by the local education authority under paragraphs (8) and (9) as it thinks fit, and
- (b) where it considers it appropriate to do so, appoint to the post either one of the applicants interviewed by it or a person so nominated by the authority.

(13) If the governing body are unable to agree on a person to appoint to the post, it may repeat the steps mentioned in paragraph (12)(a) and (b), with or without first re-advertising the vacancy in accordance with paragraph (11).

(14) A person must not be appointed under this paragraph unless he or she meets all the staff qualification requirements which are applicable in relation to his or her appointment.

(15) The governing body may, in connection with any absence of the person for the time being holding any such post as is mentioned in paragraph (1)—

- (a) engage, or
- (b) make arrangements for the engagement of,

a person to provide his or her services as a teacher at the school otherwise than under a contract of employment.

(16) No person is to be engaged under paragraph (15) unless he or she meets all the staff qualification requirements applicable in relation to a teacher in the post in which he or she would be acting as a temporary teacher.

Appointment of support staff

27.—(1) Except in a case where the governing body and the authority agree that the appointment of a member of the support staff at the school should be made by the authority—

- (a) any such appointment must be made by the governing body; and
- (b) the person appointed must be employed by the governing body under a contract of employment, or engaged by the governing body otherwise than under a contract of employment, on such terms as it thinks fit.

(2) Before making an appointment under this paragraph the governing body must consult the head teacher (where he or she would not otherwise be involved in the decision to make the appointment).

- (3) No person is to be appointed as a member of the support staff at the school, whether—
- (a) by the governing body, or
 - (b) by the authority,

unless he or she meets all the staff qualification requirements which are applicable in relation to his or her appointment.

Suspension of staff

28.—(1) Both the governing body and the head teacher have power to suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, his or her suspension from the school is required.

(2) The governing body or head teacher must in exercising that power, immediately inform the head teacher or (as the case may be) the governing body.

- (3) A suspension under this regulation may only be ended by the governing body.
- (4) The governing body must, on ending such a suspension, immediately inform the head teacher.
- (5) In this regulation “suspend” (“*atal*”) means suspend without loss of emoluments.

Dismissal of staff

29.—(1) Before making a decision that a person employed to work at the school should have his or her contract of employment with the governing body terminated or should not have that contract renewed, the governing body must—

- (a) make arrangements for giving that person an opportunity of making representations as to the action it proposes to take (including, if he or she so wishes, oral representations to such person or persons as the governing body may appoint for the purpose), and
- (b) have regard to any representations made by him or her.

(2) The governing body must also make arrangements for giving any person in respect of whom it has made such a decision an opportunity of appealing against the decision before it gives effect to it.

(3) Where its decision is that a person should have his or her contract of employment terminated, then, subject to any such appeal, the governing body must give effect to its decision by—

- (a) giving the person in question such notice terminating his or her contract of employment as is required under that contract; or
- (b) terminating that contract without notice if the circumstances are such that they are entitled to do so by reason of his or her conduct.

(4) Nothing in this regulation is to be read as referring to a person who—

- (a) is due to cease to work at the school by reason of the termination of his or her contract of employment by effluxion of time; and
- (b) has not been continuously employed at the school, within the meaning of the Employment Rights Act 1996, for a period at least as long as the period for the time being specified in section 108(1) of that Act.

30.—(1) The head teacher (except where he or she is the person concerned) and the chief education officer of the local education authority are entitled to attend, for the purpose of giving advice, all hearings of the staff disciplinary committee and the disciplinary appeal committee⁽²⁾.

(2) The requirements to establish a staff disciplinary committee and disciplinary appeal committee are contained in The Government of Maintained Schools (Wales) 2005.

(2) The governing body must consider any advice given by a person who is entitled to attend such proceedings under this regulation before making any such decision.

31. The governing body is not required to comply with regulation 29 in relation to the making of such a decision as is mentioned in regulation 29(1) in a case where—

- (a) the termination or non-renewal of the contract of employment of the person in question is required by virtue of a direction made under section 142 of the 2002 Act or regulations made under section 19 of the Teaching and Higher Education Act 1998, or
- (b) the person in question is a teacher who is subject to a conditional registration, suspension or prohibition order made under Schedule 2 to the Teaching and Higher Education Act 1998.

Staff employed by the authority

32.—(1) Nothing in regulation 29 applies in relation to a person employed by the authority to work at the school.

(2) Regulations 16 and 17 apply in relation to the suspension, dismissal or withdrawal from the school of any member of the staff who is employed by the authority as they apply in relation to the suspension, dismissal or withdrawal from a school to which Part 2 of these Regulations applies of a person who is employed to work at the school.

(3) Regulation 18 applies to any person who is, or is to be, employed by the authority to work at the school solely in connection with the provision of meals as if it were a school to which Part 2 of these Regulations applies.

Appointment of head teachers for schools of Roman Catholic religious orders

33.—(1) This regulation applies to a voluntary aided school if the trustees under a trust deed relating to the school are also trustees of a Roman Catholic religious order (“the order”).

(2) Subject to paragraph (5), paragraphs (3) and (4) have effect in relation to the filling of a vacancy in the post of head teacher of the school, in place of regulation 24(7) to (12).

(3) The governing body must notify the Major Superior of the vacancy in writing.

(4) The governing body must—

- (a) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior, and
- (b) appoint to the post one of the persons so interviewed unless, by virtue of the persons not meeting all relevant staff qualification requirements or otherwise, the governing body has good reason for not making any such appointment.

(5) No person is to be appointed under paragraph (4)(b) if he or she does not meet any staff qualification requirements which are applicable in relation to his or her appointment.

(6) If no appointment is made by the governing body under paragraph (4)(b), regulation 24(7) to (12) have effect in relation to the filling of the vacancy.

(7) In this regulation—

“the Major Superior” (“*yr Uchel Fam neu'r Uchel Dad Cyffredinol*”) means the Major Superior of the order;

“Roman Catholic religious order” (“*urdd grefyddol Gatholig Rufeinig*”) means a Roman Catholic religious institute or society of apostolic life.

Selection procedures involving the whole governing body

34.—(1) If the governing body of a voluntary aided school so determine (and regulation 33 does not apply), paragraphs (2) to (6) apply in relation to the filling of a vacancy in the post of head teacher or deputy head teacher of the school, in place of regulation 24(8) to (12).

(2) No selection panel need be appointed by the governing body under regulation 24(8), but the following provisions, namely—

- (a) regulation 24(8)(a) and (b), and
- (b) regulation 24(9),

apply to the governing body or (as the case may be) to any decision of that body taken by virtue of this paragraph as it applies to a selection panel or (as the case may be) to any decision of such a panel taken under regulation 24.

(3) If, within the period of fourteen days beginning with the date when they receive a notification under regulation 24(8)(a) (as it applies in accordance with paragraph (2)) the local education authority make written representations to the governing body that any of the applicants selected by it is not a suitable person for appointment to the post of head teacher, the governing body must not appoint that person unless it has—

- (a) considered those representations, and
- (b) notified the authority of its response to the representations.

(4) The governing body must not appoint any person if he or she does not meet any staff qualification requirements which are applicable in relation to his or her appointment.

(5) If the governing body does not appoint any person interviewed by it, the governing body—

- (a) may, if it thinks fit, re-advertise the vacancy in the manner required by regulation 24(7), and
- (b) whether or not it re-advertises the vacancy, may repeat the steps mentioned in regulation 24(8)(a) and (b) (as they apply in accordance with paragraph (2)).