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WELSH STATUTORY INSTRUMENTS

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**2006 No. 873**

**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<sup>(1)</sup>.

**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 are applicable in relation to his or her appointment, the governing body must recommend another person for appointment.

(6) Instead of making a recommendation under paragraph (2)(a) or (3)(a) the governing body may for the purpose of filling the vacancy—

- (a) engage, or

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(1) 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.

(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 with the local education authority.

(7) No person is to be engaged under paragraph (6) 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.

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

(9) Subject to paragraph (13) 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,
- (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, and
- (d) if the panel's recommendation is approved by the governing body, recommend the applicant in question to the local education authority for appointment.

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

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

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

(13) 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.

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

(15) Where there is an equal decision 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.

(16) 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).

(17) If within a period of fourteen days beginning with the date when it receives notification under paragraph (9)(a), the authority makes written representations to the selection panel that any applicant selected by the panel is not a suitable person for the appointment, the panel must not recommend that person to the governing body for appointment unless the panel has—

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

and when making such a recommendation the panel must supply the governing body with a copy of those representations and of the panel's response to them.

(18) Where the person recommended by the selection panel is approved by the governing body for appointment and the person meets all relevant staff qualification requirements, the authority must appoint the person.

(19) If—

- (a) the selection panel does not recommend a person to the governing body, or
- (b) the governing body declines to approve the person recommended by the selection panel, or
- (c) the authority declines to appoint the person that the governing body approves,

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

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

**11.**—(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 10.

(2) For the purposes of this regulation—

- (a) regulation 10(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 10(2) or (3); and
- (b) regulation 10(6) and (7) 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 10(2) or (3).

#### **Appointment of other teachers**

**12.**—(1) Subject to paragraph (2), paragraphs (3) to (7) apply in relation to the filling 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 (3) to (7) 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—

- (a) it may recommend a person for appointment to the post on such terms as to the duration of the appointment as it may specify, and
- (b) the local education authority must appoint the person recommended on the terms specified unless he or she does not meet any staff qualification requirements which are applicable in relation to his or her appointment.

(4) 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 with the local education authority.

(5) Any engagement under paragraph (4) 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.

(6) Before taking any of the steps mentioned in paragraphs (7) 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.

(7) The local education authority may nominate for consideration for appointment to the post any person who appears to the authority 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.

(8) No person who is employed at any school maintained by the authority is to be nominated by the authority under paragraph (7) without the consent of the governing body of that school.

(9) 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 (6), and must do so unless either—

- (a) it accepts for appointment to the post a person nominated by the local education authority under paragraphs (7) and (8), or
- (b) it decides to recommend to the authority for appointment to the post a person who is already employed to work at the school.

(10) 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.

(11) 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 (7) and (8) as it thinks fit, and
- (b) where it considers it appropriate to do so, either recommend to the authority for appointment one of the applicants interviewed by it or notify the authority that it accepts for appointment any person nominated by the authority under paragraphs (7) and (8).

(12) If the governing body is unable to agree on a person to recommend or accept for appointment, it must repeat the steps mentioned in paragraph (11), but it may do so without first re-advertising the vacancy in accordance with paragraph (10).

(13) Where a person is recommended or accepted for appointment by the governing body and the person meets all relevant staff qualification requirements, the local education authority must appoint the person.

(14) If the authority declines to appoint a person recommended by the governing body because they do not meet the staff qualification requirements which are applicable in relation to his or her appointment, the governing body must repeat such of the steps mentioned in paragraph (11) as it thinks fit, but it may do so without first re-advertising the vacancy in accordance with paragraph (10).

(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 with the local education authority.

(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.

### **Advice of chief education officer on appointments of teachers**

**13.**—(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 10(9), relating to appointments or engagements to which any of the provisions of regulations 10 and 11 apply, and
- (b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body under regulation 12 are delegated, relating to appointments or engagements to which any of the provisions of regulation 12 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 acting deputy head teacher, or
- (b) any matter arising in connection with any such appointment or engagement.

(3) If requested to do so by the governing body, the chief education officer, or his or her representative, is entitled to give such advice as he or she considers appropriate in relation to any appointment or engagement to which any of the provisions of regulation 12 apply.

(4) 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 10(9), or
- (c) any persons to whom any functions of the governing body under regulation 12 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**

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

- (a) regulation 13(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 13(4) applies in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer.

### **Appointment of support staff**

**15.**—(1) Subject to regulation 18, where the governing body identifies a support staff post to be filled, it may recommend a person to the authority for appointment.

(2) Any such recommendation must be sent to the authority with a job specification for the post and the job specification must include the governing body's recommendations as to—

- (a) the duties to be performed,
- (b) the hours of work (where the post is part-time),
- (c) the duration of appointment,
- (d) the grade, and
- (e) the remuneration.

(3) The grade must be on the scale of grades applicable in relation to employment with the authority, and such as the governing body considers appropriate.

(4) Before selecting a person to recommend under this regulation and determining in relation to such a recommendation any matters mentioned in paragraph (2), the governing body must consult—

- (a) the head teacher (where he or she would not otherwise be involved in the decision), and
- (b) the chief education officer of the authority, or his or her representative.

(5) Where the authority has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing body's recommendation.

(6) The authority is regarded as having discretion if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either—

- (a) do not apply in relation to that appointment, or
- (b) leave to the authority any degree of discretion as to the rate of remuneration.

(7) If within a period of seven days after receiving the job specification the authority makes written representations to the governing body relating to the grade or remuneration to be paid, the governing body must—

- (a) consider those representations, and
- (b) where it decides not to change the grade or remuneration to be paid, notify the authority in writing of its reasons.

(8) The authority must appoint a person recommended to the post by the governing body, subject to the person meeting all relevant staff qualification requirements.

### **Suspension of staff**

**16.—**(1) Subject to regulation 18, 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 is required.

(2) The governing body or head teacher must, when exercising that power, immediately inform the authority and 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 authority and the head teacher.

(5) In this regulation “suspend” (“*atal*”) means suspend without loss of emoluments.

### **Dismissal of staff**

**17.—**(1) Subject to regulation 18, where the governing body determines that any person employed or engaged by the authority to work at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it.

(2) If the person concerned is employed or engaged to work solely at the school (and does not resign), the authority must, before the end of the period of fourteen days beginning with the date on which the notification under paragraph (1) is given, either—

- (a) give him or her such notice terminating his or her contract with the authority as is required under that contract, or
- (b) terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his or her conduct.

(3) If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require him or her to cease to work at the school with immediate effect.

(4) Where paragraph (3) applies, no part of the costs incurred by the local education authority in respect of the emoluments of the person concerned, so far as they relate to any period falling after the expiration of his or her contractual notice period, is to be met from the school's budget share.

(5) The reference in paragraph (4) to the person's contractual notice period is to the period of notice that would have been required under his or her contract of employment with the authority for termination of that contract if such notice had been given on the date on which the notification under paragraph (1) was given.

(6) The governing body must—

- (a) make arrangements for giving any person in respect of whom it proposes to make a determination under paragraph (1) 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.

(7) The governing body must also make arrangements for giving any person in respect of whom it has made a determination under paragraph (1) an opportunity of appealing against it before it notifies the local education authority of the determination.

(8) Nothing in paragraphs (6) and (7) is to apply 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<sup>(2)</sup>.

(9) The chief education officer of the local education authority, or his or her representative, and the head teacher (except where he or she is the person concerned) are entitled to attend, for the purpose of giving advice, all hearings of the staff disciplinary committee and the disciplinary appeal committee<sup>(3)</sup>.

(10) The staff disciplinary committee and the disciplinary appeal committee must consider any advice given by a person who is entitled to attend such hearings under paragraph (9) before making a determination under paragraph (1).

(11) The local education authority must not dismiss a person employed by it to work solely at the school except as provided by paragraphs (1) and (2).

(12) Paragraph (11) does not apply in a case where—

- (a) the dismissal 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<sup>(4)</sup>, 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<sup>(5)</sup>.

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(2) As amended by article 3 of the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999 (S.I.1999/1436).

(3) The requirements to establish a staff disciplinary committee and disciplinary appeal committee are contained in regulation 55 of The Government of Maintained Schools (Wales) Regulations 2005.

(4) 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).

(5) As amended by section 148 of, and paragraphs 1 and 12 of Part 1 of Schedule 12 to, the 2002 Act.

### **School meals staff**

**18.**—(1) Subject to paragraphs (2) to (4), the authority is responsible for the appointment, discipline, suspension and dismissal of school meals staff who work or are to work at a school and before exercising any such function the authority must consult the school’s governing body to such extent as the authority thinks fit.

(2) Where an order is in force under section 512A(1) of the Education Act 1996<sup>(6)</sup> imposing on the governing body of a school a duty to provide school lunches corresponding to a duty of the authority mentioned in section 512(3) and (4) of that Act<sup>(7)</sup> or section 512ZB(1) of that Act, paragraph (3) or (4) applies as appropriate.

(3) Where the governing body has entered into an agreement with the authority that the authority should provide lunches at the school and the governing body determines that any school meals staff member should cease to work at the school it must notify the authority in writing of its determination and the reason for it, and the authority must then require the person to cease to work at the school.

(4) Where no such agreement has been entered into, regulations 7 and 15 to 17 apply to such staff members.

### **Advisory rights for appropriate diocesan authorities**

**19.**—(1) This regulation applies to a voluntary controlled school which is a Church of England, Church in Wales or Roman Catholic Church school.

(2) 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 13 and 17(9) and (10).

(3) The agreement of the governing body for the purposes of paragraph (2) must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority.

(4) In regulations 13 and 17(9) and (10), as they apply to a voluntary controlled school within paragraph (1), 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.

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

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<sup>(6)</sup> 1996 c. 56; section 512A was inserted by section 116 of the 1998 Act.

<sup>(7)</sup> Section 512, together with sections 512ZA and 512ZB, was substituted for section 512 as originally enacted by section 201(1) of the 2002 Act.