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WELSH STATUTORY INSTRUMENTS

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**2014 No. 1609 (W. 165)**

**EDUCATION, WALES**

**The Staffing of Maintained Schools  
(Wales) (Amendment) Regulations 2014**

<i>Made</i>	- - - -	<i>18 June 2014</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>20 June 2014</i>
<i>Coming into force</i>	- -	<i>16 July 2014</i>

The Welsh Ministers in exercise of the powers in section 569(4) and (5) of, and paragraph 3 of Schedule 1 to, the Education Act 1996(1), and sections 19(3), 21(3), 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002(2), and sections 18 and 32 of the Education (Wales) Measure 2011(3) make the following Regulations:

**Title, commencement and application**

1. (1) The title of these Regulations is the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 and they come into force on 16 July 2014.

(2) These Regulations apply in relation to Wales.

**Amendment to the Staffing of Maintained Schools (Wales) Regulations 2006**

2. (1) The Staffing of Maintained Schools (Wales) Regulations 2006(4) are amended as follows.

(2) In regulation 3(1) in the appropriate place in the alphabetical order insert—

““the 2013 Act” (“*Deddf 2013*”) means the School Standards and Organisation (Wales) Act 2013(5);

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- (1) 1996 c. 56. The functions in this section and Schedule 1 were conferred on the Secretary of State and transferred to the National Assembly for Wales, in so far as exercisable in relation to Wales, by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 2002 c. 32. The functions in these sections were conferred on the National Assembly for Wales and are now vested in the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- (3) 2011 nawm 7.
- (4) S.I. 2006/873 (W.81), as amended by S.I. 2007/944 (W. 80), S.I. 2009/2544 (W. 206), S.I. 2009/2708 (W. 226), S.I. 2009/3161 (W. 275) and S.I. 2010/1142 (W. 101).
- (5) 2013 anaw 1.

“federation” (“*ffederasiwn*”) and “federated school” (“*ysgol ffederal*”) are to be interpreted in accordance with section 21 of the Education (Wales) Measure 2011(6);

“federation transition period” (“*cyfnod pontio'r ffederasiwn*”) means the period of time after a determination has been made to proceed with the proposals for a federation under regulations 7(1), 10(2) or 12(2) of the Federation of Maintained Schools (Wales) Regulations 2014 but before the federation date;

“harm” (“*niwed*”) means physical, sexual or emotional abuse;” and

“statutory authorities” (“*awdurdodau statudol*”) means the police force and the local authorities within whose areas the school is situated;”.

(3) In regulation 7 omit paragraphs (3), (4) and (6).

(4) After regulation 7 insert—

#### **“Independent investigator**

7A. (1) This regulation applies where a person employed under a contract of employment to work at the school is the subject of an allegation falling within paragraph (2).

(2) An allegation falls within this regulation if it is an allegation that the person referred to in paragraph (1) has caused harm to a registered pupil at the school.

(3) If the head teacher is aware of any such allegations the head teacher must—

- (a) inform the governing body of all such allegations; and
- (b) consult with the person appointed by the local authority in accordance with guidance issued under section 7 of the Local Authority Social Services Act 1970 (if any) with the responsibility for child protection.

(4) If the governing body is informed of any such allegation it must appoint an independent person to investigate the allegation except where paragraph (7) applies.

(5) The governing body must not make a determination on whether or not to appoint an independent person until—

- (a) the local authority in which the school is situated has notified the governing body that it has discussed the allegation with all such persons it considers appropriate in accordance with guidance(7) issued under section 7 of the Local Authority Social Services Act 1970(8); and
- (b) the statutory authorities have notified the governing body that—
  - (i) they have each concluded their investigation (if any); and
  - (ii) any criminal proceedings (if any) arising from any such investigation by the statutory authorities and which concern the allegation have been discontinued or have otherwise concluded; and
- (c) the governing body has consulted with—
  - (i) the person appointed by the local authority in accordance with guidance issued under section 7 of the Local Authority Social Services Act 1970 (if any) with the responsibility for child protection issues; and
  - (ii) the head teacher unless the allegation is made against the head teacher.

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(6) 2011 nawm 7.

(7) The current guidance is titled “Safeguarding Children: Working Together Under the Children Act 2004” and was published in September 2006 (ISBN No 0 75048910 3). A copy is available from [www.wales.gov.uk/topics/childrenyoungpeople/publications/safeguardingunder2004act/?lang=en](http://www.wales.gov.uk/topics/childrenyoungpeople/publications/safeguardingunder2004act/?lang=en).

(8) 1970 c. 42.

(6) The governing body must ensure that a written record is made of the outcome of any consultation carried out pursuant to paragraph (5).

(7) The governing body does not have to appoint an independent investigator in accordance with paragraph (4) where it is satisfied—

- (a) beyond reasonable doubt that the allegation is not true;
- (b) beyond reasonable doubt that there is no evidence to corroborate the allegation;
- (c) that the person about whom the allegation was made has admitted to having done what has been alleged; or
- (d) that the person about whom the allegation has been made has subsequently been convicted of a criminal offence following criminal proceedings of a type referred to in paragraph (5)(b)(ii).

(8) Where an independent person is appointed in accordance with paragraph (4), the governing body must require that person to provide to the governing body a written report of their findings in respect of the allegation.

(9) The governing body must provide a copy of the report of the independent person to the head teacher unless the allegation is made against the head teacher.

(10) After receiving the report of the independent person the governing body must decide, in accordance with regulation 17 or 29 as the case may be, whether the person about whom the allegation is made should cease to work at the school.

(11) A person is not to be regarded as independent for the purposes of paragraph (4) if the person—

- (a) is a member of the governing body making the appointment;
- (b) is a parent of a current or former registered pupil of the school;
- (c) is a current or former member of staff of the school;
- (d) is a member or employee of the local authority that maintains the school;
- (e) is a trustee of the school;
- (f) is a member of the appropriate diocesan authority for the school; or
- (g) appoints the foundation governors to the school governing body.”.

(5) In regulation 10—

(a) after paragraph (1) insert—

“(1A) During the federation transition period the governing bodies of the federating schools must notify the authority of a vacancy in the post of head teacher or deputy head teacher before taking any of the steps mentioned in paragraphs (2) to (19).

(1B) During the federation transition period nothing in these Regulations prevents the governing bodies of schools intending to federate from forming a joint selection panel.”;

(b) in paragraph (8) for “paragraph (8A)” substitute “paragraphs (8A) to (8D)”;

(c) for paragraph (8A) substitute—

“(8A) The governing body may decide not to advertise in accordance with paragraph (8) the vacancy in the post of head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend (“the receiving school”) and—

- (a) a person employed as a head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher; or

- (b) there is no such person as described in sub-paragraph (a), but there is a person employed as a head teacher at a school elsewhere in the authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher.
- (8B) The governing body may decide not to advertise in accordance with paragraph (8) the vacancy in the post of deputy head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend ("the receiving school") and—
  - (a) a person employed as a deputy head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher; or
  - (b) there is no such person as described in sub-paragraph (a), but there is a person employed as a deputy head teacher at a school elsewhere in the authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher.
- (8C) The governing body may decide not to advertise in accordance with paragraph (8) the vacancy in the post of head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—
  - (a) there is a person employed as a head teacher in any federated school within the federation; and
  - (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of head teacher of the federation or a federated school.
- (8D) The governing body may decide not to advertise in accordance with paragraph (8) the vacancy in the post of deputy head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—
  - (a) there is a person employed as a deputy head teacher in any federated school within the federation; and
  - (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of deputy head teacher of the federation or a federated school.”;
- (d) in paragraph (9) for “paragraph (13)” substitute “paragraphs (13) to (13B)”; and
- (e) after paragraph (13) insert—
  - “(13A) During the federation transition period membership of the selection panel may include persons from the federating schools.
  - (13B) The persons referred to in paragraph (13A) must be entitled to vote.”.
- (6) In regulation 24—
  - (a) after paragraph (1) insert—

“(1A) During the federation transition period the governing bodies of the federating schools must notify the authority of a vacancy in the post of head teacher or deputy head teacher before taking any of the steps mentioned in paragraphs (2) to (18).

(1B) During the federation transition period nothing in these Regulations prevents the governing bodies of schools intending to federate from forming a joint selection panel.”;

(b) in paragraph (7) for “paragraph (7A)” substitute “paragraphs (7A) to (7D)”;

(c) for paragraph (7A) substitute—

“(7A) The governing body may decide not to advertise in accordance with paragraph (7) the vacancy in the post of head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend (“the receiving school”) and—

- (a) a person employed as a head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher; or
- (b) there is no such person as described in sub-paragraph (a), but there is a person employed as a head teacher at a school elsewhere in the authority’s area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher.

(7B) The governing body may decide not to advertise in accordance with paragraph (7) the vacancy in the post of deputy head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend (“the receiving school”) and—

- (a) a person employed as a deputy head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher; or
- (b) there is no such person as described in sub-paragraph (a), but there is a person employed as a deputy head teacher at a school elsewhere in the authority’s area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher.

(7C) The governing body may decide not to advertise in accordance with paragraph (7) the vacancy in the post of head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of head teacher of the federation or a federated school.

(7D) The governing body may decide not to advertise in accordance with paragraph (7) the vacancy in the post of deputy head teacher of the federation or a

federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a deputy head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of deputy head teacher of the federation or a federated school.”;
- (d) in paragraph (8) for “paragraph (12)” substitute “paragraphs (12) to (12B)”; and
- (e) after paragraph (12) insert—
  - “(12A) During the federation transition period membership of the selection panel may include persons from the federating schools.
  - (12B) The persons referred to in paragraph (12A) must be entitled to vote.”.

### **Amendment to the Government of Maintained Schools (Wales) Regulations 2005**

**3.** (1) Regulation 55 of the Government of Maintained Schools (Wales) Regulations 2005<sup>(9)</sup> is amended as follows.

(2) For paragraph (3) substitute—

“(3) The staff disciplinary committee must include not less than three governors, but where allegations are made against a member of staff that that member of staff has caused harm to a registered pupil at the school the committee must include not less than two governors and an independent person who is not a governor.

(3A) For the purposes of paragraph (3) “harm” (“*niwed*”) means physical, sexual or emotional abuse.”.

(3) For paragraph (4A) substitute—

“(4A) A person is not to be regarded as independent for the purposes of paragraphs (3) and (4) if the person—

- (a) is a member of the governing body making the appointment;
- (b) is a parent of a current or former registered pupil of the school;
- (c) is a current or former member of staff of the school;
- (d) is a member or employee of the local authority that maintains the school;
- (e) is a trustee of the school;
- (f) is a member of the appropriate diocesan authority for the school; or
- (g) appoints the foundation governors to the school governing body.”.

### **Amendment to the Federation of Maintained Schools (Wales) Regulations 2014**

**4.** (1) The Federation of Maintained Schools (Wales) Regulations 2014<sup>(10)</sup> are amended as follows.

(2) In Schedule 8—

- (a) before paragraph 1 insert—

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<sup>(9)</sup> S.I. 2005/2914 (W. 211) as amended by S.I. 2005/3200 (W. 236), S.I. 2006/873 (W. 81), S.I. 2007/944 (W. 80), S.I. 2009/2544 (W. 206), S.I. 2010/638 (W. 64), S.I. 2010/1142 (W. 101), S.I. 2010/2582 (W. 216), S.I. 2013/2124 (W. 207) and as modified by S.I. 2012/1643 (W. 212).

<sup>(10)</sup> S.I. 2014/1132.

- “**A1.** In regulation 3(1) in the definition of “statutory authorities” for “school” substitute “federation or federated school”.”;
- (b) in paragraph 4 for “7(1), (2)(a) to (c) and (4)(c)” substitute “7(1), (2)(a) to (c), 7A(1), (2), (10), and (11)(c)”;
- (c) omit paragraphs 5 and 6; and
- (d) for paragraph 7 substitute—
- “**7.** In regulation 7A(5)(a), (11)(b), (d), (e) and (f) for “school” substitute “federated school”.”.

**Amendment to the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007**

**5.** For sub-paragraph (5) of paragraph 14 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007(**11**) substitute—

“(5) Omit paragraph (5) of regulation 7 and paragraph (5)(c)(i) of regulation 7A.”.

18 June 2014

*Huw Lewis*  
Minister for Education and Skills, one of the  
Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Staffing of Maintained Schools (Wales) Regulations 2006 (“the 2006 Regulations”) make provision for the staffing of maintained schools.

Regulation 7(3) and (4) of the 2006 Regulations make provision for allegations of a child protection nature against members of a school staff to be independently investigated. These Regulations revoke those provisions (regulation 2(2) and (3)) and further amend the 2006 Regulations so as to make new provision for allegations of causing harm to a registered pupil against members of a school staff to be independently investigated (regulation 2(4)).

Regulation 10 of the 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in community, voluntary controlled, community special and maintained nursery schools. Regulation 2(5) of these Regulations amends those provisions to reflect the coming into force of the Federation of Maintained Schools (Wales) Regulations 2014 (“the Federation Regulations”).

Similarly regulation 24 of the 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in foundation, voluntary aided and foundation special schools. Regulation 2(6) of these Regulations amends those provisions in light of the coming into force of the Federation Regulations.

The Government of Maintained Schools (Wales) Regulations 2005 (“the 2005 Regulations”) makes provision in relation to the constitution and procedures of governing bodies. Regulation 55 of the 2005 Regulations requires that certain disciplinary functions of governing bodies must be delegated to a staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee. In particular regulation 55(3) of the 2005 Regulations provides that where an allegation involves issues of a child protection nature the membership of the committee must include an independent person. These Regulations amend regulation 55(3) of the 2005 Regulations so as to omit reference to “issues of a child protection nature” and insert a new regulation 55(3) and (3A) which reflect the amendments made to the 2006 Regulations by regulation 2(4) of these Regulations.

Regulation 55(4A) of the 2005 Regulations sets out the circumstances where a person is not to be regarded as independent for the purposes of regulation 55(3) of the 2005 Regulations. Regulation 3(2) of these Regulations inserts a new regulation (4A) into the 2005 Regulations to reflect the amendments made to the 2006 Regulations by regulation 2(4) of these Regulations.