

EXPLANATORY MEMORANDUM TO
AMENDMENT OF THE STAFFING OF MAINTAINED SCHOOLS (WALES)
REGULATIONS 2006

1. This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

2. The Staffing of Maintained Schools (Amendment) (Wales) Regulations 2009 (hereafter the 'Amending Regulations') amend the Staffing of Maintained Schools (Wales) Regulations 2006 (the 'Staffing Regulations') to give a governing body choice whether to advertise a vacant head and/or deputy head teacher post/s in prescribed circumstances.

Matters of special interest to the Subordinate Legislation Committee

3. None.

Legislative Background

4. The Staffing Regulations make provision for the staffing of all categories of maintained schools. They cover the appointment of staff, their conduct and discipline, suspension and dismissal, the capability of teachers, the performance of the head teacher and the provision of staff for community facilities and services. They also make provision for the delegation of authority from the governing body.
5. The Staffing Regulations are made under sections 72 and 138(7) of the School Standards and Framework Act 1998 and sections 19(3), 34(5), 35(4) and (5) and 210 of the Education Act 2002.
6. In law school governing bodies appoint head teachers and deputy head teachers. The Staffing Regulations require a governing body to advertise any head teacher and deputy head teacher vacancy in publications circulating throughout England and Wales as it considers appropriate. The requirement is made by regulation 10(8), other than for foundation, voluntary aided and foundation special schools, to which regulation 24(7) applies.

Purpose and intended effect of the legislation

7. The amending regulations remove the requirements imposed on governing bodies by regulations 10(8) and 24(7) of the Staffing

Regulations to always advertise head teacher and deputy head teacher vacancies in publications circulating in Wales and England. Instead, a governing body may choose to advertise in the following circumstances:

- (i) a vacancy arises in a new or amalgamated school formed from immediately pre-existing schools; and that
 - (ii) for each head teacher or deputy head teacher post available in the new or amalgamated school there is at least one person from the pre-existing schools available for continued employment in that role in the new school.
8. If there are no eligible candidates but a number of statutory proposals are planned to come into effect at the same or similar times, a governing body which has no eligible candidates of its own may consider applicants, without national advertisement, who are eligible for such posts in other newly formed or amalgamated schools maintained by the same local authority.
 9. The intended effect of the amending regulations is to provide governing bodies with discretion about whether to advertise vacant head and deputy head teacher posts in the above circumstances. The compulsion to advertise has been a burden on governing bodies, slows down the appointment process and has a financial cost for schools. It can also place a stress on head and deputy head teachers in schools which are being closed or amalgamated and are placed in the position of having to compete for what they regard as their own jobs.
 10. The option of not advertising in the circumstances defined by the amending regulations should help ease local authority management of school organisation, and the statutory proposals that that entails, by addressing one of the more contentious staff concerns that arises; the fact that head teachers and deputy head teachers feel they have to, or are seen by others, as having to apply for their 'own jobs' in new or amalgamated schools.

Extent

11. This instrument extends to Wales.

Policy Background

12. School governing bodies have had extensive responsibilities for staffing matters since the Locally Managed School model of governance was introduced by the Education Reform Act 1988. Responsibilities include the appointment and dismissal of staff, staff grievances, performance appraisal of the head teacher, and upholding the Teachers Workload Agreement and associated pay and conditions matters.

13. The Welsh Assembly Government expects local authorities to maintain an efficient and effective network of schools. Demographic changes can cause significant levels of surplus places. Local authorities are expected to anticipate and respond to these changes by planning orderly and timely changes to how schools are organised. Changes are proposed and put into effect by processes set by statute. The Welsh Ministers determine proposals when objections have been made.
14. The opening, closure and amalgamation of schools that results has implications for the employment of school staff. New and amalgamated schools will need to appoint a head teacher and usually one or more deputy head teachers. Persons will have held these posts in schools which may have forerun the new or amalgamated school. The governing body for the new or amalgamated school is responsible for making these appointments.
15. The Welsh Assembly Government's policy has been that all head and deputy head teacher appointments should be advertised in England and Wales in order to attract the best possible candidates. However, this policy takes time, has a financial cost and, in the case of appointments to a school created as a product of proposals that include school closures and amalgamations, can be stressful for persons it affects. The Welsh Assembly Government has come to the conclusion that in strict circumstances it would be preferable to permit governing bodies a choice as to whether they advertise head and deputy head teacher posts. The policy objective in providing that choice is to make the operational handling of school organisation more straight forward and efficient.

Miscellaneous amendments

16. None.

Consultation

17. The Welsh Assembly Government has consulted local and diocesan authorities, Governors Wales, and the school staff unions. A large majority of consultation responses favoured the amendment. The consultation exercise set out the detail of the proposal and so no further consultation on the text of the amending regulations has been undertaken.

Regulatory Impact Assessment

18. A RIA has not been prepared because the amending regulations make a permissive change and do not place any new obligation, duty or cost on another body. There is no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 73-75 GOWA 06).