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WELSH STATUTORY INSTRUMENTS

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**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<sup>(1)</sup> 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<sup>(2)</sup>:

**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<sup>(3)</sup>, and
- (b) Part VI of The Education (New Schools) (Wales) Regulations 1999<sup>(4)</sup>.

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(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<sup>(5)</sup>;

“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<sup>(6)</sup>, regulations made under section 19 of the Teaching and Higher Education Act 1998<sup>(7)</sup> and regulations made under section 218(1)(a) of the Education Reform Act 1988<sup>(8)</sup>,

(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<sup>(9)</sup>, 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<sup>(10)</sup> is amended as follows—

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

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**(11)** S.I. 2005/ 2914 (W.211).

**(12)** S.I. 1998/2535.

**(13)** S.I. 2000/3027 (W.195).

- (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<sup>(14)</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.

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<sup>(14)</sup> 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.

(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
- (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>(15)</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>(16)</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>(17)</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>(18)</sup>.

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<sup>(15)</sup> 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).

<sup>(16)</sup> 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.

<sup>(17)</sup> 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).

<sup>(18)</sup> 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>(19)</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>(20)</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.

## 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<sup>(21)</sup>.

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<sup>(19)</sup> 1996 c. 56; section 512A was inserted by section 116 of the 1998 Act.

<sup>(20)</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.

<sup>(21)</sup> 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.

### **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—

- (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(22).

(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.

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

### **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)).

## **PART 4**

### **Staffing of new schools**

#### **Interpretation of provisions applied by Part 4**

**35.** Any provision of these Regulations or Schedule 2 to the 2002 Act which applies in relation to a proposed school as a result of this Part has effect for that purpose as if—

- (a) any reference to a “governing body” (“*corff llywodraethu*”) were a reference to a temporary governing body, and
- (b) any reference to a “governor” (“*llywodraethwr*”) were a reference to a temporary governor.

#### **Staffing of proposed community, voluntary controlled, community special and maintained nursery schools having delegated budgets**

**36.** Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget<sup>(23)</sup>, regulations 4 to 7 and 10 to 19 apply.

#### **Staffing of proposed foundation, voluntary aided and foundation special schools having delegated budgets**

**37.** Where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget, regulations 4 to 7 and 21 to 34 apply.

#### **Staffing of proposed community, voluntary controlled, community special and maintained nursery schools without delegated budgets**

**38.** Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school does not have a delegated budget, Part 1 of Schedule 2 to the 2002 Act applies.

#### **Staffing of proposed foundation, voluntary aided and foundation special schools without delegated budgets**

**39.** Where a proposed school which will be a foundation, voluntary aided or foundation special school does not have a delegated budget, Part 2 of Schedule 2 to the 2002 Act applies.

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<sup>(23)</sup> See section 49(2) and (3) of the 1998 Act as to whether a school has a delegated budget. A school having a delegated budget is defined by section 39(2) of the 2002 Act.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(24).

21 March 2006

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations make provision for the staffing of maintained schools.

Part 1 covers general matters and in particular delegation of authority, the performance of the head teacher, conduct and discipline of staff, capability of teachers and the provision of staff for community facilities and services.

Part 2 relates to community, voluntary controlled, community special and maintained nursery schools and deals with the appointment of staff, suspension of staff, dismissal of staff and the local education authority's entitlement to offer advice. Part 2 also provides for the appointment of school meals staff.

Part 3 relates to foundation, voluntary aided and foundation special schools and deals with the appointment of staff, suspension of staff, dismissal of staff and the entitlement of the local education authority and appropriate diocesan authorities to offer advice. Part 3 also provides for the appointment of head teachers for schools of Roman Catholic religious orders.

Part 4 relates to the staffing of new schools either with or without delegated budgets.