

EXPLANATORY MEMORANDUM TO THE FEDERATION OF MAINTAINED SCHOOLS (WALES) (AMENDMENT) REGULATIONS 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Federation of Maintained Schools (Wales) (Amendment) Regulations 2020.

Kirsty Williams
Minister for Education
23 November 2020

1. Description

The Federation of Maintained Schools (Wales) (Amendment) Regulations 2020 (“the 2020 Amendment Regulations”) amend The Federation of Maintained Schools (Wales) Regulations 2014 (“the 2014 Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The 2020 Regulations were made in exercise of the powers conferred on Welsh Ministers by sections 19(2), (9), 210(7) of the Education Act 2002() and now vested in them.

The provisions contained in the Regulations give school governing bodies in Wales a framework under which to operate and include categories of governor, constitution, qualification and tenure, instruments of government, transitional provision, appointments, meetings and proceedings and committees.

Schedule 7 provides disqualification criteria for governors, including relating to the Mental Health Act 1983. Schedule 7 also provides references to Northern Ireland and Scotland provisions.

Regulations 57 and 72 provide for how governing bodies in Wales should meet, and Regulations 59 and 73 provide for how records of governing body meetings should be made and kept.

4. Purpose & intended effect of the legislation

The purpose of the 2020 Amendment Regulations is to provide school governing bodies with a suitable and fair framework within which to operate, by ensuring that governors and potential governors will not be discriminated against if they are liable to be detained under The Mental Health Act 1983.

They provide for governing bodies to conduct their meetings by remote access as well as face to face. They also provide for school governing bodies to make electronic records of their meetings and decisions with the aim of facilitating better record keeping, and bring the regulations up to date in respect of the persons whose employment is prohibited or restricted.

The 2020 Amendment Regulations amend the 2014 Regulations in the following ways:

- Regulations 57 and 72: amendment to allow meetings to take place by remote access. This change clarifies that virtual, remote access

meetings (that is tele- or video-conference) are permitted, bringing regulations up to date with current common practice. The conditions permitting remote access meetings are as follows:

- (1) participants will be fully able to make representations/discharge functions;
 - (2) participants agree to the meeting being held using remote access;
 - (3) each participant has access to the electronic means to allow them to hear/be heard, see/be seen;
 - (4) meeting is capable of being held fairly and transparently.
- Regulations 59 and 73: amendment to allow minutes, records, etc. to be kept electronically. This change will facilitate better record keeping and bring regulations up to date with current common practice.
 - Schedule 7: removal of the disqualification criteria relating to the Mental Health Act 1983, thereby precluding discrimination against people who are liable to be detained under the Act.
 - Schedule 7: amendment to update references to Northern Ireland and Scotland legislation bringing the regulations in line with the rest of the UK.

5. Consultation

A six week consultation ran from 12 August to 23 September 2020 on the proposed changes to school governance procedures. The consultation was drawn to the attention of a wide audience of key stakeholders including schools, local authorities, and governors.

A total of 127 responses were received for the consultation. There was overwhelming support for all of the proposals in the consultation and as a result the proposals were actioned in full.

In addition to the formal consultation, Mind Cymru provided advice on the removal of the disqualification criteria relating to the Mental Health Act 1983.

6. Impact Assessments

An Integrated Impact Assessment has been carried out in the making of the 2020 Amendment Regulations. The Impact Assessment and the Regulations will be kept under review.

Regulatory Impact Assessment

There are no costs or savings resulting from the 2020 Amendment Regulations, therefore a Regulatory Impact Assessment has not been completed. No impact on business, charities or voluntary bodies is foreseen.

Welsh language

There are no positive or adverse impacts specific to the Welsh language.

The 2020 Amendment Regulations provide governing bodies with the flexibility to conduct their business by remote access or face to face meetings. The conditions permitting remote access meetings are that participants are fully able to make representations/discharge functions; that they agree to the meeting being held using remote access and that each participant has access to the electronic means to allow them to hear/be heard, see/be seen and that the meeting is capable of being held fairly and transparently.

Children's Rights

There are no positive or adverse impacts specific to Children's Rights. However, facilitating the recruitment of governors and efficient governing bodies supports articles 28 and 29 of the United Nations Convention on the Rights of the Child which give children a right to an education that develops their aptitudes to the full.

Equality and Human Rights

There is potentially a positive impact on equality by allowing the use of remote access meetings to conduct school governing body business. Some people with protected characteristics and/or those who live in remote areas may be more easily able to engage in school governing bodies without the need to be physically present at all meetings.

The 2020 Amendment Regulations provide flexibility on how school governing bodies meet and the conditions to be met for remote access meetings to take place. This ensures that all participants are treated fairly.

Privacy

The provisions in the General Data Protection Regulation 2016 are not affected by the amendment to these Regulations. Some concerns were raised in response to the consultation that electronic record keeping may compromise data security.

It should be noted that 2020 Amendment Regulations provide flexibility for school governing bodies to keep records electronically. This brings the Regulations in line with common practice and, provided suitable tools and software are used, should not present any additional adverse impacts on data protection.

Justice Impact Assessment

Whilst no formal Justice Impact Assessment has been undertaken, no impacts have been identified when considering these Regulations.