

2012 No. 1797 (W. 227)

EDUCATION, WALES

**The Education (Middle Schools)
(Wales) Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Education (Middle Schools) Regulations 1980 as amended by the Education (Middle Schools) (Amendment) Regulations 1994 in relation to Wales.

These Regulations specify the circumstances in which a middle school is to be treated as either a primary or secondary school, for the purposes of the Education Acts.

Regulation 4 provides that a middle school is to be determined to be a secondary school where that school has a wider range of pupils of secondary school age, than primary school age, or, unless a determination has been made under regulation 5(2), where that school provides education up to or beyond compulsory school age.

Regulation 5(1) provides that a middle school is to be determined to be a primary school where that school has a wider range of pupils of primary school age, than secondary school age, and where that school does not provide education up to or beyond compulsory school age.

Under regulation 5(2), a middle school may be treated to be a primary school by the Welsh Ministers where the school in question provides education up to or beyond compulsory school age, and either the local authority, governing body or promoters request the Welsh Ministers to make such a determination.

The Welsh Ministers also have the power under regulation 6 to determine whether a middle school is to be treated to be primary or secondary where the school in question has an equal range of pupils of primary and secondary school age, and where that school does not provide education up to compulsory school age. The Welsh Ministers must, under this regulation, allow the

local authority, governing body or promoters to make representations and must take any representations made into account.

Regulation 7 provides that where a middle school has pupils in the fourth key stage it must be treated as a secondary school for the purposes of sections 116A to 116K of the Education Act 2002 only even if it is treated as a primary school for all other Education Act purposes.

Regulation 8 provides that where a middle school has junior pupils (those who have not yet attained 12 years of age) it must be treated as a primary school for the purposes of section 101(1)(c) of the Education Act 2002 only. It further provides that where that school has senior pupils (those who have attained 12 years of age but are not yet 19) it must be treated as a secondary school for the purposes of section 101(1)(c) of the Education Act 2002 only.

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(Wales) Regulations 2012**

Made 6 July 2012

Laid before the National Assembly for Wales
10 July 2012

Coming into force 1 September 2012

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 5(4) and 569(4) and (5) of the Education Act 1996⁽¹⁾ and now vested in them make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Middle Schools) (Wales) Regulations 2012, and they come into force on 1 September 2012.

(2) These Regulations apply in relation to Wales.

Revocation and savings

2.—(1) The following regulations are revoked in relation to Wales—

- (a) the Education (Middle Schools) Regulations 1980⁽²⁾; and
- (b) the Education (Middle Schools) (Amendment) Regulations 1994⁽³⁾.

(2) The regulations referred to in paragraph (1) continue to apply in relation to those proposals which have been implemented before the date on which these Regulations come into force.

(1) 1996 c.56. Section 569(4) was amended by the Education (Wales) Measure 2009 (nawm 5), section 8. The functions of the Secretary of State under sections 5 and 569(4) and (5) of the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(2) S.I. 1980/918.

(3) S.I. 1994/581.

Interpretation

3. In these Regulations—

“2002 Act” (“*Deddf 2002*”) means the Education Act 2002(1);

“Education Act purposes” (“*dibenion y Ddeddf Addysg*”) means the purposes of the Education Act 1996 and the other enactments relating to education;

“fourth key stage” (“*pedwerydd cyfnod allweddol*”) means the period set out in section 103(1)(d) of the 2002 Act;

“governing body” (“*corff llywodraethu*”) includes a temporary governing body constituted in accordance with section 34 of the 2002 Act(2);

“primary age range” (“*ystod oedran ysgol gynradd*”) means the range of years during which a pupil is between the age of 11 years and the lower age specified in the proposals;

“promoters” (“*hyrwyddwyr*”) means persons other than a local authority who have published proposals for the establishment of a new school under section 28(2) of the School Standards and Framework Act 1998;

“proposals” (“*cynigion*”) means the proposals referred to in section 28 of the School Standards and Framework Act 1998(3) and which—

- (a) specify an age which is below the age of 10 years 6 months and an age which is above the age of 12 years; and
- (b) provide that the school to which the proposals relate is to be a school providing full-time education suitable to the requirements of pupils whose ages are between the ages specified; and

(1) 2002 c.32.

(2) 2002 c.32, as amended by paragraph 11(1) and (2) of Part 1 of Schedule 2 to the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158).

(3) The heading was amended by the Education and Inspections Act 2006 (c.40), paragraph 18(1) and (10). Sub-section (1) was amended by the Education and Inspections Act 2006 (c.40) paragraph 18(1), (2)(a) and (b) of Schedule 3 and by Part 3 of Schedule 18, and also by the Education Act 2002, section 154(1) to (3), and by paragraph 10(1) and (2) of Part 1 of Schedule 2 to the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010, and also by the Education (Wales) Measure 2011 (nawm 7), section 26(1) and (2)(a). Sub-section (2)(a) was amended by the Education Act 2002, paragraph 97(1) and (3) of Schedule 21, and by the Education Act 2005, Part 2 of Schedule 19, and by the Education and Inspections Act 2006, paragraph 18(1) and (3)(a) of Schedule 3 and also by the Education (Wales) Measure 2011, section 26(1) and (2)(b). Sub-section (2)(b) was amended by the Education Act 2002, section 73, and by the Education and Inspections Act 2006, paragraph 18(1), (3)(b)(i) and (ii) of Part 3 of Schedule 18.

“secondary age range” (*“ystod oedran ysgol uwchradd”*) means the range of years during which a pupil is between the age of 11 years and the higher age specified in the proposals.

Determination of a middle school as secondary school

4. A middle school, to which the proposals relate, is to be treated as a secondary school for Education Act purposes where—

- (a) that school has a wider secondary age range of pupils than of primary age range pupils;
- (b) the school proposes to provide education for pupils until they cease to be of compulsory school age or are above compulsory school age; and
- (c) (where paragraph (b) applies) the Welsh Ministers have not made a determination under regulation 5(2).

Determination of a middle school as primary school

5.—(1) A middle school, to which the proposals relate, is to be treated as a primary school for Education Act purposes where that school has a wider primary age range of pupils than of secondary age range pupils, and—

- (a) regulation 4(b) does not apply; or
- (b) regulation 4(b) does apply but the Welsh Ministers have made a determination under paragraph (2).

(2) The Welsh Ministers may determine a middle school, to which the proposals relate, be treated as a primary school for Education Act purposes where—

- (a) regulation 4(b) applies;
- (b) the local authority, governing body or promoters request the Welsh Ministers to make a determination under this regulation; and
- (c) the Welsh Ministers consider such a determination to be appropriate.

Determination of a middle school where there is a primary age range of pupils equal to its secondary age range of pupils

6.—(1) The Welsh Ministers must determine whether the middle school, to which the proposals relate, is to be treated for Education Act purposes as a primary or secondary school where—

- (a) the school, to which the proposals relate, has a primary age range of pupils which is equal to that of its secondary age range of pupils; and

(b) regulation 4(b) does not apply.

(2) Before making such a determination, the Welsh Ministers must—

- (a) allow the local authority, governing body or promoters an opportunity to make representations; and
- (b) take into consideration any representations made by them.

Determination of a middle school as a secondary school for the purposes of sections 116A to 116K of the 2002 Act

7. Where a middle school, to which the proposals relate, has been determined to be a primary school in accordance with regulations 5 or 6, it is to be treated for the purposes of sections 116A to 116K of the 2002 Act as a secondary school where that school has pupils in the fourth key stage.

Determination of a middle school as a primary or secondary school for the purposes of section 101(1)(c) of the 2002 Act

8. Where a middle school, to which the proposals relate, has been determined to be a primary or secondary school in accordance with these Regulations, it is to be treated for the purposes of section 101(1)(c) of the 2002 Act as—

- (a) a primary school in relation to junior pupils at the school; and
- (b) a secondary school in relation to senior pupils at the school.

Leighton Andrews

Minister for Education and Skills, one of the Welsh Ministers

6 July 2012