
WELSH STATUTORY INSTRUMENTS

2010 No. 638

The Federation of Maintained Schools and
Miscellaneous Amendments (Wales) Regulations 2010

PART 6

INSTRUMENT OF GOVERNMENT, STAFFING,
SCHOOL COUNCILS AND CHARITABLE STATUS

Duty to have regard to guidance

39. In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance given from time to time by the Welsh Ministers.

Contents and form of instrument of government

40.—(1) The instrument of government for a federation must set out—

- (a) the name of the federation;
- (b) the names and categories of the federated schools within the federation;
- (c) the name of the governing body of the federation;
- (d) subject to paragraph (4), the manner in which the governing body is to be constituted in accordance with Part 4, specifying—
 - (i) the number of governors in each category of governor;
 - (ii) the categories of person from whom or from amongst whose members nominations for the appointment of any additional community governor or sponsor governor are authorised by these Regulations; and
 - (iii) the total membership of the governing body;
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the federation has foundation governors—
 - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person entitled to appoint, the basis upon which such appointments are made;
 - (ii) details of any foundation governorship to be held ex officio by the holder of a named office; and
 - (iii) the name of any person who is entitled to remove any ex officio foundation governor and to appoint any substitute governor;

- (g) where the federation includes a community special school, the name of any appropriate body or appropriate voluntary organisation entitled to nominate a person for appointment as a representative governor under Schedule 6;
 - (h) where there is a trust relating to a federated school, that fact;
 - (i) where a federated school is a foundation or a voluntary school designated under section 69(3) of the 1998 Act as having a religious character, a single description of the religious ethos of each such school; and
 - (j) the date when the instrument of government takes effect.
- (2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1)(d), must accord with the provisions of these Regulations.
- (3) The instrument of government must (subject to any statutory provision) comply with any trust relating to a federated school.
- (4) Sub-paragraphs (d) and (e) of paragraph (1) do not apply to associate pupil governors.

Procedure for making an instrument

41.—(1) In this regulation, where reference is made to the local authority and the federation is to include schools maintained by different local authorities, the reference is to be taken as a reference to whichever of those local authorities the governing bodies of the schools agree between them should make the instrument of government for the federation.

(2) The governing bodies of the schools which are to form the federation must jointly prepare a draft instrument of government and submit it to the local authority.

(3) Where the federation will have foundation governors, the governing bodies of the proposed federation must not submit the draft to the local authority unless it has been approved in respect of each foundation or voluntary school by—

- (a) that school's foundation governors;
 - (b) the trustees of any trust relating to such a school;
 - (c) in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
 - (d) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.
- (4) If—
- (a) the local authority are content that the draft complies with all the applicable provisions; or
 - (b) there is agreement between the local authority, the governing bodies and (where the federation will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions;

the instrument of government is to be made by the local authority in the form of the draft or (as the case may be) the revised draft.

(5) If, in the case of a federation which will have foundation governors, there is at any time disagreement as to the content of the draft among the persons mentioned in paragraph (3), any of those persons may refer the draft to the Welsh Ministers who must give such direction as they think fit having regard, in particular, to the categories of schools which are proposed to be included within the federation.

(6) If neither of sub-paragraphs (a) and (b) of paragraph (4) applies in the case of a federation which will not have foundation governors, the local authority must—

- (a) inform the governing body of the federation of the reasons why it is not content with the draft instrument of government; and
- (b) give the governing body of the federation a reasonable opportunity to reach agreement with it on revising the draft;

and the instrument of government must be made by the local authority either in the form of a revised draft agreed between it and the governing body of the federation or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the categories of school included in the federation.

Review of instruments of government

42.—(1) The governing body or the local authority may review the instrument of government at any time after it is made.

(2) Where on any review the governing body or the local authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local authority must notify the other of its proposed variation together with its reasons for proposing such a variation.

(3) Where the governing body has received notification under paragraph (2), it must inform the local authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

(4) Where the federation has foundation governors, the governing body must not—

- (a) give the local authority any notification under paragraph (2); or
- (b) inform the local authority under paragraph (3) that it is content with the local authority's proposed variation;

unless the persons listed in regulation 41(3) have approved the proposed variation.

(5) If—

- (a) whichever of the governing body and the local authority is the recipient of a notification under paragraph (2) agrees with the proposed variation; or
- (b) there is agreement between the local authority, the governing body and (if the federation has foundation governors) the other persons listed in regulation 41(3) that some other variation should be made instead;

the local authority must vary the instrument of government accordingly.

(6) If, in the case of a federation which has foundation governors, at any time the persons listed in regulation 41(3) disagree with the proposed variation any of those persons may refer it to the Welsh Ministers; and on such a reference the Welsh Ministers must give such direction as they think fit having regard, in particular, to the categories of school which make up the federation.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a federation which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons—
 - (i) why it is not content with the governing body's proposed variation, or as the case may be;
 - (ii) why it wishes to proceed with its own variation; and
- (b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation;

and the instrument of government must be varied by it either in the manner agreed between it and the governing body or (in the absence of such agreement) in such manner as it thinks fit having regard, in particular, to the categories of school which make up the federation.

(8) Nothing in this regulation is to be taken as requiring the local authority to vary the instrument of government if it does not consider it appropriate to do so.

(9) Where an instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect.

Other requirements relating to instruments of government

43.—(1) The local authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with—

- (a) a copy of the federation’s instrument of government; and
- (b) where any variation is made to the federation’s instrument of government, a consolidated version of the instrument of government incorporating all variations made by the local authority (other than any variations which have ceased to have effect).

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

- (a) every member of the governing body of the federation;
- (b) the head teacher of the federation or each federated school, whether or not the head teacher is a member of the governing body;
- (c) the trustees of any trust relating to a federation school;
- (d) in the case of a Church in Wales federated school or Roman Catholic Church federated school, the appropriate diocesan authority;
- (e) in the case of any other federated school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body; and
- (f) the Welsh Ministers.

Staffing of federations

44. The Staffing Regulations apply to the staffing of federations subject to the modifications in Schedule 8.

School Council Regulations

45. The School Council Regulations apply to the governing body of a federation and its members subject to the modifications in Schedule 9.

Charitable status of federations

46.—(1) The governing body of a federation which includes a foundation, voluntary or foundation special school is a charity which is an exempt charity for the purposes of the Charities Act 1993(1), but no governing body of a federation which includes only community, community special or maintained nursery schools is a charity.

(2) So far as it is a charity, any institution which—

- (a) is administered by or on behalf of any governing body of a federation which includes a foundation, voluntary or foundation special school; and
- (b) is established for the general purposes of, or for any special purpose of, or in connection with, that body or that federation or any foundation, voluntary or foundation special school within that federation;

must also be an exempt charity for the purposes of the Charities Act 1993.

(1) 1993 c. 10.

(3) In this regulation, “charity” (“*elusen*”) and “institution” (“*sefydliad*”) have the same meaning as in the Charities Act 1993.