

**2009 No. 2159 (W.183)**

**EDUCATION, WALES**

**The School Teacher Appraisal  
(Amendment) (Wales) Regulations  
2009**

**EXPLANATORY NOTE**

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

These Regulations amend the School Teacher Appraisal (Wales) Regulations 2002 (S.I. 2002 No 1394 (W. 137)) (“the 2002 Regulations”).

These Regulations bring within the scope of the 2002 Regulations the appraisal of the performance of school teachers (including nursery school teachers) who are employed by local authorities for more than one school term and teachers employed by local authorities who are not attached to one particular school or who teach outside school settings.

Part IV, to be inserted into the 2002 Regulations, will provide for local authorities to be responsible for appraising the performance of unattached teachers. Local authorities may delegate some of their responsibilities to the school where an unattached teacher spends the predominant part of their working time or to another suitable person. Those responsible for appraising unattached teachers may obtain information from other places at which the teacher works.

Local authorities will be required to prepare a performance management policy and keep it under review. Objectives must relate to personal development and pupil progress.

The appraisal cycle for teachers employed under a fixed term contract of less than one year will be the length of the contract. For all other teachers brought within the scope of the 2002 Regulations, the appraisal cycle will be one year. There are some exceptions for those coming into the appraisal system for the first time or who change jobs during a cycle.

For all school teachers within the scope of the 2002 Regulations, the appraisal review must determine whether there has been a successful review of overall performance.

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*Made* 4 August 2009

*Laid before the National*

*Assembly for Wales* 6 August 2009

*Coming into force* 1 September 2009

The Welsh Ministers in exercise of the powers conferred on the National Assembly for Wales by sections 21(3), 131 and 210 of the Education Act 2002<sup>(1)</sup> and now vested in them make the following Regulations.

In accordance with section 131(7) of that Act the Welsh Ministers have consulted with such of the following as appeared to them to be appropriate: associations of local education authorities in Wales; local education authorities in Wales; bodies representing the interests of governing bodies in Wales; and bodies representing the interests of teachers in Wales.

**Title, Commencement and Application**

1.—(1) The title of these Regulations is the School Teacher Appraisal (Amendment) (Wales) Regulations 2009 and they come into force on 1 September 2009.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) Except where the context otherwise requires, in these Regulations—

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(1) 2002 c.32; conferred upon the National Assembly for Wales in the Education Act 2002 and transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

“2002 Regulations” means the School Teacher Appraisal (Wales) Regulations 2002<sup>(1)</sup>.

(2) Any reference in these Regulations to—

- (a) a numbered regulation is a reference to the regulation bearing that number in the 2002 Regulations; and
- (b) a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference appears.

### **Amendment of the 2002 Regulations**

3. The 2002 Regulations are amended as follows.

4.—(1) In regulation 3(1) insert the following at the appropriate places in alphabetical order—

““authority” (*“awdurdod”*) in relation to an unattached teacher means the local education authority by which the teacher is employed and if employed by more than one authority then each such authority;

“relevant date” (*“y dyddiad perthnasol”*) means 1 September 2009;

“school term” (*“tymor ysgol”*) includes (a) a period of time short of a full school term by no more than one week and (b) two consecutive half terms;

“short term contract” (*“contract cyfnod byr”*) means a contract of employment for a fixed term of less than one school term;

“unattached teacher” (*“athro neu athrawes ddigyswllt”*) means a teacher employed by the authority falling within one of the following categories—

- (a) a teacher not attached to a particular school;
- (b) a teacher employed to provide primary or secondary education otherwise than at a school;
- (c) a teacher employed at a pupil referral unit (including a teacher in charge of a unit);

but does not include a teacher employed under a short term contract.”.

(2) In the definition of “school teacher” (*“athro neu athrawes ysgol”*) from line 5 onwards omit “under a fixed term contract of employment the term of which is less than one year” and insert “under a short term contract”.

5. In regulation 4 insert the following after (2)—

“(3) Where a school is appointed as appraiser in accordance with regulation 36(2) it is the

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(1) S.I. 2002/1394 (W. 137).

duty of the governing body and head teacher of that school to exercise their functions under these Regulations with a view to securing that the performance of the unattached teacher concerned in discharging their duties at that school and at other schools is regularly appraised in accordance with these Regulations.

(4) It is the duty of the authority to exercise their functions under these Regulations with a view to securing that the performance of unattached teachers in discharging their duties to the authority is regularly appraised in accordance with these Regulations.”.

**6.** In regulation 15(1) omit “and” from line 3 of (b) and insert the following at the end of line 2 of (c)—

“; and

(d) determining whether there has been a successful review of overall performance.”.

**7.—**(1) Regulation 22 is amended as follows.

(2) In (2) line 1 insert before “(3)”, “(2A)” and insert after (2)—

“(2A) In the case of a school teacher employed under a contract of employment for a fixed term of less than one year the length of the appraisal cycle is the period of the fixed term.”.

(3) Insert the following after (4)—

“(4A) In the case of a school teacher at a nursery school in post on the relevant date, the head teacher may determine that the length of the first appraisal cycle is a period other than one year provided that it ends no sooner than 30 April 2010 and later than 30 September 2010.

(4B) In the case of a school teacher employed under a contract of employment for a fixed term of less than one year in post on the relevant date, his or her performance must be managed throughout the unexpired period of the contract as at the relevant date and reviewed at the end of the fixed term.”.

**8.—**(1) In regulation 29(1) omit “and” from line 3 of (b) and in (c) after “needs” insert—

“; and

(d) determining whether there has been a successful review of overall performance.”.

**9.** Insert the following as Part IV after regulation 33—

**“PART IV  
APPRAISAL OF UNATTACHED  
TEACHERS**

**Application of Part IV**

**34.**—(1) Regulations 35 to 45 apply to the appraisal of unattached teachers.

(2) In this Part IV “school” includes a pupil referral unit and references to a head teacher include reference to a teacher in charge of a pupil referral unit.

**Requirement on authority to produce a performance management policy**

**35.**—(1) The authority must no later than 1 November 2009 establish a written policy (“the performance management policy”) setting out how the appraisal of unattached teachers is to be implemented.

(2) The authority must review the performance management policy every school year.

(3) Following such review the authority must if it sees fit amend the performance management policy.

(4) Before establishing or amending the performance management policy the authority must consult all their unattached teachers about the formulation of the performance management policy or its amendment.

(5) The authority must implement the performance management policy.

(6) The authority must make a copy of the performance management policy available for inspection at any reasonable time by:

- (a) any unattached teacher;
- (b) any person involved in the inspection of the operation of the unattached teacher appraisal system;
- (c) any appraiser appointed in accordance with these Regulations.

**Appointment of appraisers for unattached teachers**

**36.**—(1) Subject to the following paragraphs the authority is the appraiser for every unattached teacher.

(2) The authority may delegate some or all of the duties imposed on an appraiser to a school teacher at a school where the unattached teacher spends the predominant part of his or her working time or to such other person whom they consider best placed to manage and review the unattached teacher’s performance.

(3) The authority may appoint a new appraiser in place of an existing appraiser at any time or they may perform those duties themselves.

## **The appraisal cycle**

**37.**—(1) Subject to the following provisions of this regulation the authority must determine the timing of the appraisal cycle for every unattached teacher employed by it.

(2) Except as provided for in paragraphs (3), (4) and (5) the length of an appraisal cycle is one year.

(3) In the case of the first appraisal cycle under these Regulations of an unattached teacher in post on the relevant date, the authority may determine that the length of the appraisal cycle is a period other than one year.

(4) In the case of the first appraisal cycle under these Regulations of an unattached teacher not in post on the relevant date, the authority may determine that the length of the first appraisal cycle is a period of less than one year.

(5) In the case of an unattached teacher employed under a contract of employment for a fixed term of less than one year, his or her performance must be managed throughout the term of the contract and reviewed at the end of that term.

(6) The authority must take all reasonable steps to secure that the first appraisal cycle for every unattached teacher in post on the relevant date begins no later than 31 October 2010.

(7) Once begun, appraisal cycles for every unattached teacher shall be continuous.

(8) The appointment of a new appraiser shall not cause an unattached teacher's appraisal cycle to begin again save as may be provided for in paragraph (9).

(9) Where an unattached teacher transfers to a new post within the authority part way through an appraisal cycle, the authority must determine whether the cycle is to begin again and if so whether to appoint a new appraiser.

## **Appraisal procedures**

**38.**—(1) Subject to paragraph (2) and to regulations 39 to 43 the authority must determine the procedures for the appraisal of unattached teachers.

(2) If some or all of the authority's duties in respect of an unattached teacher have been delegated to a teacher at a school in accordance with regulation 36(2) then subject to regulations 39 to 41 the procedures for the appraisal of that unattached teacher may be those determined by the school's governing body pursuant to regulation 25.

## **Planning of appraisal and setting of objectives**

**39.**—(1) Before or at the start of the appraisal cycle the appraiser and the unattached teacher must meet to

plan and prepare for the appraisal and to seek to agree objectives which must include objectives relating to—

- (a) developing and improving the unattached teacher's professional practice;
- (b) pupil progress.

(2) If objectives are not agreed under paragraph (1) the appraiser must set out in writing such objectives as the appraiser considers appropriate and the unattached teacher may add comments in writing.

(3) The objectives agreed under paragraph (1), or where objectives have not been agreed the objectives set out in writing under paragraph (2) and the unattached teacher's written comments, must be recorded in a written statement of objectives.

(4) A copy of the statement of objectives must be sent to the authority (where the appraiser is not the authority) and to the head teachers of schools at which the unattached teacher regularly spends part of their working time in the discharge of their duties.

### **Revising objectives**

**40.**—(1) An unattached teacher's objectives may be revised at any time during the appraisal cycle if the unattached teacher and the appraiser agree.

(2) Where an unattached teacher's objectives are revised under paragraph (1)—

- (a) the statement of objectives must be amended to show the agreed revisions;
- (b) references in these Regulations to the unattached teacher's objectives shall be read as references to the revised objectives; and
- (c) references in these Regulations to the unattached teacher's statement of objectives shall be read as references to the amended statement of objectives.

### **Monitoring progress**

**41.**—(1) The appraiser and the unattached teacher must seek to agree at a meeting held under regulation 39 on the procedures for monitoring the unattached teacher's performance against the objectives agreed under regulation 39(1) or where objectives have not been agreed the objectives set on writing under regulation 39(2).

(2) If procedures are not agreed under paragraph (1) the appraiser must set out in writing such procedures for monitoring the unattached teacher's performance as the appraiser considers appropriate.

(3) Procedures whether agreed under paragraph (1) or set out in writing under paragraph (2) must include:

- (a) a requirement for the appraiser in appraising the unattached teacher to observe the unattached teacher teaching on at least one occasion during the appraisal cycle;
- (b) a requirement for the appraiser to seek information from those with relevant professional knowledge of the unattached teacher at other places at which the unattached teacher regularly spends part of their working time in the discharge of his or her duties.

(4) Subject to paragraphs (3) and (5) an appraiser may not obtain from any other person information, whether written or oral, relevant to the unattached teacher's performance unless the unattached teacher consents or the information is obtained in accordance with procedures agreed under paragraph (1) or where procedures have not been agreed the procedures set out in writing under paragraph (2).

(5) Paragraph (4) does not apply to any information which the appraiser is entitled to receive under any other provision of these Regulations.

#### **The appraisal review and the appraisal statement**

**42.**—(1) At or near the end of the appraisal cycle the appraiser and the unattached teacher must hold an appraisal review, with the object of—

- (a) reviewing the unattached teacher's performance and identifying his or her achievements and any aspects in which further progress would be desirable;
- (b) assessing the extent to which the unattached teacher has met the objectives recorded in the statement of objectives;
- (c) identifying any training and developmental needs and ways of meeting such needs; and
- (d) determining whether there has been a successful review of overall performance.

(2) The date on which an appraisal review is to be held must be determined by the appraiser, but at least 10 school days notice (in writing) must be given to the unattached teacher of that date.

(3) The unattached teacher may, at least five school days before the appraisal review, submit to the appraiser—

- (a) the unattached teacher's own assessment of his or her performance against the objectives recorded in the statement of objectives;
- (b) particulars of any training which the unattached teacher considers it would be desirable to receive having regard to that assessment; and

- (c) particulars of any factors which the unattached teacher considers affected his or her performance against the recorded objectives;

and any such assessment and other information submitted to the appraiser under this paragraph must be considered at the appraisal review.

(4) Within 10 school days after each appraisal review, the appraiser must prepare a written statement recording the main points made by the appraiser and the unattached teacher at the review and the conclusions reached, and there must be recorded in an annex to the statement (which shall form part of the statement) the training and developmental needs and ways of meeting such needs identified at the review.

(5) An appraisal review under paragraph (1) may be combined with a meeting under regulation 39 in relation to the following appraisal cycle.

(6) The appraiser must give the unattached teacher a copy of the statement prepared under paragraph (4) within 10 school days after the appraisal review.

(7) The unattached teacher may, within 10 school days of receiving a copy of that statement add to it his or her comments in writing, and such comments shall form part of the appraisal statement.

(8) Where the appraiser is not the authority, the appraiser must send a copy of the appraisal statement to the authority and to the head teacher of any school at which the unattached teacher regularly spends part of his or her working time in the discharge of his or her duties.

(9) Where the authority is the appraiser, the authority must send a copy of the appraisal statement to the head teacher of any school at which the unattached teacher regularly spends part of his or her working time in the discharge of his or her duties.

## **Appeals**

**43.**—(1) An unattached teacher is entitled to appeal against his or her appraisal under these Regulations within 10 school days of receiving a copy of the appraisal statement under regulation 42(6).

(2) Where the appraiser is a teacher at a school the provisions of regulation 30(2) to (12) shall apply, save that reference in those paragraphs to an appraisal statement shall be references to a statement prepared under regulation 42(4) including for the purposes of regulations 31 and 32 any observations added by an appeals officer under paragraph (6)(a) of regulation 30.

(3) Where the authority is the appraiser any appeal shall be made in writing to the authority in accordance with their appeals procedures applicable to all staff save as may be inconsistent with this regulation.

(4) The appeals officer must within 10 school days of receiving the appraisal statement under regulation 44(2)(b) conduct and conclude a review of the appraisal and must take account of any representations made by the unattached teacher.

(5) The appeals officer may—

- (a) order the appraisal statement to stand with or without observations of the appeals officer; or
- (b) with the agreement of the appraiser amend the appraisal statement; or
- (c) order that the appraisal statement be expunged and order a new appraisal.

(6) Where a new appraisal is ordered under paragraph (5)(c), a new appraiser must be appointed in accordance with regulation 36 and the appeals officer must determine which appraisal procedures must be repeated.

(7) Where it appears to the appeals officer that there is no suitable school teacher at a school where the unattached teacher spends the predominant part of his or her working time to be a new appraiser who can be appointed for the unattached teacher, the appeals officer must appoint as a new appraiser for the unattached teacher a member of that school's governing body (other than a governor who is a teacher or other member of staff) or any other person suitable to manage and review the unattached teacher's performance.

(8) All appraisal procedures determined to be repeated under paragraph (7) must be completed within 15 school days from the date of the appeals officer's order under paragraph (5)(c).

(9) The appeals officer may not—

- (a) determine that new objectives be agreed or set; or
- (b) determine that the objectives agreed or set under regulation 39 be revised.

(10) References in this regulation and in regulations 44 and 45 to an appraisal statement are references to a statement prepared under regulation 42(4), including, in the case of regulations 44 and 45, any observations added by an appeals officer under paragraph (5)(a).

#### **Provision and retention of appraisal statements**

**44.**—(1) The appraiser must give the appraisal statement to:

- (a) the head teacher at every school at which the unattached teacher regularly spends part of his or her working time in the discharge of his or her duties;
- (b) the authority.

(2) The authority must make the appraisal statement available upon request to:

- (a) the appraiser;
- (b) any appeals officer and any external adviser assisting the appeals officer within five school days of the authority receiving notice of an appeal under regulation 43 who must also be given a copy of the statement of objectives;
- (c) the Chief Education Officer or any officer or adviser specifically designated by the Chief Education Officer to be responsible for advising about, or taking decisions in relation to, the promotion of unattached teachers or the use of any discretion in relation to pay.

(3) The authority must provide a copy of the annex to the appraisal statement referred to in regulation 42(4) to the person or persons responsible for planning the training and development of school teachers at any school at which the unattached teacher regularly spends part of his or her working time in the discharge of his or her duties.

(4) The authority must make an unattached teacher's current statement of objectives available to a new appraiser appointed otherwise than at the beginning of an appraisal cycle.

(5) An unattached teacher's appraisal statement must be kept by the authority until at least three years after the next appraisal statement has been finalised.

### **Information from appraisal statements**

**45.**—(1) Relevant information from appraisal statements may be taken into account by an authority, Chief Education Officers or any officers or advisers specifically designated by a Chief Education Officer under regulation 44(2)(c) in taking decisions, and in advising those responsible for taking decisions, about the promotion, dismissal or discipline of unattached teachers or the use of any discretion in relation to pay.

(2) Appraisal procedures must not form part of any disciplinary or dismissal procedures.”.

### **Amendments to the School Government (Terms of Reference) (Wales) Regulations 2000**

**11.**—(1) The School Government (Terms of Reference) (Wales) Regulations 2000(1) are amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “school teacher” delete “no more than two schools” and substitute “one school”; delete “fixed term contract of

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(1) S.I. 2000/3027 (W. 195) as amended.

- employment the term of which is less than one year” and substitute “short term contract”;
- (b) after the definition of “school teacher” insert—
- ““school term” (*tymor ysgol*) includes (a) a period of time short of a full school term by no more than one week and (b) two consecutive half terms;”;
- (c) after the definition of “school year” insert—
- ““short term contract” (*contract cyfnod byr*) means a contract of employment for a fixed term of less than one school term;”.
- (3) In regulation 2(2)(a) omit “and” and after “a maintained nursery school” in (b) insert—
- “; and
- (c) school teachers in regulation 10 shall include references to any unattached teachers as defined in the School Teacher Appraisal (Wales) Regulations 2002 for which the head teacher or other school teacher at that school is for the time being the appraiser in accordance with regulation 36 of those Regulations.”.
- (4) Delete paragraph (11) from regulation 10.

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4 August 2009