

LEGISLATION COMMITTEE

REPORT TO THE ASSEMBLY ON THE EDUCATION (SCHOOL TEACHER APPRAISAL) (WALES) REGULATIONS 1999

INTRODUCTION

At its meeting on 28 September, the Legislation Committee concluded that formal reporting under Standing Order 11.5 appeared to be necessary under 11.5 (v) and 11.5 (vi).

Where formal reporting under Standing Order 11.5 is contemplated, the Committee is first required, under Standing Order 11.4, to give the relevant Assembly Secretary an opportunity of giving evidence and answering, in writing or orally, any questions that the Committee has raised.

Accordingly, the Chair wrote to the Assembly Secretary on 28 September. A copy of this letter is at Annex A. A written response from the Assembly Secretary was considered by the Committee at its meeting on 12 October. A copy of this is at Annex B.

REPORT OF THE LEGISLATION COMMITTEE

Regulation 2(1) - definition of "appraisal record", and Regulations 13 and 14(1)

Although the Welsh text uses the term "record gwerthuso" for "appraisal record" in the definition in Regulation 2(1), the term used in Regulation 14(1) and in the heading to Regulation 13 is "cofnodion gwerthuso". The Assembly Secretary accepts that this is an inconsistency within the Welsh text, and comments that although both "record" and "cofnod" have the same meaning in Welsh, this is a discrepancy which should ideally be remedied by adoption of either term consistently.

The Committee felt that this defect is not merely an inconsistency within the Welsh text, but an inconsistency between the two texts. The term used in Regulations 13 and 14(1) in the English text has a definition, but the term used in the Welsh text does not, because a different term appears in Regulation 2(1).

For this reason it is concluded that the Committee must, under the terms of SO 11.5(v) and (vi), invite the Assembly to pay special attention to the Regulations on the ground that there is defective drafting in the Welsh text and inconsistency between the Welsh and English texts.

It is noted, however, that the Assembly Secretary concludes that the remedying of these

defects should be left to regulations which are intended to introduce a new appraisal system having effect from 1 September of next year. The Committee would not wish to dissent from this proposed course of action.

The Committee does wish to point out, however, that the term "appraisal record" in the English text seems only to be used in Regulation 14(1) and in the heading to Regulation 13. Also it is used only in the plural, not in the singular as in the definition. Thus the discrepancy between the Welsh and English texts could be remedied, and the drafting simplified as well, by omitting the definitions altogether and referring to "appraisal statements"/ "datganiadau gwerthuso" in Regulation 14(1) and in the heading to Regulation 13.

Regulation 9(2)(3)

In respect of Regulation 9(2) and (3), it does seem to the Committee that the possibility of a deputy head teacher having two appraisers has been overlooked, and that this amounts to a drafting defect.

Two appraisers will be appointed for a head teacher. Thus Regulation 9(2) is expressly stated not to apply in the case of a head teacher. Separate provision is made in paragraph (3). But under Regulation 8(6) there may also be two appraisers for a deputy head teacher. Thus the drafting is defective in that whilst it must be assumed that provision similar to 9(3) is intended to operate in the case of a deputy head who has two appraisers, provision has not been made for this.

Since the point in issue is considered to be a defect of drafting, the Committee is obliged, under the terms of SO 11.5(v), to invite the Assembly to pay special attention to it.

However, it is recognised that not all defects will warrant immediate rectification. Thus, again, the Committee would not wish to dissent from the Assembly Secretary's proposal that the remedying of this defect could be left to the planned replacement regulations.

Although formal reporting under SO 11.5 is confined to the above two aspects, there are a number of more general observations that were made by the Committee, but which do not form part of the formal report.

Explanatory Note

This explains why these Regulations have been made and indicates that the provisions in the former 1991 Regulations as to the aims and procedure for appraisal are unchanged. However, the Note does not give any detail with regard to the substantive content of the Regulations. The view appears to have been taken that it is sufficient for the Explanatory Note to explain why the new Regulations have been needed and what changes they have made, without giving any explanatory material on the substantive provisions which remain unchanged from the superseded Regulations.

The Committee would have expected explanatory material on the content of the Regulations to have been included in the Explanatory Note.

Making

As these are made Regulations submitted to the Committee in accordance with Standing Order 22.26, the submitted copy should have included the date of making.

Recital of Powers - footnote (a)

In the final sentence the opening bracket before "amended"/ "a ddiwygiwyd" is not closed. It should close immediately before "and"/ "ac". Also, there is a typographical error in that the words "Ddeddf honno" appear at the end of the English text. It is understood that these matters are being corrected on the printed copy.

Regulation 1(2)

A footnote identifying where the definition of "maintained school" can be found in the Education Acts would have been helpful.

Regulation 1(3)

Strictly speaking it seems that "a teacher" should have been "a school teacher" since the latter is the defined term in Regulation 2(1) which is used elsewhere in the Regulations.

Regulation 5(2) and (3)

Although the references to "new post" may be assumed to have operated satisfactorily in the 1991 Regulations the drafting could have been made clearer in the present Regulations. It is

assumed that paragraph (2) is intended to refer to a school teacher moving to the post of head teacher in the same school. In paragraph (3) it is assumed that the reference is to a teacher moving to another post in the same school.

Regulation 10

Where references to a school teacher are not intended to include a head teacher, the Regulations expressly indicate this (e.g. Regulation 9(2)).

Thus it appears that Regulation 10 is intended to apply to a head teacher. But Regulation 10 does not indicate whether the interviews and consultations referred to are required to be carried out, in the case of a head teacher (or a deputy for whom there are two appraisers), with just one appraiser or both acting together. This is in contrast to the specific provision made for head teachers (but not deputies) in Regulation 9(1) and (3).

Regulation 11(5)(6)

Regulation 11(3) and (4) provides for two review officers to be appointed in the case of a head teacher. But paragraphs (5) and (6) do not make it clear how the two review officers are to work together. This contrasts with the attention paid to such matters in Regulation 9(1) and (3).

Regulation 12

Again, this does not deal with the situation where there are two appraisers. The assumption must be, however, that the meeting and consultation will be with both.

Signature

Since this is a made instrument submitted to the Committee under SO 22.26, the submitted copy should have contained the date of making and an indication of signature.

BACKGROUND TO THE ORDER

These regulations set out the detail of the aims of, and procedures for, the appraisal of school teachers. In substance they repeat the provisions contained in the Education (School Teacher Appraisal) Regulations 1991. The 1991 Regulations have had to be re made to take account of the changes to the framework for schools brought about by the School Standards and Framework Act 1998.

M GERMAN

Chair, Legislation Committee

13 October 1999