

Explanatory Memorandum to the Government of Maintained Schools (Clerk to a Governing Body)(Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales 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 Government of Maintained Schools (Clerk to Governing Body)(Wales) Regulations 2013.

Huw Lewis

Minister for Education and Skills

23 August 2013

1. Description

1.1 These regulations set out the requirements for clerks to governing bodies to attend mandatory training and the requirements on local authorities to provide governing bodies with a trained clerk, if requested, within 16 weeks of receiving the request. The regulations also set out who is exempt from completing the clerk training and that clerks who are required to, but do not do so, are to be removed from office by the governing.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 There is no information the Minister wishes to bring to the attention of the Constitutional and Legislative Affairs Committee.

3. Legislative background

3.1 The Welsh Ministers powers to make the Government of Maintained Schools (Clerk to a Governing Body)(Wales) Regulations 2013 are contained in sections 23, 24 and 25 of the Education (Wales) Measure 2011 (“the Measure”). Section 23 requires local authorities in Wales to inform bodies who are responsible for appointing clerks, from time to time, that they may request the local authority to provide them with a clerk. This section also allows the Welsh Ministers to make regulations permitting local authorities to charge schools for the cost of providing a clerk.

3.2 Section 24 of the Measure allows the Welsh Ministers to place a duty on bodies who appoint clerks to ensure that their clerk completes the prescribed training to a required standard. It also permits regulations to be made which:

- prevent a person from being appointed as a clerk who has not completed the mandatory training to a required standard within a required period of time;
- provide for a clerk who has not completed the training to be removed from office by the governing body;
- set out the content and standard of the training to be delivered in a published document.

3.3. Section 25 of the Measure requires local authorities to ensure that training for clerks is made available to all clerks. This does not mean that the local authority has to provide and deliver the training, they may contract out for this service if they wish. The local authority can charge a fee for the provision of the training.

3.4 The Government of Maintained Schools (Clerk to a Governing Body)(Wales) Regulations 2013 are subject to annulment and are being made using the negative resolution procedure.

4. Purpose & intended effect of the legislation

4.1 The Welsh Government recognises that governing bodies have a key role to play in raising standards and improving school performance. To be effective governors need support from a quality clerk who can organise governing body business so that the governors are able to discharge their functions smoothly and professionally. The clerk's role is to carry out the administrative tasks set out in regulation 43 of the Government of Maintained Schools (Wales) Regulations 2005 ("the 2005 Regulations"), the Federation of Maintained School and Miscellaneous Amendments (Wales) Regulations 2010 ("the 2010 Regulations") and the Collaboration Between Education Bodies (Wales) Regulations 2012 ("the 2012 Regulations"), which includes:

- convening meetings of the governing body;
- attend meetings and taking and keeping minutes;
- distributing agendas and papers;
- maintaining a register of governors and reporting vacancies;
- maintaining a register of governor attendance at meetings and reporting non attendance;
- giving notice and receiving notices of vacancies, removal of governors, resignation of chairs and vice chairs, and disqualifications;
- reporting to the governing body as requested;
- performing other functions as requested by the governing body and
- providing advice on the governing body functions and procedures.

4.2 In accordance with the same 2005 Regulations the governing body must also appoint a clerk to the statutory committees – the staff disciplinary and dismissal committee; the staff disciplinary and dismissal appeal committee; the pupil discipline committee and where appropriate the admissions committee. The clerk to these committees may be the same person that clerks the governing body, and for consistency and continuation purposes it is preferable that the clerk is the same person. However, the 2005 school governance regulations do not require this and a governing body may appoint another person to clerk these committees. The duties of the clerk to these committees are very similar to the duties of a clerk to the governing body. These clerks will also be required to attend the clerk training.

4.3 Therefore, in order for clerks to be effective in carrying out these duties, there is a requirement that, with some exceptions (explained in paragraph 4.7 below) all clerks must attend mandatory training. In order to bring consistency into the content and quality of the training Welsh Ministers have also set out the content of the mandatory training in a document entitled 'Content of governing body clerk training in Wales'. The topics chosen for inclusion in the mandatory training are:

- the statutory duties and administrative functions of the clerk;
- the key roles and responsibilities of the governing body and the chair of governors;
- the powers and duties of the governing body;

- the establishment of committees;
- the governing body's core responsibilities;
- key relationships;
- governing body business;
- the advisory role of the clerk;
- Sources of advice and help.

4.4 Training on these topics will give clerks a better understanding of their role and will help them develop appropriate skills to carry out their duties effectively.

Training for Clerks

4.5 The Government of Maintained Schools (Clerk to a Governing Body) (Wales) Regulations 2013 define who is considered to be a clerk to a governing body and who must complete the mandatory clerk training to a satisfactory standard. This includes:

- a person appointed to clerk the governing body;
- a person appointed to clerk the statutory committees;
- a person appointed by a governing body of schools that have federated to clerk the federated governing body;
- a person appointed by the governing body of schools that have federated to clerk the statutory committees;
- a person appointed by an Interim Executive Board to clerk proceedings.

4.6 A clerk appointed under the circumstances above will be required to attend the mandatory training within one year of their appointment, if they are appointed after the regulations come into force in September 2013, or within one year of the regulations coming into force, if they were already in post.

4.7 The following persons are exempt from completing the training:

- a governor support officer employed by a local authority;
- a person who has satisfactorily completed the training and
- a governor who is appointed as a clerk as a temporary arrangement when the properly appointed clerk does not turn up.

The last bullet point in paragraph 4.7 above is set out in regulation 42(4) of the Government of Maintained Schools (Wales) Regulations 2005 and regulation 50(4) of the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010.

4.8 If a clerk does not satisfactorily complete the training within the required period the governing body must remove the clerk from office. A clerk removed from office cannot be appointed as a clerk again until they have satisfactorily completed the mandatory training.

4.9 It will be the responsibility of the person delivering the training to assess whether the clerks have completed the training to a satisfactory standard.

4.10 The Welsh Government has arranged for the all Wales Centre for Governor Training and Research to produce a training programme incorporating all of the topics set out in the Content of governing body clerk training in Wales' document. This training programme will be sent to all local authorities and is free of charge.

Provision of a Clerk

4.11 The Government of Maintained Schools (Clerk to a Governing Body)(Wales) Regulations 2013 requires a local authority to provide a governing body with a clerk if they are requested to do so. Following receipt of a request, the local authority must provide a suitable person within 16 weeks of the request. A suitable person is someone who has satisfactorily completed the mandatory training or is a governor support officer.

4.12 Local authorities may charge schools for the cost of providing a clerk but cannot charge more than the costs incurred by the local authority.

5. Consultation

5.1 Consultation on these draft regulations took place between 15 May to 10 July 2012 with key stakeholders including local authorities, Governors Wales, diocesan authorities, school governing bodies, school staff unions and community councils.

5.2 One hundred and thirty seven responses were received, the majority of which agreed and supported the proposals regarding clerking in order to better support governing bodies. An analysis of the consultation responses will be available shortly at <http://wales.gov.uk/consultations/education/maintrain/?status=closed&lang=en>

6. Regulatory Impact Assessment (RIA)

6.1 A full Regulatory Impact Assessment was completed for the Education (Wales) Measure 2011. The provisions for mandatory training for clerks and the provision of a clerk by governing bodies, were included as part of this RIA and is available at <http://www.assemblywales.org/ms-ld7481-em-r-e.pdf> .

6.2 Under provisions in the Education (Wales) Measure 2011 local authorities are required to offer a clerking service to all its schools and if accepted to provide that service. Local authorities would also be required to offer clerk training although they do not have to deliver it. Schools are not obliged to take up the offer of a clerk or the local authority clerk training.

6.3 The cost of a clerk service provided by a local authority and set out in the RIA for the Education (Wales) Measure 2011 varies considerably within a range

of a minimum of £450 per school for clerking up to 6 full governing body meetings; whilst the maximum charge is £2,000 per school to clerk three governing body meetings per year (one per term), plus all the administrative work of setting agendas, issuing papers, taking the minutes and giving advice to the governing body.

6.4 Each local authority has a set menu for the cost of clerking additional meetings, whether of the full governing body or committees. Again rates between local authorities vary significantly. Some local authorities charge by the hour for additional meetings (one example is £17 per hour); others charge a blanket fee, one local authority charging for example £150 per 2 hour meeting plus an additional charge of £5.50 for every 15 minutes over that. Therefore given the variances that exist in local authority clerk provision costs it would be very difficult and misleading to give an average cost of clerking a governing body or committee meeting.

6.5 There need not be any additional cost for local authorities in offering a clerking service as the schools who take up the offer could be charged through their delegated budget for the local authority's time and effort for finding a suitably trained clerk and the clerk's time.

6.6 We have provided some examples and comparisons of costs using a local authority with the most schools – 131 – and not offering a clerking service; and similarly a local authority with the lowest number of schools – 56 – to give an approximate figure for costs.

6.7 Based simply on the rawest data we have, the costs of providing a clerking service in the local authority with 131 schools, if all schools accepted the local authority's offer, would range from around £60,000 (based on a cost of £450 per school) for providing a clerk to 6 full governing body meetings per year, to £262,000 for a service (based on £2,000 per school) for a more wide-ranging service.

6.8 The cost in the local authority with 56 schools would range from £25,200 based on a cost of £450 per school to a maximum of £112,000 based on costs of £2,000 per school.

6.9 However, schools are not obliged to take up the local authority offer, and it is unlikely that they will if the cost of the local authority service exceeds the cost the school is currently paying its clerk.

6.10 The Welsh Assembly Government holds no information on what schools pay their 'private clerks'.