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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Proposed amendments to school governance procedures in Wales

The Government of Maintained Schools (Wales) (Amendment)
Regulations 2020 and The Federation of Maintained Schools (Wales)
(Amendment) Regulations 2020

Date of issue: November 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Proposed amendments to school governance procedures in Wales

Overview This document provides a summary of the responses received to the consultation regarding The Government of Maintained Schools (Wales) (Amendment) Regulations 2020 and The Federation of Maintained Schools (Wales) (Amendment) Regulations 2020

Action required None

Further information Enquiries about this document should be directed to:

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Introduction

The Welsh Government undertook a public consultation on proposed changes to the Government of Maintained Schools (Wales) Regulations 2005 (“the Governance Regulations”) and the Federation of Maintained Schools (Wales) Regulations 2014 (“the Federation Regulations”). The changes:

- remove the disqualification from being a school governor if a person is liable to be detained under the Mental Health Act 1983;
- allow governing body minutes and records to be kept electronically;
- make explicit the option for governing bodies to meet via remote access as well as face to face; and
- amend the regulations regarding the disqualification of company directors Order and the Act under which charity trustees are disqualified in line with the rest of the UK.

Due to the nature of the proposed changes and the timing and resources constraints this year as a result of the Covid-19 pandemic, the consultation ran for six weeks.

This document provides a summary of the consultation responses received and confirms the outcome.

Summary of responses

127 people responded to the consultation. The Welsh Government is grateful to all those who responded for taking the time to submit their views. A list of respondents can be found at Annex 1.

There was broad support for all of the proposed changes. A breakdown of responses is included below. Please note that the percentages relate to the number of people who responded to each question, rather than the total number who responded to the consultation:

Question 1 – Do you agree with the proposal to remove the disqualification criteria relating to the Mental Health Act 1983?

| Agree | Disagree | Neither agree nor disagree | Number of responses |
|-------|----------|----------------------------|---------------------|
| 110 | 2 | 9 | 121 |
| 91% | 2% | 7% | 100% |

The following comments were received:

One respondent felt that it was unclear what this means in practice.

One respondent stated it is not clear if there are any exceptional cases likely or how to accommodate them.

One respondent commented that it must be clear that it is not appropriate or safe for neither the school nor the individual to continue to be an active governor if the individual’s current mental health compromises their ability to make sound judgments.

One respondent sought clarification of whether this refers generally to mental ill health or specifically to detention under the Mental Health Act, and another suggested that training for governing bodies on mental health issues would be helpful.

Welsh Government response:

The amendment to the Government of Maintained Schools (Wales) Regulations removes the provision regarding the disqualification from being a governor on mental health grounds. This is consistent with the Mental Health (Discrimination) Act 2013 which is intended to protect against discrimination on the grounds of mental health and to help to remove the stigma associated with mental illness.

The Government of Maintained Schools Regulations set out the conditions under which a governor may be removed or suspended from office and apply to all governors dependent on by whom they were elected.

Local authorities are responsible for ensuring that school governors are provided with the necessary training to enable them to undertake their role effectively.

Question 2 – Do you agree with the proposal to amend the disqualification of company directors Order and the Act under which charity trustees are disqualified, bringing Wales’ regulations up to date in respect of legislation from across the UK?

| Agree | Disagree | Neither agree nor disagree | Number of responses |
|-------|----------|----------------------------|---------------------|
| 107 | 1 | 9 | 117 |
| 91% | 1% | 8% | 100% |

Welsh Government response:

The vast majority of respondents agreed with this proposal. Although one respondent was concerned that regulations were not up to date, there were no adverse comments on the proposal. The Welsh Government therefore intends to amend the 2005 School Government Regulations and the 2014 Federation Regulations to reflect this change.

Question 3 – Do you agree with the proposal to allow minutes and records to be kept electronically? ‘Electronically’ in this context means making and confirming decisions via e-mail, or other file-sharing tools such as Microsoft Teams, which are saved securely for audit purposes.

| Agree | Disagree | Neither agree nor disagree | Number of responses |
|-------|----------|----------------------------|---------------------|
| 119 | 0 | 1 | 120 |
| 99% | 0% | 1% | 100% |

The following comments were received:

Almost all respondents agreed to this change with many stating they have introduced similar procedures in order to make necessary decisions during the Covid-19 pandemic. Some respondents said there should be an option to keep written records and questioned how long these should be kept.

One respondent was concerned about using emails as evidence for decision making.

Welsh Government response:

The proposed changes to the Regulations provide flexibility for school governing bodies to keep records electronically if this suits their needs. This brings the Regulations in line with common practice and, provided suitable tools and software are used, should not present any additional adverse impacts on data protection. There is nothing to prevent governing bodies from maintaining paper based records.

School governing bodies should ensure that a suitable audit trail of all decisions is kept. Welsh Government guidance on retention of records is available on its website, and local authorities can advise governing bodies on specific local policies.

Question 4 – Do you agree with the proposal to allow meetings to take place via remote access i.e. through the use of a tele- or video-conferencing tools?

| Agree | Disagree | Neither agree nor disagree | Number of responses |
|--------------|-----------------|-----------------------------------|----------------------------|
| 117 | 3 | 0 | 120 |
| 98% | 2% | 0% | 100% |

The following comments were received:

The vast majority of respondents welcomed this amendment with many stating that this has been particularly helpful during the current circumstances as it has ensured the continuity of school governing body business during the Covid-19 pandemic. Many echoed that it would be preferable to continue to hold 'physical' meetings where possible, acknowledging that remote access meetings could be a suitable alternative.

One respondent stated they would like to see a prescribed minimum number of 'in-person' meetings stipulated, to guard against the virtual meeting becoming the norm. Another asked for clarification on whether mixed in-person and virtual meetings would be possible under the new Regulations.

Welsh Government response:

The Welsh Government is aware that it is increasingly common to conduct meetings 'virtually' by remote access, using video- and tele-conferencing tools. Feedback from schools and local authorities indicates that this has been particularly welcomed during the ongoing Covid-19 pandemic and has allowed schools and local authorities to continue with essential business. There is nothing in the existing regulations that specifically precludes meeting virtually, but we are taking this opportunity to make it clear that it is permitted practice.

The Welsh Government accepts that not all governors will be able or willing to take part in remote access meetings. The conditions attached to virtual meetings aim to ensure that there is consensus on the format of meetings and that all governors are able to take part.

The Welsh Government does not intend to prescribe the format for governing body meetings. School governing bodies should make their own decisions about what works for them based on their own local circumstances. It is permitted under the amendment

Regulations for meetings to be a mix of in-person and remote access, if this suits the needs of the meeting and everyone in attendance.

Question 5 – Do you agree with the conditions to allow meetings to take place via remote access?

- (1) participants will be fully able to make representations/discharge functions
- (2) participants agree to the meeting being held using remote access
- (3) each participant has access to the electronic means to allow them to hear/be heard, see/be seen
- (4) meeting is capable of being held fairly and transparently.

| Agree | Disagree | Neither agree nor disagree | Number of responses |
|--------------|-----------------|-----------------------------------|----------------------------|
| 114 | 4 | 2 | 120 |
| 95% | 3% | 2% | 100% |

The following comments were received:

The vast majority of respondents agreed with this proposal. A number commented that they successfully applied these conditions during the Covid-19 pandemic lockdown.

Whilst the majority of respondents agreed that the conditions are reasonable, some expressed concern that there are numerous governors who do not have access to the internet.

Welsh Government response:

The purpose of the conditions is to ensure that there is consensus on how meetings are held, and that all participants have access to the electronic means so that they are fully able to make representations and discharge functions, with the overall aim of ensuring that meetings are capable of being held fairly and transparently. It is for the governing body to decide how they conduct their business.

Where virtual meetings are held consideration will need to be given to the meeting tool used based on its availability to all parties, its security, and its practicality for conducting the business at hand.

Questions 6 and 7 asked for views on how the proposals could affect the use of the Welsh language, and how the proposals could be altered to have a positive effect on the use of the Welsh language

The following comments were received:

The majority of respondents considered that the proposals would not have any effect on the use of the Welsh language.

Some respondents commented that there was a lack of explicit detail around expectations on holding meetings through the medium of Welsh or the diversity of governing bodies.

Welsh Government response:

School governing bodies are responsible for determining how their meetings are conducted. The changes proposed do not impact on the arrangements in respect of the language in which meetings are conducted, which should be the same whether a meeting is face to face or virtual. The Welsh language will not be treated less favourably as a result of conducting virtual meetings. The conditions placed on virtual meetings aim to ensure that governors are able to contribute effectively.

The Welsh Language Commissioner has published [guidance](#) to support organisations, and share best practice on holding bilingual video meetings.

Question 8 – Additional comments

One respondent commented that the use of remote, virtual and online means of communication will greatly increase the potential for those with disabilities, especially those with limited mobility, to be part of and contribute to school governance. Another echoed that virtual meetings may make it easier for those in rural areas to attend more regularly.

One respondent was concerned that if more governing bodies choose to conduct meetings using technology, there could be training implications for existing governors and clerks which regional consortia and/or local authorities would need to address.

A concern about the future of the role of the clerk to the governing body and whether they would still be required for virtual governing body meetings was raised.

Welsh Government response:

The Welsh Government agrees that the proposals for virtual meetings have the potential to increase attendance at governing body meetings. There are benefits for people with disabilities and/or those who live in rural areas as they may be more easily able to engage in school governing bodies without the need to be physically present at every meeting.

Local authorities are responsible for providing training for their governors to enable them to undertake their role effectively. Many local authorities have already adapted their services in the light of the Covid-19 pandemic to ensure they are up to date and will be able to advise on the latest technologies for conducting business electronically.

In addition, the Welsh Government's digital learning platform, [Hwb](#), offers free resources to help school governing bodies with digital access.

The role of the clerk is vital to the success of an effective school governing body and the requirement to have a clerk remains. The Welsh Government has made training for clerks mandatory. The amendment Regulations do not diminish or change the nature and importance of this role.

Conclusion

The Welsh Government has considered these responses carefully. A clear majority showed support for all of the proposals and the Welsh Government therefore considers that the proposals should proceed unchanged.

The Government of Maintained Schools (Wales) (Amendment) Regulations 2020 and the Federation of Maintained Schools (Wales) (Amendment) Regulations 2020 will be made and laid before Senedd Cymru on or before 26 November 2020. The Regulations are expected to come into force on 18 December 2020.

Annex 1: List of respondents

- 34 primary schools - governors and school staff
- 17 secondary schools - governors and school staff
- 1 middle school - governor
- 1 special school - governor
- 1 federation - governor
- 10 local authorities
- Governors Cymru Services
- Education Achievement Service for South East Wales (EAS)
- NASUWT
- UCAC
- Estyn
- Catholic Education Service
- Parentkind
- 56 responses from individuals, and people who wished to remain anonymous