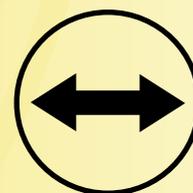


Guidance on the Draft Education (Modification of Enactments Relating to Employment)(Wales) Order 2006

Date of Issue: 23 December 2005
Response Required by: 3 February 2006

Consultation
Document



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Adran Hyfforddiant ac Addysg
Department for Training and Education



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Title of Document: Guidance on The Draft Education (Modification of Enactments Relating to Employment)(Wales) Order 2006.

Audience: Local Education Authorities in Wales, School Staff Unions, Roman Catholic and Church in Wales Diocesan Directors, Governors Wales and WLGA.

Overview: The document consults on the draft Education (Modification of Enactments Relating to Employment) (Wales) Order 2006. The Order replicates provisions contained in the Education (Modification of Enactments Relating to Employment) Order 1999, which will be revoked by the new Order. The 2006 Order preserves the current employer status and responsibilities of governing bodies towards members of staff in community, community special and voluntary controlled schools, contained in the 1999 Order.

Action required: Consultees to respond to the draft regulations by 3 February 2006. Responses should be made on the enclosed proforma and sent to:
Mrs Debra Froud
Schools Management Division 2
Welsh Assembly Government
Cathays Park, Cardiff, CF10 3NQ
Or completed electronically and sent to:
SMD2consultations@wales.gsi.gov.uk

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Or from the Assembly's web site at
www.learning.wales.gov.uk

Related Documents: Sections 81 and 138(7) and Schedules 16 and 17 of the School Standards and Framework Act 1998
The Education (Modifications of Enactments Relating to Employment) (Wales) Order 1999
National Assembly for Wales Circular 45/2004 'Staff Disciplinary Procedures in Schools' Consultation on the draft Staffing of Maintained School (Wales) Regulations 2006

THE DRAFT EDUCATION (MODIFICATIONS OF ENACTMENTS RELATING TO EMPLOYMENT) (WALES) ORDER 2006

This consultation invites comments on the draft Education (Modifications of Enactments relating to Employment)(Wales) Order 2006 which is being made under Sections 81 and 138(7) of the School Standards and Framework Act 1998. When the 2006 Order comes into force it will revoke the Education (Modification of Enactments Relating to Employment) Order 1999.

The Education (Modification of Enactments Relating to Employment) Order 1999

The local authority remains the employer of staff at community, community special, maintained nursery schools, maintained nursery schools and voluntary controlled schools.

The Education (Modification of Enactments Relating to Employment) (Wales) Order 1999 includes provisions which apply employment law and convey employer status and responsibilities on governing bodies of community, community special, maintained nursery schools and voluntary controlled schools as a consequence of the staffing provisions contained in Schedules 16 and 17 of the School Standards and Framework Act 1998, which are still in force in Wales.

The 1999 Order also modifies other statutory provisions relating to employment to take account of the requirement contained in the School Standards and Framework Act 1998 for local authorities to delegate financial management of schools to their governing bodies.

The governing body of a school that has a delegated budget has powers for the appointment, suspension, conduct and discipline, capability and dismissal of staff at the school.

The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006

The 2006 Order replicates the provisions of the 1999 Order. The new Order has to be in place before the coming into force of the new Staffing of Maintained Schools (Wales) Regulations 2006, so as to preserve and continue the current employment responsibilities of governing bodies of community, community special, maintained nursery schools and voluntary controlled schools towards members of staff.

The employment responsibilities are those contained in the proposed 2006 Staffing Regulations relating to appointment, capability, staff grievance, conduct and discipline, suspension and dismissal of staff, which replace the current provisions in Schedules 16 and 17 of the School Standards and Framework Act 1998.

As school staffing and employment matters are not functions devolved to the Welsh Assembly Government, responsibility for making the Order rests with the Secretary of State for Education and Skills. However, there is a statutory requirement under the provisions in Sections 81 and 138(7) of the School Standards and Framework Act 1998 for consultation with specified partners as set out in Section 81(2) of the 1998 Act before making the Order. The partners are local authorities, diocesan authorities and teacher and staff unions. The Welsh Assembly Government is carrying out this consultation on behalf of the Department for Education and Skills

Responses to this consultation should be sent to Mrs Debra Froud, Schools Management Division 2, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ by **3 February 2006**. Or completed electronically and sent to SMD2consultations@wales.gsi.gov.uk

This consultation document is issued in English only.

Severe pressure on translation services means that documents have to be prioritised. The approach to setting priorities is set out in the Welsh Language Scheme for the Welsh Assembly Government prepared under the Welsh Language Act 1993.

The final regulations and guidance will be bilingual.

2006 No.

EDUCATION, WALES

**The Education (Modification of Enactments Relating to
Employment) (Wales) Order 2006**

<i>Made</i> - - - -	<i>20th May 2005</i>
<i>Laid before Parliament</i>	<i>20th May 2005</i>
<i>Coming into force</i> - -	<i>20th May 2005</i>

In exercise of the powers conferred upon the Secretary of State by sections 81 and 138(7) of the School Standards and Framework Act 1998(1) and after consulting—

- (a) such associations of local authorities,
- (b) such bodies representing the interests of governors of foundation or voluntary schools, and
- (c) such organisations representing staff in maintained schools,

as appeared to him to be concerned, the Secretary of State hereby makes the following Order:

Citation, commencement, application and revocation

1.—(1) This Order may be cited as the Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 and shall come into force on 31st January 2006.

(2) This Order applies in relation to Wales.

(3) The Education (Modification of Enactments Relating to Employment) Order 1999(2) is revoked in relation to Wales.

Interpretation

2.—(1) In this Order—

“the 1996 Act” means the Employment Rights Act 1996(3);

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2006 Regulations” mean the Staffing of Maintained Schools (Wales) Regulations 2006(4);

“authority” means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

(1) 1998 c. 31, amended by paragraph 107 of Schedule 21 to the Education Act 2002 c. 32.

(2) S.I. 1999/2256.

(3) 1996 c. 18.

(4) S.I. 2006/[] (W.[]).

“governing body” means the governing body of a school which is maintained by an authority;
“governing body having a right to a delegated budget” and “school having a delegated budget”
have the same meaning as in Part 2 of the 1998 Act.

(2) In this Order references to employment powers are references to the powers of appointment, suspension, conduct and discipline, capability and dismissal of staff conferred by the 2006 Regulations.

General modifications of employment enactments

3.—(1) In their application to a governing body having a right to a delegated budget, the enactments set out in the Schedule have effect as if—

- (a) any reference to an employer (however expressed) included a reference to the governing body acting in the exercise of its employment powers and as if that governing body had at all material times been such an employer;
- (b) in relation to the exercise of the governing body’s employment powers, employment by the authority at a school were employment by the governing body of the school;
- (c) references to employees were references to employees at the school in question;
- (d) references to dismissal by an employer included references to dismissal by the authority following notification of a determination by a governing body under regulation 18(1) of the 2006 Regulations; and
- (e) references to trade unions recognised by an employer were references to trade unions recognised by the authority or the governing body.

(2) Paragraph (1) does not cause the exemption in respect of an employer with fewer employees than is specified in section 7(1) of the Disability Discrimination Act 1995⁽⁵⁾ to apply (without prejudice to whether it applies irrespective of that paragraph).

4. Without prejudice to the generality of article 3, where an employee employed at a school having a delegated budget is dismissed by the authority following notification of such a determination as is mentioned in article 3(1)(d)—

- (a) section 92 of the 1996 Act⁽⁶⁾ has effect as if the governing body had dismissed him and as if references to the employer’s reasons for dismissing the employee were references to the reasons for which the governing body made its determination; and
- (b) Part X of the 1996 Act⁽⁷⁾ has effect in relation to the dismissal as if the governing body had dismissed him, and the reason or principal reason for which the governing body did so had been the reason or principal reason for which it made its determination.

Trade disputes

5.—(1) Subject to paragraph (2), a dispute between staff employed to work at a school having a delegated budget and the school’s governing body, which relates wholly or mainly to one of the matters set out in section 244(1) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁸⁾ is a trade dispute within the meaning of that Act.

(2) In any case where there is a trade dispute only by virtue of this article, nothing in section 219 of that Act⁽⁹⁾ prevents an act from being actionable in tort where the inducement, interference or

⁽⁵⁾ 1995 c. 50. Section 7(1) is amended by S.I. 1998/2618.

⁽⁶⁾ Section 92(1) is amended by S.I. 2002/2034, section 92(2) is amended by the Employment Act 2002, section 92(3) is amended by the Employment Act 2002 and by S.I. 1999/1436, section 92(4) is amended by the Employment Relations Act 1999, section 92(4A) is inserted by the Employment Act 2002 and section 92(6) is amended by S.I. 2002/2034.

⁽⁷⁾ Part X of the 1996 Act is amended by the Police (Health and Safety) Act 1997, the Employment Rights (Dispute Resolution) Act 1998, the National Minimum Wage Act 1998, the Public Interest Disclosure Act 1998, the Teacher and Higher Education Act 1998, the Employment Relations Act 1999, the Tax Credits Act 1999, the Welfare Reform and Pensions Act 1999, the Employment Act 2002, the Police Reform Act 2002, the Tax Credits Act 2002, S.I. 1996/1513, S.I. 1998/1833, S.I. 1999/1436, S.I. 1999/1925, S.I. 1999/3323, S.I. 2000/1551, S.I. 2002/2034 and S.I. 2002/2927.

⁽⁸⁾ 1992 c. 52.

⁽⁹⁾ Section 219 is amended by the Trade Union Reform and Employment Rights Act 1993.

threat mentioned in that section relates to a contract the performance of which does not affect directly or indirectly the school over which the governing body in question exercises its functions.

Applications to Employment Tribunals

6.—(1) Without prejudice to articles 3 and 4, and notwithstanding any provision in the Employment Tribunals Act 1996⁽¹⁰⁾ and any regulations made under section 1(1) of that Act, this article applies in respect of any application to an employment tribunal, and any proceedings pursuant to such an application, in relation to which by virtue of article 3 or 4 a governing body is to be treated as if it were an employer (however expressed).

(2) The application must be made, and the proceedings must be carried on, against that governing body.

(3) Notwithstanding paragraph (2), any decision, declaration, order, recommendation or award made in the course of such proceedings except in so far as it requires reinstatement or re-engagement has effect as if made against the authority.

(4) Where any application is made against a governing body under paragraph (2)—

- (a) the governing body must notify the authority within 14 days of receiving notification; and
- (b) the authority, on written application to the employment tribunal, is entitled to be made an additional party to the proceedings and to take part in the proceedings accordingly.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

⁽¹⁰⁾ 1996 c. 17 is amended by the Arbitration Act 1996, the Employment Rights (Dispute Resolution) Act 1998, the National Minimum Wage Act 1998, the Social Services Act 1998, the Employment Relations Act 1999, the Tax Credits Act 1999, the Employment Act 2002, the Tax Credits Act 2002, S.I. 1998/1658, S.I. 1998/1833, S.I. 1999/678, S.I. 1999/3323, S.I. 2000/1299, S.I. 2000/1551, S.I. 2001/237, S.I. 2001/1107 and S.I. 2002/2034.

Article 3

SCHEDULE

Sex Discrimination Act 1975**(11)**
sections 6, 7, 9, 41 and 82(1A)

Race Relations Act 1976**(12)**
sections 4, 5, 7 and 32

Trade Union and Labour Relations (Consolidation) Act 1992**(13)**
sections 146, 147, 152–154 and 181–185

Disability Discrimination Act 1995**(14)**
sections 4–6, 11, 12, 16, 55, 57 and 58

Employment Rights Act 1996**(15)**
sections 66–68, 70, 71, 92, 93 and Part X

Employment Act 2002**(16)**
sections 29–32 and Schedules 2–4

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies various statutory provisions relating to employment to take account of the requirement contained in the School Standards and Framework Act 1998 for authorities to delegate financial management of schools to their governing bodies. While a school has a delegated budget, the governing body has powers as to the appointment, suspension, conduct and discipline, capability and dismissal of staff at the school, although the authority remains the employer of staff at community, voluntary controlled, community special schools and maintained nursery schools. The authority may also be the employer of certain support staff at foundation, voluntary aided and foundation special schools. This Order and the modifications made by it apply to Wales only.

The Education (Modification of Enactments Relating to Employment) Order 1999, which is revoked, made provision in similar terms in relation to the application of employment law consequent upon the staffing provisions (now repealed) of the 1998 Act and replaced by Regulations made under sections 35 and 36 of the Education Act 2002.

Article 3 makes general modifications to the statutory provisions set out in the Schedule to the Order by providing that—

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- (11)** 1975 c. 65 was materially amended by the Employment Protection Act 1975, the Industrial Training Act 1982, the Sex Discrimination Act 1986, the Pensions Act 1986, the Employment Act 1989, the Education Act 1996, S.I. 1999/1102, S.I. 2000/2040 and S.I. 2001/ 2660.
- (12)** 1976 c. 74 was amended by the Race Relations (Amendment) Act 2000.
- (13)** 1992 c. 52 was amended by the Trade Union Reform and Employment Rights Act 1993, the Employment Rights Act 1996, the Employment Rights Act (Dispute Resolution) Act 1998 and the Employment Relations Act 1999.
- (14)** 1995 c. 50 was amended by the Special Educational Needs and Disability Act 2001.
- (15)** 1996 c. 18 was amended by the Employment Rights (Dispute Resolution) Act 1998, the Employment Relations Act 1999, the Employment Act 2002, S.I. 1999/1436 and S.I. 2002/2034 and as otherwise provided in footnote (d) on page 2 of this Order.
- (16)** 2002 c.22.

- (a) references to an employer or someone acting as such are treated as including references to the governing body exercising its employment powers;
- (b) employment by the authority at the relevant school is treated as employment by the governing body;
- (c) references to employees are treated as referring to employees at the relevant school;
- (d) references to dismissal by an employer are treated as including references to dismissal by the authority on the direction of the governing body; and
- (e) references to trade unions recognised by an employer are, as far as the governing body is concerned, treated as references to trade unions recognised either by the authority or the governing body.

Some provisions of employment law are excluded if an employer employs less than a certain number of staff. Article 3 further provides that the modifications which it makes do not cause the governing body to be such a “small employer” if it would not have been so without the modifications.

Article 4 provides that where the governing body of a school requires the authority to dismiss a member of staff, provisions relating to dismissal in the Employment Rights Act 1996 have effect as if the governing body were the employer, and the governing body’s reason for requiring the employee’s dismissal were the employer’s reason for dismissing the employee.

Article 5 provides that a dispute between staff employed to work at a school with a delegated budget and the governing body is capable of being a trade dispute within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. A dispute which is a trade dispute only by virtue of article 5 is not a trade dispute so far as staff employed to work at other schools are concerned.

Article 6 provides that the governing body is to be the respondent to any application to an employment tribunal arising out of any of its actions taken in the exercise of its employment powers, or any action taken by the authority at its direction, but provides that any award of compensation or costs or other order (other than an order for reinstatement or re-engagement) is to be made against the authority. It further provides that the authority is to be notified by the governing body when an application is made and is to have the right to apply to be made an additional party and to appear at the hearing of any such application.