

EXPLANATORY MEMORANDUM TO THE STAFFING OF MAINTAINED SCHOOLS (WALES) (AMENDMENT) REGULATIONS 2014

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 Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Huw Lewis AM
Minister for Education and Skills
18 June 2014

Description

1. These Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 (the 2014 Regulations) amend the Staffing of Maintained Schools (Wales) Regulations 2006 (the 2006 Regulations). They remove the duty on governing bodies of maintained schools to appoint an independent investigator to investigate allegations of a child protection nature against school staff prior to a staff disciplinary hearing and replace it with a duty to appoint an independent investigator to investigate allegations of abuse against school staff.
2. The 2014 Regulations clarify the circumstances in which an independent investigator must be appointed, the action that must be taken prior to the independent investigation, and following it, and the exceptions to where an independent investigation must be carried out. In addition they reflect the relationship between the Local Authority Designated Officer, the statutory authorities and the school's disciplinary process and extend the list of persons considered to be independent for the purposes of the investigation.
3. The 2014 Regulations further amend the 2006 Regulations to allow the governing bodies of schools that are being federated to decide not to advertise headteacher and deputy headteacher posts nationally in certain circumstances. They also amend the provisions in the 2006 Regulations which allow governing bodies not to advertise headteacher and deputy headteacher posts in certain school closure or merger situations.

Matters of special interest to the Subordinate Legislation Committee

4. None.

Legislative background

5. The powers enabling this instrument to be made are contained in section 569(4) and (5) of, and paragraph 3 of Schedule 1 to the Education Act 1996 and sections 19(3), 21(3), 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002 and sections 18 and 32 of the Education (Wales) Measure 2011. The instrument is subject to annulment in pursuant of a resolution of the National Assembly for Wales, i.e. the negative resolution procedure.

Purpose & intended effect of the legislation

6. The purpose of the legislation is to ensure that governing bodies and local authorities are clear about their respective duties in handling allegations against school staff, including the duty to appoint an independent investigator in cases where allegations have been made which will be

subject to a staff disciplinary hearing. It does this by clarifying that the duty to appoint an independent investigator relates to allegations that a member of staff employed at the school has abused a pupil attending the school. It further provides that the headteacher must inform the chair of governors of all such allegations that come to his/her attention, clarifies the actions to be undertaken both prior to and following the independent investigation in line with child protection processes and reflects the involvement of key individuals including the headteacher, chair of governors, Local Authority Designated Officer, the statutory authorities and the courts. It further provides the circumstances where the governing body does not have to appoint an independent investigator and extends the list of those persons not considered to be independent.

7. The intended effect is to ensure there is independence in the system for considering allegations of abuse against school staff; and that allegations are handled appropriately using common sense and professional judgement, taking into account all the information and evidence surrounding each case, with the involvement of key individuals and in accordance with statutory guidance and child protection procedures.
8. In addition the purpose of the 2014 Regulations is to provide governing bodies of schools that are federating with the discretion and flexibility to decide whether or not to nationally advertise headteacher and deputy headteacher posts where an eligible person so qualified, in a school that is federating, expresses an interest in taking over the headteacher or deputy headteacher vacancy, and has notified the governing bodies of the schools that are federating of their interest in writing. The intended effect is to reduce the burden in terms of time, cost and effort on schools that are federating in appointing a suitable headteacher when that appointment can be made from within the schools that are federating.

Policy Background

Independent investigations of allegations against school staff

9. The Children's Commissioner's Inquiry into child sexual abuse in a school setting found that senior teachers and local authority officers had not taken proper account of allegations of abuse against a teacher over a number of years. In his 2004 Clwyd Inquiry Report the Commissioner recommended strengthening and introducing independence into the investigation of such allegations.
10. In response the Welsh Government made the 2006 Regulations which introduced a requirement on the governing bodies of maintained schools to appoint an independent investigator to investigate child protection allegations made against school staff, prior to the hearing of any proceedings relating to those allegations. A hearing before a governing body's staff disciplinary and dismissal committee takes place where it is determined that the nature of an allegation about a member of staff's

conduct and behaviour if proven could constitute gross misconduct and result in dismissal. Governing bodies are responsible for the conduct and discipline of the staff they employ and can choose who to appoint as independent investigator in accordance with the 2006 Regulations. However, to assist governing bodies the Welsh Government established the Independent Investigation Service (IIS) to undertake independent investigations of allegations free of charge to governing bodies. In addition the governing body is required to appoint an independent member on its staff disciplinary and dismissal committee and staff disciplinary and appeals committee when considering such allegations.

11. The policy intention in establishing the provision in the 2006 Regulations and the IIS was to provide for independent investigation of allegations of the nature described in the Clywch Report; that is allegations that a teacher or member of school staff has abused a pupil. Such allegations, if substantiated would constitute gross misconduct, would be heard by a disciplinary panel, and may result in dismissal and referral to the Disclosure and Barring Service (DBS). Informal consultation with local authorities suggested there were likely to be around 20 such allegations a year based on figures at the time.
12. However, since the inception of the IIS the number of referrals for independent investigation has been over 100 each year. There are a number of possible reasons for this; the IIS is free and there is no disincentive in making referrals to the service, regardless of how inappropriate. Some schools and local authorities are taking an over cautious approach when dealing with allegations and are referring allegations for independent investigation which are unfounded or could be dealt with internally by the school (headteacher or chair of governors if the allegation is about the headteacher). In addition the legislation currently allows little discretion and professional judgement on whether an allegation is referred for independent investigation.
13. A survey undertaken by the Welsh Government in 2013 to ascertain the nature and outcome of referrals to the IIS over the period of a year found that a significant proportion of cases referred for independent investigation could have been dealt with through internal procedures without the need for an independent investigation. The survey found that:
 - 55 (49%) of referrals were subsequently found to be either no case to answer
 - 43 (38%) of referrals which were independently investigated did not subsequently progress to formal disciplinary;
 - 19 (17%) of referrals were subsequently found to be lesser misconduct;
 - 25 (22%) of referrals to the IIS where investigations had concluded were subsequently found to be gross misconduct; and
 - 14 (13%) of referrals resulted in dismissal.
14. In the light of experience gained in the seven years of operation since the provisions regarding independent investigation in the 2006 Regulations

came into force the Welsh Government reviewed their operation and now consider that there are a number of aspects that require revision. In summary:

- the nature of allegations that would trigger the duty to appoint an independent investigator is too broad. The reference to 'issues of child protection' is open to wide interpretation and extends to safeguarding behaviours i.e. a member of staff failed to escort a child from the school bus in line with school procedures or other allegations which would be considered lesser misconduct which should be dealt with through the school's lesser misconduct procedures;
 - there are currently no exceptions to where an independent investigation is required. The fact that an allegation has been made would automatically trigger the requirement for an independent investigation. This takes no account of allegations that are demonstrably false or unfounded or where a person has admitted the allegation or been convicted of a criminal offence relating to it;
 - there is no account taken of allegations that do not require a formal disciplinary hearing and could be dealt with by the headteacher (or chair of governors);
 - there needs to be greater clarity regarding to whom the independent investigation provisions apply; and
 - the relationship between the statutory authorities, the Local Authority Designated Officer and the Disciplinary Process requires clarification.
15. The survey of local authorities suggested that further guidance was needed and in response the Welsh Government has subsequently issued standalone statutory guidance to schools and local authorities on *'Safeguarding Children in Education: Handling Allegations of Abuse Against Teachers and Other Staff'* – Circular 009/2014.
16. That guidance makes clear that all allegations of abuse against school staff should be referred to the headteacher (unless the allegation is about the headteacher in which case it should be referred to the chair of governors). The headteacher must advise the chair of governors of all such allegations made known to him/her. The headteacher must immediately discuss the allegation with the Local Authority Designated Officer (LADO) nominated by the Social Services Department, the purpose of which is to share all the information and facts of the case. This discussion may lead to a decision that the allegation is false or unfounded and no further action is necessary, or that the matter can be dealt with by the school using their agreed lesser misconduct procedures, if so this decision and the reason for it must be recorded. If none of these circumstances apply and there is a cause for concern that a child may be in danger of significant harm a strategy meeting must be held.

17. It is only once the statutory authorities have concluded their consideration of the allegation that it is referred back to the governing body for disciplinary action, which will involve the chair of governors consulting with the headteacher and the LADO on the next steps including whether an independent investigation is required. This process ensures that these important decisions are not made by the headteacher alone but on discussion with the LADO and the chair of governors and that decisions and the rationale for them are recorded.

Appointment of headteachers and deputy headteachers – Federation of schools

18. The process of nationally advertising headteacher and deputy headteacher vacancies takes time; has a financial cost to school; can be burdensome; and slows up the appointment process. It requires careful planning as headteachers can be required to give up to two terms notice before starting a new post. Consequently, if a governing body required a new headteacher to be in post at the start of the autumn term in September, the governing body will need to have advertised the post, carried out the sifts and interviews and offered the post to the successful candidate in the autumn term of the previous year. This would allow the successful candidate to give two terms notice by the end of December of the autumn term (i.e. the January to Easter term and the Easter to summer term). Extending the flexible arrangements that currently exist for appointment of headteachers and deputy headteachers of new schools and schools that merge, to cover schools that are federating, will give governing bodies of those schools flexibility and discretion over whether to advertise these senior posts in the circumstances laid down in the 2006 Regulations reducing unnecessary bureaucracy.

Appointing a Single Headteacher and/or deputy headteacher of a federation

19. If during the federation process the governing bodies of the schools that are federating decide to have a single headteacher and deputy headteacher in charge of all the schools in the federation, and there are eligible, suitably qualified persons, employed in the schools being federated who express an interest in one of those posts and have informed governing bodies of this in writing, the governing bodies may choose not to nationally advertise those posts. If more than one of the existing headteachers or deputy headteachers, of a school being federated, expresses an interest in the single headteacher or deputy headteacher post, the governing bodies of the schools should form a joint appointment panel to interview those candidates to ensure the most suitable person is selected. An interview should also take place if only one headteacher or deputy headteacher expresses an interest in the single headteacher or deputy headteacher posts. If no headteacher or deputy headteacher of the schools being federated expresses an interest in the single overarching headteacher and deputy headteacher post, then it must be nationally advertised. In circumstances where the single headteacher or deputy headteacher subsequently leaves

that post following federation, the vacancy must be nationally advertised in accordance with the 2006 Regulations.

Appointing individual headteachers and/or deputy headteachers of each school in a federation

20. Alternatively, the governing bodies of the schools being federated may decide that there will be no single overarching headteacher or deputy headteacher and each school will retain its own headteacher and deputy headteacher. If there is an existing vacancy for a headteacher or deputy headteacher in one of the schools to be federated, the governing bodies must decide whether that school is to have its own substantive headteacher and deputy headteacher and the workload of the posts is such that a shared headship is not viable. In these circumstances the post(s) must be advertised nationally prior to federation.
21. If the decision is that each school is to have a headteacher and deputy headteacher but there is capacity amongst the existing headteachers and deputy headteachers of the other schools in that federation to take over the vacant headteacher and deputy headteacher posts (the schools effectively share a headteacher and/or deputy headteacher), and those eligible headteachers and deputy headteachers express an interest in writing, the governing bodies may decide not to nationally advertise the vacant posts. It makes sense to allow the governing bodies to appoint the headteacher and/or deputy headteacher without the need of incurring financial costs through the advertisement process. Where schools 'share' a headteacher or deputy headteacher the governing body could also save some costs as they would not have to pay for additional posts.

Appointment of an overarching headteacher in charge of the federation and appointment of headteachers and deputy headteachers in each school in the federation

22. The 2014 Regulations also permit a federation to have an overarching headteacher with responsibility for the federation and each school to retain its own headteacher and/or deputy headteacher. This is a cumbersome and costly approach for schools but schools may decide to have this structure in place.
23. If there are eligible headteachers from amongst the schools that are federating, and they are interested in the overarching headteacher post the provisions of paragraph 19 apply. If the appointment of that overarching headteacher post creates a vacancy in a headteacher post at school level, the governing bodies must decide whether that headship can be shared by another headteacher in the federation. If there is an existing headteacher that expresses an interest in taking over the headship of the school with the vacancy and effectively becomes the head of two schools within the federation, the governing body may decide not to advertise that headteacher post.

24. If the scenario in paragraph 23 above is not a possible solution then the vacant headship at school level must be advertised nationally. If the overarching headteacher in charge of the federation should leave that post after the schools have been federated, the vacancy must be nationally advertised in accordance with the 2006 Regulations irrespective of whether a headteacher from within the federation expresses an interest in the vacancy.
25. This flexibility will help small schools that are federating in particular as they will be able to take advantage of having a headteacher in post quite quickly and at no cost to the governing body. It is recognised that many small schools have difficulties attracting and recruiting quality headteachers as they are unable to offer good salaries due to lack of funding and opportunities for professional development. Federating schools would be able to pool resources making the headteacher posts more attractive and make appointments more swiftly.
26. These flexible provisions do not mean that a deputy head in a federating school could simply apply for a vacant headteacher post. If there is no eligible headteacher amongst the schools that are federating who is interested in the vacant headteacher post, then it must be advertised nationally, which would allow suitably qualified deputy headteachers to apply through open competition.
27. Enabling governing bodies to determine whether they wish to advertise headteacher and deputy headteacher posts in certain circumstances is not a new policy as provisions for non-advertisement of these posts already exist in the Staffing of Maintained Schools (Wales) (Amendment No 2) Regulations 2009 (2009 Regulations). These amendments made by those 2009 Regulations allow governing bodies of schools that are to be closed or merged to choose whether or not to nationally advertise vacant headteacher or deputy headteacher posts if there is an eligible person who has expressed an interest in the single headteacher or deputy headteacher post from the schools to be discontinued. The provisions in these 2009 Regulations will be consolidated in the 2006 Regulations by the 2014 Regulations.

Consultation

Appointment of headteachers and Deputy Headteachers in relation to federation of schools

28. A 12 week consultation on the federation proposals took place between 17 January and 14 March 2013. The consultation was brought to the attention of key stakeholders including local authorities, Governors Wales, diocesan authorities, governing bodies and school staff unions.

The consultation sought views on proposals for regulations which give effect to local authorities' power to federate schools. As federation could possibly result in headteacher and deputy headteacher redundancies,

where a single headteacher and deputy headteacher was being appointed, we included proposals to introduce flexibility into the recruitment process for headteacher and deputy headteachers by allowing governing bodies of schools that are federating to decide not to nationally advertise these posts in certain circumstances. 19 of a total of twenty five respondents supported this proposal. Six respondents disagreed.

29. Following consultation the Regulations were amended to make clear that once a federation is established any vacancy in a headteacher or deputy headteacher post must be nationally advertised. As drafted the consultation would give discretion to governing bodies to be allowed not to nationally advertise vacant headteacher and deputy headteacher posts where an established federation is subsequently dissolved or one or more school(s) leave a federation.
30. It was subsequently agreed that the exemption to nationally advertising headteacher and deputy headteacher posts should only extend to schools that are in the process of federating, when they will be deciding on the proposed staffing structure of the federation and possible redundancies could be identified. An analysis of the consultation responses is available at:
<http://wales.gov.uk/consultations/education/maintstream/?status=closed&lang=en>.

Regulatory Impact Assessment

31. A Regulatory Impact Assessment has not been prepared in respect of the appointment of headteacher and deputy headteachers in relation to federation of schools as the provisions in the 2014 Regulations relating to the appointment of headteachers and deputy headteachers of federated schools makes a permissive change and do not place any new obligation, duty or cost on another body. There is no impact on the statutory duties (sections 77-79 GOWA 2006) or statutory partners (sections 73-75 GOWA 2006).
32. Details of the consultation in respect of the independent investigation of allegations against teachers and other staff are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Independent investigations of allegations against school staff

Options

33. Two options were considered:
34. **Option 1** - Do nothing - Don't amend the 2006 Regulations.
35. Doing nothing will not achieve the aim of ensuring that allegations are dealt with quickly and appropriately, taking into account all the evidence and information available and with the involvement of key individuals. It will not address the issue of inappropriate referrals being made for independent investigation and the associated costs and inherent stress involved in a lengthy process for all concerned.
36. The current situation whereby no account is taken of allegations where following discussion and evaluation between the headteacher and Local Authority Designated Officer they are determined to be demonstrably false or unfounded would prevail. Similarly, independent investigations would continue to be required in cases where a person has admitted an allegation, or been convicted of a criminal offence relating to the allegation(s). In such circumstances the independent investigation would only serve to inform the governing body of what they already know and there should be sufficient evidence in such cases from the statutory authorities to inform the governing body disciplinary hearing without the need for an independent investigation.
37. Some schools will continue to refer allegations which are clearly lesser misconduct for independent investigation even though there is an established procedure for the headteacher to deal with such cases.
38. The number of suspensions in cases where it is subsequently *found that there is no case to answer is likely to remain high*. By contrast the changes provided for in the 2014 Regulations should mean that there are fewer unnecessary suspensions
39. The 2006 Regulations require that an independent investigation be undertaken where allegations are made against a member of school staff which involve issues of child protection. This can be taken to mean allegations involving a child other than a child at the school, for example a teacher's child or a teacher's nephew or niece, where the incident occurred at home or off the school premises.
40. Allegations that a teacher has abused a child who is not a pupil at the school the governing body would continue to be referred to the IIS event though the independent investigator would be reliant on information provided by the police as part of their investigation of the allegation. The

police are responsible for deciding the information that should be shared with the employer.

41. In such cases the independent investigation would be restricted to pulling together information from the police that should already be available to the governing body as the employer under local Safeguarding Children's Board procedures for sharing information. There would be no role for the independent investigator in re- interviewing witnesses or potential victims outside the school.
42. The perception that the 2006 Regulations are unclear that the requirement for an independent investigation relates to a member of staff employed under a contract of employment with the school would remain. The school governing body is responsible for the disciplinary and dismissal process to regulate the conduct and discipline of the staff it employs and the 2006 Staffing Regulations therefore only apply to those staff members who are employed under a contract of employment. However it is perceived that currently this is unclear. The new 2014 Regulations make it clear that where a person who works in the school is employed by an employer other than the governing body, that employer would be responsible for undertaking the disciplinary procedure.
43. The relationship between the statutory authorities, the Local Authority Designated Office and the Disciplinary Process would remain unclear. The current 2006 Regulations require that an independent investigator be appointed once an allegation of a child protection is made but do not say at what point an independent investigation would be instigated. Clearly, consideration by the statutory authorities takes precedence over local disciplinary action, but as currently drafted the 2006 Regulations do not reflect the requirement for the governing body to consult with the Local Authority Designated Officer for Child Protection (LADO) before an independent investigation is commenced. The LADO has a crucial role to play in overseeing and monitoring allegations of abuse, liaising with the statutory authorities and providing advice and guidance to the governing body throughout the process.
44. It would remain unclear who should receive a copy of the report of the Independent Investigator. We need to clarify that where an independent investigation is carried out the report of the investigation must be given to the governing body to inform the disciplinary process and a copy must be provided to the head teacher (unless the allegation is about the head teacher).
45. The list of persons who are not regarded as independent for the purposes of undertaking an independent investigation. would not include the diocesan authority that support the school and trustees, where the school is a foundation or voluntary school, .
46. The protracted nature of investigations will continue to place an unacceptable strain on those subject to allegations (and the school

community as a whole) where the allegation is subsequently found to be groundless or is a matter that can be dealt with by the headteacher or chair of governors (lesser misconduct). The member of staff concerned has to deal with the inherent stress of the investigation process and the school has to cope with the anxiety of pupils, parents and staff about how a case will proceed as well as possibly incurring substantial costs associated with lengthy suspensions.

Option 2 – Amend the 2006 Regulations and issue statutory guidance to schools and local authorities on handling allegations of abuse against teachers and other members of staff as part of the staff disciplinary process including referral for independent investigation

47. Amending the 2006 Regulations will ensure that the duty to appoint an independent investigator will only be triggered in respect of allegations that a teacher has abused a pupil at the school. They will ensure that allegations that are determined to be false or unfounded are dealt with appropriately. That allegations considered to not warrant a formal disciplinary hearing could be dealt with by the headteacher or chair of governors (if the allegation is about the headteacher) and that in cases where the member of staff admits the allegation or is imprisoned an independent investigation is not required. They will place the independent investigation at a point in the process to ensure that consideration by the statutory authorities takes precedence over disciplinary action by the governing body. In turn this will ensure that the governing body is informed by all the facts and information surrounding the case including the deliberations of the statutory authorities (the LADO, social services and the Police), and shared with the governing body in accordance with the Local Safeguarding Children Board procedures for sharing information.

Costs & benefits

Cost analysis for option 1 - Do nothing

48. Almost half of referrals to the IIS during 2012/13 resulted in no further action. Many of these could have been dealt with internally through the schools disciplinary process without the need for independent investigation. The cost of undertaking an independent investigation varies, depending on the nature of the allegation who conducts it and the length of time it takes. We estimate that an investigation commissioned from a private contractor could range between £300 and £3,000 depending on the time taken, complexity of the case and availability of witnesses etc.

49. Informal consultation with local authorities prior to the establishment of the 2006 Regulations and IIS indicated that there was likely to be around 20 serious allegations of abuse per year. This is consistent with the information provided in response to the survey of local authorities to ascertain the nature and outcome of referrals to the IIS over the period of a year. The survey found that 25 allegations were found to be gross

misconduct. On the basis that over 100 referrals are made to the IIS the likely cost of referrals for independent investigation if we do nothing is likely to be in the region of £30,000 – £300,000 however, the current cost to the Welsh Government suggest that it much more likely to be towards the higher end.

50. The responsibility for conduct and discipline of staff lies with the school governing body. The Welsh Government established the IIS to assist governing bodies to undertake their statutory responsibilities. However, the expenditure on the Welsh Government Independent Investigation Service is rising year on year. This is not best use of public money where referrals for independent investigation are being made inappropriately
51. Where an allegation involves a suspension of a member of staff the length of that suspension will depend on the nature of the allegation, the time taken to undertake the process, availability of witnesses etc.. This could be anything from several weeks to a year. The average cost of supply staff is around £186 a day for directly employed teachers and £135 for agency supply teachers. Most supply teachers are either paid on the teachers' main scale or at rates set by supply agencies. A relatively newly qualified teacher may cost a school between £120 and £150 per day (including national insurance and pensions contributions). A more experienced teacher on the main scale may cost between £120 up to £200 or more per day¹. Cost of supply will be dependent on the length of suspension and the nature of the supply cover in line with the costs above. Using these basic salary figures and the minimum and maximum length of a suspension as being between 8 weeks and 52 weeks, the rough estimated costs to the school to pay for supply teachers would be in the region of:
- £186 per day = £7,500 for an eight week period and £48,360 for a year
 - £135 per day = £5,400 for an eight week period and £35,100 for a year
 - £120 per day = £3,840 for an eight week period and £24,960 for a year
 - £150 per day = £6,000 for an eight week period and £39,000 for a year
 - £200 per day = £8,000 for an eight week period and £52,000 for a year.
52. If the new 2014 Regulations are not made schools and local authorities will continue under current law to refer the types of cases referred to above for an independent investigation where it is clear from the initial discussion between the headteacher and the Local Authority Designated Officer that an allegation is demonstrably false or unfounded or where the evidence and information from the statutory authorities supports that. Similarly for cases where the accused has admitted an allegation or been convicted of a criminal offence where an independent will not add anything to the process. In addition allegations about a teacher's private life would continue to be referred for independent investigation where the investigator would be reliant on information provided by the police or the courts and where they would have no role in interviewing witnesses. The protracted nature of investigations can place an unacceptable strain on those subject to

¹ Covering Teachers Absence, Wales Audit Office 2013

allegations where the allegation is subsequently found to be groundless, but in the meantime the school has had to cope with the anxiety of pupils, parents and staff about how a case will proceed and may have incurred substantial costs associated with employing supply staff at this time whilst also paying for the salary of the suspended member of staff.

53. Welsh Government guidance in circular 009/2014 on ‘*Safeguarding Children in Education: Handling Allegations of Abuse Against Teachers and Other Staff*’ does recognise that in some cases further enquiries will be needed to enable a decision on how to proceed. It states that it is important that local authorities ensure that schools and FE colleges have access to an affordable facility for independent investigations. The expectation is that local authorities, consortia and schools would work together collaboratively to develop a pool of people that could be used to carry out investigations whether through reciprocal agreement or to achieve economies of scale.
54. At present inappropriately referred allegations are being funded by the Welsh Government funded independent investigation service which is not best use of public funding. Doing nothing will mean that the current high level of costs incurred will result in the service becoming unsustainable.
55. The new 2014 Regulations will therefore have an impact on the way that schools and local authorities make decisions about these allegations against members of staff at the disciplinary stage, whereas, currently the temptation may be to refer all allegations to the Welsh Government’s independent investigation service regardless of whether that is appropriate.

Cost analysis for Option 2 - Amend the 2006 Regulations and issue standalone statutory guidance to schools and local authorities

Informal consultation with local authorities prior to the introduction of the 2006 Regulations and IIS indicated that there were likely to be around 20 allegations of the nature described by the Clywch Report each year. This is in line with the survey of local authorities which found that 25 allegations of abuse were found to be gross misconduct. We would expect no more than 30 allegations to be referred to the IIS under the new regulations. The cost of dealing with these cases would be the same as under the Do Nothing option. On this basis there would be cases being referred for independent investigation each year.

In 75% to 90% of the remainder of cases the discussions between the headteacher and LADO are expected to conclude that there is either no case to answer or that the matter constitutes lesser misconduct and should be dealt with through the schools lesser misconduct procedure. There would be a cost saving associated with not requiring independent investigation of these cases of £300 - £3,000 per case or £15,750 - £189,000 in total (70 cases * 75% * £300 to 70 cases * 90% * £3,000). In these cases, the member of staff in question is not expected to be suspended and so there would be a cost-saving associated with not having

to fund a supply-teacher. Based on the figures in paragraph 50 and assuming the minimum suspension of eight weeks for these cases, the approximate cost-saving would be between £200,000 and £500,000 (70 cases * 75% * £3,840 to 70 cases * 90% * £8,000).

56. In the remaining 10% to 25% of cases it is expected that the headteacher and LADO discussions will conclude that further investigation is required. The cost of this investigation - if carried out by a consultant - is expected to be the same as under Option 1 £300 - £3,000 per case. In this option, this cost would be incurred by the school rather than by the Welsh Government (funding the IIS). However, as noted above, it is expected that local authorities, consortia and schools will work collaboratively to develop a pool of people that can be used to carry out these investigations. For cases of gross misconduct, the member of staff is expected to be suspended and so the cost of hiring a supply teacher is assumed to be the same as under Option 1. The combination of the 2014 Regulations comprehensive guidance in Circular 009/2014 and revised guidance on disciplinary and dismissal procedures for school staff will ensure:

- a) that false or unfounded allegations do not go beyond the initial discussion between the headteacher and the local authority designated officer (LADO) so avoiding unnecessary costs of suspension and independent investigation;
- b) that allegations that are not considered to warrant a formal disciplinary hearing can be properly risk assessed and dealt with by the headteacher (or chair of governors if the allegation is about the headteacher) at school level, thus avoiding suspension and the inherent stress to all involved and additional costs to the school; and
- c) that in the circumstances where a member of staff has admitted an allegation or been convicted of a criminal offence relating to it the case can proceed directly to a disciplinary hearing for the governing body to consider disciplinary action without the need for independent investigation.

57. This improved practice should result in there being less likelihood of members of staff being subjected to protracted investigations which will help to reduce the costs of investigation, and supply to cover suspension along with a reduction in the inherent stress in the process and uncertainty for pupils, other staff, parents and the wider school community involved in protracted investigations. There should also be less likelihood of unnecessary suspensions and disruption to pupils' education, and schools would not incur the additional costs outlined in paragraph 54 of the 'Do Nothing' option of paying for a member of staff whilst on an unnecessarily long suspension and funding the cost of employing supply cover.

58. All allegations should be investigated before any action is taken unless the decision of the LADO and headteacher is that based on the circumstances the allegation is unfounded or false. As noted above, schools could incur some costs if the allegations are considered to be lesser misconduct or gross misconduct (potential costs set out in the 'Do Nothing' option) especially if the circumstances of the allegation do not warrant a referral to

the IIS for an investigation which is free of charge to schools. Making changes to the law however, should also mean fewer referrals and a reduction in the costs of the Welsh Government's independent investigation service which means savings of public funds.

59. Given the analysis undertaken on the above options, it is considered that Option 2 - to amend the 2006 Regulations and issue standalone statutory guidance on handling allegations of abuse against teachers and other members of staff should be adopted. This option is preferred in order to: to ensure that governing bodies and local authorities are clear about their respective duties in handling allegations against members of school staff, that allegations are handled appropriately using common sense and professional judgement, taking into account all the information and evidence surrounding each case, and with the involvement of key individuals, and that referrals for independent investigation are appropriate and necessary to inform the school's disciplinary and dismissal procedures.

Consultation

60. The Department for Education and Skill undertook a 12 week e-consultation on proposed amendments to the 2006 Regulations between 25 November 2013 and 24 February 2014. The consultation was drawn to the attention of a wide audience of key stakeholders including schools, local authorities, the Children's Commissioner, Governors Wales, Estyn and the teacher unions. The consultation posed 12 questions regarding independent investigations of allegations against teachers reflecting the issues above.

61. There were 36 responses to the consultation with broad agreement to all of the consultation proposals. A summary of consultation responses can be accessed at:

<http://wales.gov.uk/consultations/education/staffing-of-maintained-schools/?lang=en>

62. Taking into account consultation responses the 2014 Regulations were amended to stipulate that:
- (i) the headteacher must inform the governing body (i.e. the chair of governors) of all such allegations known to them; and
 - (ii) that the governing body (i.e. chair of governors) must provide a copy of the report of the independent person to the headteacher, unless the allegation is made about the headteacher.

Competition Assessment

63. A Competition Assessment is not required as this Order does not affect business, charities and/or the voluntary sector.

Post implementation review

64. The effect of the subordinate legislation will be monitored through meetings with Association of Directors of Education in Wales (ADEW), Governors Wales Governors Support Officers and the Children's commissioner.
65. The survey of local authorities to ascertain the nature and outcome of referrals to the Welsh Government funded Independent Investigation Service (IIS) will provide the starting point for the review and provide a baseline in which to establish whether the regulations are having the intended effect. Officials propose to re-run the survey on an annual basis over the next three years to ascertain the impact the regulations are having on the nature and outcome of referrals for independent investigation. The Regulations will be reviewed three years after implementation to establish the actual costs and benefits and whether the legislation is achieving its desired effects.