

## **Explanatory Memorandum: The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018.**

This Explanatory Memorandum has been prepared by Education and Public Services department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

**Kirsty Williams AC/AM**

Cabinet Secretary for Education

Date: **29<sup>th</sup> June 2018**

## **1. DESCRIPTION**

1.1 The Welsh Government have powers under a number of Education Acts to make Regulations relating to the collection of data from schools and to publish that information under certain circumstances.

1.2 The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018 (“The 2018 Regulations”) have been drafted to amend a number of existing Regulations. In summary the 2018 Regulations stop the routine publication of the Teacher Assessment and National Reading and Numeracy Test data below the national level in Wales.

## **2. MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE**

2.1 None

## **3. LEGISLATIVE BACKGROUND**

3.1 The 2018 Regulations are made under the following powers:

- sections 29(3) and (5), 408(1) and (7), 537(1), 537A(1), (2) and (4), and 569(4) and (5) of the Education Act 1996;
- sections 19 and 54(3) and (4) of the Education Act 1997;
- sections 21(3), 30(1) and (2), 131 and 210 of the Education Act 2002;
- sections 22(3) and (4) and 32 of the Education (Wales) Measure 2011, and
- sections 87 and 98 of the School Standards and Organisation (Wales) Act 2013.

The following Regulations currently require schools to collect and publish data:

*the Education (information About Individual Pupils) (Wales) Regulations 2007*, which specify that the governing body of a maintained school, at the request of the relevant local authority must provide information on individual pupils. The Regulations also set out the persons to whom Welsh Ministers may provide individual information;

*the School Governors’ Annual Reports (Wales) Regulations 2011*, which the information that must be published by a school governing body in their annual report;

*the Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011*, which make provisions as to the report the head teacher is required to send to parents and adult pupils each school year, and the additional information parents may request from a head teacher;

*the School Information (Wales) Regulations 2011*, which specifies the information that must be published by the local authority and the school governing body;

*the School Performance and Absence Targets (Wales) Regulations 2011*, specify the school performance targets that a governing body must set;

*the School Teacher Appraisal (Wales) Regulations 2011*, provide for the appraisal of the performance of school teachers;

*the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013*, specify the training requirements for school governors;

*the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013* set out the circumstances in which a local authority must carry out a Welsh medium education assessment and make provision in respect of the form, content and publication of its WESP including the information to be published in that WESP; and

*the Education (School Development Plans (Wales) Regulations 2014*, specify a duty on school governing bodies to draw up school development plans.

#### **4. PURPOSE AND INTENDED EFFECT OF THE LEGISLATION**

4.1 The provisions within the 2018 Regulations are required in order to make the necessary changes in line with curriculum reform in Wales, as per the recommendations of Professor Graham Donaldson's Independent Review of Curriculum and Assessment Arrangements in Wales, otherwise known as *Successful Futures*.

4.2 In moving to an environment where key decisions are taken at the local level, it is vital that distorting effects that can arise from external performance and reporting requirements are avoided. There is currently lack of confidence in end of phase/stage teacher assessments as results have been used for accountability purposes (leading to concerns over inflation) rather than the original intention of mapping pupil progression and support. In addition, the paper-based National Reading and Numeracy Tests are being phased out and replaced by online 'adaptive' tests - "Personalised Assessments" - from the 2018/19 academic year. It is intended that these Personalised Assessments will be used for formative assessment purposes and for school self-evaluation, but not for accountability.

4.3 Through Pioneer School network events and workshops with key stakeholders it has become clear that the current accountability process lacks coherence as a result of many additional layers being added on over time. This includes arrangements for teacher assessment such as external verification; the current arrangements for the National Reading and Numeracy Tests; the introduction of various types of challenge advisors and categorisation; how published data is reported; and performance targets for GCSE, A-Levels etc.

## Proposal

4.4 The Welsh Government is committed to developing a new evaluation and accountability framework. Our ongoing reforms of the education system play an important part in our *National Mission* - to raise standards for and extend opportunities for all our young people.

4.5 The Welsh Government will continue to collect individual learner level data to enable research and evaluation around particular policy interventions – for example, to understand the impact on learner outcomes on additional developmental programmes throughout the education system. Our ability to inform other policies, such as health and social services, also allows significant cross-topic research. This will ensure we continue to have an understanding and transparency around national performance trends and differences amongst groups of learners such as free school meals, special educational needs (SEN) and equality characteristics to inform policy direction.

4.6 However, the Welsh Government has listened to the concerns set out in paragraph 4.3 and the *Successful Futures* accountability recommendations and will therefore:

- discontinue the routine publication of the Teacher Assessment and National Reading and Numeracy Test data at a school and regional level from 2018/19. It should be noted that this will not impact on current arrangements about the flow of data to local authorities or regional consortia, from schools, and
- ensure that the 2016/17 publication of data at a school and regional level to the public, partners, stakeholders and policy makers will be the last year that this is done.

4.7 This decision is the first legislative step towards the commitment to develop revised accountability arrangements which focus on the key work of schools and all other tiers in the system to deliver the best outcome for all learners

4.8 This new arrangement will apply to all maintained primary and secondary schools (including the cohort of Pioneer Schools) through the transitional period as we prepare for a new accountability system.

4.9 In moving to an environment where key decisions are taken at the local level, it is vital that distorting effects that can arise from external performance and reporting requirements are avoided. There is currently little trust in teaching assessments for accountability purposes (due to over inflation) rather the original attention of mapping pupil progression and support. In addition, the paper based Reading and Numeracy Tests are being phased out and replaced by online 'adaptive' tests - "Personalised Assessments" - from the 2018/19 academic year. It is intended that these online tests will be solely used for formative assessment purposes and not for accountability.

4.10 From 2018/19, Welsh Government proposes to no longer issue teacher assessment and National Reading and Numeracy Tests (test) data below the

national level. At present, schools and other bodies have a statutory requirement to use this data in their roles. The Welsh Government now proposes to ensure any current duties placed upon bodies to use teacher assessment and National Reading and Numeracy Tests (test) data below the national level, no longer apply.

4.11 The 2018 Regulations will have direct implications, in particular the stopping of:

- The availability of the All Wales Core Data Sets (AWCDS) for teacher assessments for schools
- School Comparative Reports
- Step 1 Categorisation of Primary Schools
- The 'My Local School' (MLS) website
- The publication of teacher assessment data in reports and documents including:
  - The Head Teachers' Report to Parents and Adult Pupils
  - School Prospectuses
  - School Governors' Annual Reports
  - School Development Plans
- The use of teacher assessment data as part of the self-evaluation by individual practitioners for appraisal and at school level for strategic planning.

4.12 The Welsh Government will streamline other processes in addition to those listed under paragraph 4.11. The Welsh Government is committed to continuing the development of the National School Categorisation Process, which is set against the context of the fundamental review of accountability systems. For primary schools, Step 1 of the categorisation process will no longer be used, as the teacher assessment data will no longer be available. However, improvements might include, for example, further strengthening Step 2 to ensure the process for categorising schools remains robust.

4.13 In addition, elements of the My Local School website rely on teacher assessment data collected below the national level. This includes, for example, data used in Step 1 of the school categorisation process for primary schools. Where applicable, such information will no longer be published on the website. The website will still continue to include Key Stage 4 results and attendance data. Parents will also still have access to other information about their children's schools, such as the school prospectus from governing bodies and Head Teachers.

4.14 Finally, the Welsh Government will no longer produce and publish School Comparative Reports and All Wales Core Data Sets ('datapacks') for the teacher assessment data. During inspection Estyn will only report on nationally collected and externally verified performance data.

4.15 Future changes to accountability arrangements are being discussed with schools, local authorities and consortia and will reinforce this new direction.

4.16 In the meantime, the following arrangements will remain:

- a. Children will continue to be assessed and Head Teachers and teachers will still provide a written report to parents that will set out individual information about the child and the progress the child has made that academic year.
- b. Teacher assessments and the National Reading and Numeracy Tests will continue in schools as part of assessment for learning.
- c. Welsh Government will continue to collect teacher assessment data and test data from schools.
- d. Current arrangements about the flow of data to local authorities (and regional consortia) from schools will not change.
- e. Schools and local authorities will continue to have access to their own data.
- f. School governors will still hold schools to account for their performance and will issue an annual report.
- g. Schools will still set performance targets, issue a school prospectus and complete their school development plan.

## **5. CONSULTATION**

5.1 Details of the consultation undertaken are included in section 8 within the RIA below.

## **6. PART 2 – REGULATORY IMPACT ASSESSMENT**

6.1 This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications of proposed changes to the way in which school data (teacher assessment and National Reading and Numeracy Tests) is used.

## **7. OPTIONS**

### Option 1: Do Nothing

7.1 The option of doing nothing would mean that the Welsh Government would continue to publish teacher assessment and test data.

7.2 A system that has been identified by key stakeholders as lacking coherence as a result of many additional layers being added on over time; with the continuation of current arrangements requiring schools and other bodies to use the data for a number of defined purposes. This includes arrangements for teacher assessment such as external verification; the current arrangements for the National Reading and Numeracy Tests; the introduction of various types of

challenge advisors and categorisation; how published data is reported; and performance targets for GCSE, A-Levels etc

### Cost

7.3. There would be no new cost implications from this option

### Benefits

7.4 There would be no benefits from this option.

### Option 2: Make the Legislation

7.5 The making of the 2018 Regulations will address the concerns set out under paragraph 7.2.

### **Costs**

7.6 There are costs associated with the time required for teachers, Head Teachers and other school practitioners to become familiarised with the 2018 Regulations. This cost is expected to be incurred in 2018-19. Officials have followed similar costing methods for familiarisation of similar regulations<sup>1</sup>. Allowing 1.5 hours for Head Teachers read and disseminate information, best estimate for this one-off cost would be as follows:

- 1,391 head teachers and 186 acting head teachers. Totalling 1,577.
- 1.5 hours time at £34.68 per hour<sup>2</sup>
- Total estimated cost of familiarisation, £82,030

7.7 Costs to statutory school governor training on data use have also been considered, however, as training requirements are already in place, these are sunk costs and changes are considered to have a negligible effect.

7.8 Other costs, listed below, will be upon Welsh Government and absorbed within relevant departmental running cost budgets.

- Since we will continue to collect teacher assessment and test data at all levels, we may be obliged under the Freedom of Information Act to release comparative data on schools on request.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 allows for costs of £25 per hour to administer

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<sup>1</sup> [https://www.legislation.gov.uk/ukia/2015/264/pdfs/ukia\\_20150264\\_en.pdf](https://www.legislation.gov.uk/ukia/2015/264/pdfs/ukia_20150264_en.pdf)

<sup>2</sup> Estimated resource costs for Head Teachers have been calculated using hourly pay Senior professionals of educational establishments in Wales, from the provisional 2016 Annual Survey of Hours and Earnings (ASHE).

Fol requests<sup>3</sup>. Policy officials within the associated branch and statisticians responsible to school information estimate each such Fol would take 8 hours to complete. It is very difficult to anticipate how many such requests would be received, but at a nominal 2 requests per month, we could estimate the annual cost at £4,800.

- Amendments to various statutory and non-statutory guidance documents will be necessary. Guidance documents to be amended are included at Annex C.

Six guidance documents will need revising as a result of the changes to legislation. Total cost of amending all associated guidance documents has been estimated as £7,170. This cost would be incurred in 2018-19. Policy officials for each responsible area of work have broken down the estimated costs for the amendments as follows:

- *Guidance on mandatory training for governors and clerks (2013)*
  - 3 days Senior Executive Officer (SEO) time = £660
  - 2 days support from School Improvement Branch at SEO = £440

*Amendments to this guidance will be supported by Governors Wales.*
- *School development plans (2014)*
  - 2 days Senior Executive Officer time = £440
- *Performance management for teachers and Performance management for headteachers (2012)*
  - 2 days Senior Executive Officer time = £440
- *Teachers' guides to self-evaluation (2015)*
  - 20 days Higher Executive Officer time = £3,430, plus
  - 5 days Senior Executive Officer time = £1,100
- *Regulations about reporting school and pupil information: concise guidance*
  - 3 days Senior Executive Officer time = £660

## Benefits

7.9 It is intended there will be social (educational) benefits in making regulatory changes in the short term by refocusing assessment for the purposes of learning and away from accountability. That is not to say that accountability will become less effective - Non teacher-assessment sources, such as exam results for secondary schools, will still be available. Furthermore, Welsh Government recently announced plans for an improved accountability model in *Education in Wales: Our national mission*. Welsh Government will be able to use information to note improvements at a system level, but this information cannot be used to influence the behaviour at an individual school level. This means teacher assessment can be used for information purposes but not for school accountability purposes below national level, therefore re-establishing trust with schools. Teacher assessment would no longer be seen as loaded

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<sup>3</sup> <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

with high stakes in an accountability system, and learning targets could (and should) still be set for individual learners. In the long term, the changes will also help pave the way for curriculum reform in Wales.

7.10 There are potential cost-savings from Welsh Government no longer publishing data below national level or making 'datapacks' available, although, as these 'datapacks' are made available electronically, such benefits are considered to be minimal. Furthermore, as outlined in the 'costs' section above, there will be an added risk of an increased number of FOI requests for school data being received by Welsh Government.

## **8. CONSULTATION**

8.1 The Welsh Government undertook a consultation on the "The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018"

8.2 A summary of responses is available at: <https://beta.gov.wales/education-amendments-relating-teacher-assessment-information-wales-regulations-2018>

## **9. COMPETITION ASSESSMENT**

9.1 There is no market implications associated with the making these 2018 Regulations.

## **10. IMPACT OF THE PROPOSED LEGISLATION ON DUTIES OF THE WELSH MINISTERS AS SET OUT IN THE GOVERNMENT OF WALES ACT 2006**

10.1 The 2018 Regulations are not considered to have any specific impact on the duties of the Welsh Ministers as set out in the Government of Wales Act 2006.

## **11. IMPACT UPON THE VOLUNTARY SECTOR**

11.1 None

## **12. EQUALITY OF OPPORTUNITY AND WELSH LANGUAGE**

12.1 No issues relating to these duties are considered to arise from the making of these 2018 Regulations.

## **13. SUSTAINABLE DEVELOPMENT**

13.1 The aim of these 2018 Regulations is for social (educational) benefits in making regulatory changes in the short term by refocusing assessment for the purposes of learning and away from accountability.