

EDUCATION (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: School Governance

Chapter 1: Federation of maintained schools

22. This Chapter replaces for Wales sections 25 and 26 of the Education Act 2002, making new provision for federating maintained schools. Federation allows for two or more schools to group together under a single governing body.

Section 10 - Federation of schools by governing bodies

23. This section gives governing bodies of maintained schools a power to provide that two or more schools federate, or that an existing federation federates with one or more schools, or that two or more existing federations federate under a single governing body. It further provides that the decision to federate under this section rests with the governing body concerned once they have complied with certain conditions and procedures set out in regulations.

Section 11 – Proposals by local authorities to federate schools

24. Subsection (1) provides local authorities in Wales with the power to propose that two or more maintained schools may federate, that an existing federation federates with one or more schools, or that two or more existing federations may federate, under a single governing body.
25. Subsection (2) provides that if a local authority makes proposals to federate schools or federations under this section, it must publish those proposals. Subsection (3) provides that a local authority is to consult with certain bodies about the published proposals.
26. These requirements to publish and consult do not apply to a proposal to federate small schools. A small school is defined by an order made under section 15 of the Measure. Where there is such a proposal, sub-section (5) requires a local authority to consult only with the governing bodies of the small schools to be federated.
27. Subsection (7) provides that a local authority must determine any proposals to federate schools. Regulations will set out the procedure for determining proposals. The local authority may confirm the proposals (with or without modification or subject to the occurrence of an event) or withdraw them.
28. Subsection (8) allows local authorities to consider federating with schools maintained by another local authority providing they obtain the consent of the other local authority.
29. Subsection (9) requires the consent of certain persons before a local authority may propose a federation that include a foundation or voluntary school. Those persons are, in the case of a Roman Catholic or Church in Wales school, the diocesan authority, and for other foundation or voluntary schools, the persons who appoint the foundation governors.

30. Subsection (10) provides that regulations may specify requirements in relation to proposals to federate. These could include, for example, requiring the consent of certain persons to be obtained before an authority can make, publish or confirm proposals. Regulations made under this sub-section may make different provision for a federation involving a small school.

Section 12 – Implementation of proposals under section 11

31. This section makes provision about the implementation of proposals to federate.
32. Subsections (2) and (3) set out who is required to implement the proposals. These are the local authority or the governing body in so far as the proposals provide for this, and any other person set out in regulations.
33. Where a local authority has confirmed proposals they must be implemented as confirmed (subsection (4)). However, confirmed proposals may be modified at the request of persons specified in regulations (subsection (5)).
34. Under subsection (6) a local authority can determine not to implement a confirmed proposal if it would be unreasonably difficult to do so or if circumstances have changed so much that it is no longer appropriate to do so. Regulations may require the local authority to consult prescribed persons before making that determination (subsection (7)).

Section 13 – Single governing body for federations

35. A federation is a group of schools with one governing body. Schools within a federation will continue to be treated as individual schools (so that in exercising its duties the governing body must do so in relation to each school within a federation individually). However regulations can set out the circumstances when the schools within a federation can be treated as a single school.

Section 14 – Regulations in relation to federations

36. This section provides that regulations may make further provision in relation to federations, including in relation to their dissolution and the transfer of property, rights and liabilities.

Section 15 – Identification of small maintained schools in Wales for the purposes of this Chapter

37. This section provides a power for the Welsh Ministers to make an order defining a “small maintained school” by the numbers of pupils in a school. The numbers of pupils would be those specified on a given date in a school year. Once a small maintained school is defined, the Welsh Ministers will be able to use their powers in section 16 to direct the federation of such schools.

Section 16 - Federation of schools causing concern by direction of the Welsh Ministers

38. This section allows the Welsh Ministers to direct the federation of schools causing concern. It does this by inserting a new section 18B into Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (intervention in schools in Wales causing concern).
39. The new section 18B(1) and (2) explains what is meant by a school causing concern for the purposes of this power of intervention. It includes - a school in special measures; a school requiring significant improvement; a school at which pupils’ standards of performance of the pupils are unacceptably low; a school where there has been a serious breakdown of management or governance which is prejudicing or likely to prejudice

standards of performance; a school where the safety of pupils or staff is threatened; and a school which is failing to comply with a teachers' pay and conditions order.

40. Subsection (3) of the new section 18B allows the Welsh Ministers to direct a local authority or a governing body, and subsection (4) sets out the different types of arrangements they may direct. These include federating a school causing concern with another one or more schools or with an existing federation, and directing a school causing concern to leave a federation.
41. Subsection (5) of the new section 18B requires the Welsh Ministers to consult certain bodies before making a direction and subsections (6) and (7) make provision in connection with making, varying and revoking directions, including that directions are enforceable by a mandatory order of the High Court.
42. Section 16 of the proposed Measure also amends section 14(3) of the School Standards and Framework Act 1998 so that a local authority may not exercise its powers of intervention in relation to a school causing concern if the Welsh Ministers are exercising their power of intervention in the new section 18B.

Section 17 – Guidance given by Welsh Ministers

43. This section provides a power for the Welsh Ministers to issue guidance on federation to which to which local authorities, and a governing bodies of a maintained school in Wales must have regard to in exercising their functions under Chapter 1 of Part 2 of the Measure.

Section 18 – Federations: supplementary provisions

44. This section allows regulations to be made which modify Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (intervention in schools causing concern), and sections 49 – 51 and Schedule 15 to that Act (financial delegation) in their application to school federation. Regulations under this section could, for example, provide that where certain conditions that trigger powers of intervention exist in relation to one school within a federation, but not to others, those powers of intervention can nevertheless be exercised in relation to the governing body. Section 18 also allows for regulations to modify legislation relating to different categories of schools. Such regulations will make it clear how that legislation applies in relation to schools within a federation which belong to different categories.

Section 19 – Minor and consequential amendments to the Education Act 2002

45. This section makes consequential amendments to sections 19 and 20 of the Education Act 2002, so that those provisions refer to federations under the Measure. It limits the application of sections 24, 25 and 39 of the Education Act 2002 to England because they have been replaced, for Wales, by provision made by this Chapter. It also amends paragraph 5 of Schedule 1 to the Education Act 2002 to make it clear that if a school in a federation closes and there is more than one school remaining in the federation, the governing body of the federation does not automatically dissolve.

Section 20 – Minor and consequential amendments to the Education Act 2005

46. This section makes a minor and consequential amendment to the Education Act 2005 so that it refers to federations under this Measure.

Section 21 – Interpretation of this Chapter

47. Subsection (1) defines terms used in Chapter 1 of Part 2 of the Measure. Subsection (2) provides for the interpretation of terms used in any enactment in relation to a federated school, so that, for example, a reference in legislation to a governing body of

These notes refer to the Education (Wales) Measure 2011 (c.7)

a maintained school has effect, in relation to a federation, as though it were a reference to the governing body of a federation.