

Explanatory Memorandum to the School Organisation (Miscellaneous Amendments) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **the School Organisation (Miscellaneous Amendments) (Wales) Regulations 2011** and I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM

Minister for Children Education and Lifelong Learning

28 January 2011

EXPLANATORY MEMORANDUM

1. Description

These amending Regulations specify timings for the publication of notices for school organisation proposals, the time available for objection, and the timetable for the submission of objections and comments by local authorities to Welsh Ministers so that proposals may be determined. These matters are currently set out in Regulations.

2. Matters of Special Interest to the Constitutional Affairs Committee

None

3. Legislative Background

The powers enabling these amending Regulations to be made are contained in sections 28 (3), 28 (8), 29(3), 29(7), 31(3), 31(8), 34, 35, 138(7) and (8), and 144 of and paragraph 7 of Schedule 6, paragraphs 5 and 12 of Schedule 7, paragraph 2 of Schedule 8 to, the School Standards and Framework Act 1998 and in sections 113A(9) and 152 (5) and (6) of, and paragraphs 20(2), 22, 28(2), 30, 39(2), 40 and 41 of Schedule 7, and paragraph 1 of Schedule 7A to, the Learning and Skills Act 2000.

3. Purpose and intended effect of the legislation

The intended effect of the legislation is to shorten the timetable for the processing of statutory proposals for school organisation. Currently, in accordance with existing Regulations, local authorities and other promoters must publish a statutory notice for 2 months to allow for objections and there is no restriction as to the time of year that proposals may be published. The amending legislation provides that in future statutory notices must be published on a school day which is not fewer than 15 school days before the end of a school term, thus ensuring that it comes to the notice of parents and others with an interest at the most relevant time. The amending legislation also provides that the time available for objections to be lodged will be 1 month instead of 2, which current legislation provides for.

The amending legislation also provides that at the end of the objection period, any local authority publishing a statutory notice must submit objections and their comments on the objections to the Welsh Ministers within 2 weeks from the end of the objection period, instead of 1 month as originally prescribed.

These changes will reduce the timetable for the receipt of proposals by Welsh Ministers from 3 months to 1 month and 2 weeks in total, enabling an overall speedier resolution of statutory proposals for changes to schools. The amending regulations also provide that if statutory proposals are published prior to the coming into force date of the legislation, the current procedures apply to those statutory proposals.

5. Consultation

Consultation on the effect of the Regulations was carried out between 13 August and 5 November 2010, with a wide range of stakeholders. The results of the consultation are included in the Regulatory Impact Assessment.

6. Regulatory Impact Assessment

The following 3 options were identified in relation to the current timescales for school organisation proposals.

- Option 1: Do nothing. Taking no action at all will mean that papers in respect of contested school organisation proposals will continue to be submitted up to 3 months following the publication of notices. Local authorities, promoters, parents and others believe that the current process for statutory proposals takes too long. Welsh Ministers cannot commence full consideration of contested proposals until all the papers are received from local authorities or promoters. It normally takes at least 3 months for post receipt consideration therefore determinations are not made until at least 6 months following the publication of proposals. In addition, there is nothing in current regulations to prevent local authorities and other promoters publishing proposals during the summer school holiday, with the bulk of the objection period occurring during such times. Although such occasions are highly unlikely to occur, since promoters make every effort to adhere to good practice in the publication of notices, there is nothing in legislation to prevent this happening. Were such situations to arise, parents and others might be less able to respond to objections as they would be unlikely to be able to seek clarification from the school involved and less likely to be able to discuss issues with parents in the same position. The do nothing option is therefore not acceptable.
- Option 2: Not alter regulations but request local authorities to only publish proposals at a time when parents may engage to an appropriate extent and request local authorities also to submit objections more quickly than the 1 month currently allowed for their submission. Whilst local authorities can be expected to follow good practice and publish notices at an appropriate time, there is currently no force of law to secure this. Local authorities might voluntarily submit papers within the month currently allowed, but there would be nothing obliging them to do so; an unregulated deadline would be less likely to be adhered to than one set in regulations. There would not be sufficient or significant time savings to be gained through voluntary means as the period available for objections by the public, which can only be altered by changing regulations would remain at 2 months. The maximum time saving which could be gained by seeking an earlier voluntary submission of objections would be around 2 weeks as compared with

the 6 that can be achieved through the proposed regulations. This option is therefore not acceptable.

- Option 3: Amend the Regulations so as to reduce the time available for objection from 2 months to 1 month, and ensure that publication takes place on a school day and extends substantially over school term time. In addition, amend the Regulations so as to reduce the overall time for the submission of papers in respect of contested statutory proposals to 1 month and 2 weeks enabling a more timely consideration of statutory proposals requiring determination by Welsh Ministers. The publication of notices must follow a period of statutory consultation, normally lasting at least 4 weeks, during which consultees have an opportunity to form a view on the proposal. The reduction in the objection period which follows the publication of notices should therefore be sufficient to enable those with an interest to object. The publication of notices substantially during term time will ensure that parents have the maximum amount of time within the reduced period to discuss their concerns with relevant professionals and other parents. Local authorities will be under a duty to submit objections and their comments within 2 weeks of the end of the objection period. Since most points of objection have already been raised during the consultation period it is anticipated that much of the paperwork necessary in order to submit objections can be prepared during the month allowed for objection and revised to reflect any new areas of concern identified in the statutory objections in a relatively short period. For these reasons, Option 3 is preferred.

7. Benefits

If Option 3 is adopted, the overall timescale for the resolution of contested statutory proposals will be reduced by approximately 6 weeks. This will reduce uncertainty for parents, pupils and local authorities.

8. Costs

There should be no additional costs to local authorities in adhering to the shorter timetable proposed in Option 3. The shortened period available for objection may or may not reduce the overall level of objection and if a reduction occurred this would ease the processing of objections. A more intense period of activity by local authorities will be required in order to comply with the shortened timetable, but local authorities should be able to plan for this eventuality.

9. Consultation

A full 12 week consultation on the principles of the amendment Regulations took place between 13 August and 5 November 2010. The consultation was issued electronically to a wide range of stakeholders and a sample of schools. Those who responded are listed at Annex A. The consultation was also made

available on the Welsh Assembly Government website and a press notice was issued at the time of its publication.

Most of those consulted represented those with an interest in the organisation of schools. In total 33 responses were received. These break down into the following categories:-

13 Local authorities and WLGA/ADEW

Representatives from 3 schools

Representatives from 4 Professional Organisations representing teachers

In addition responses were received from Governors Wales, the Welsh Language Board, the Diocese of Monmouth, Rhieni Dros Addysg Gymraeg, the Children's Commissioner, the Catholic Education Service, Estyn and a number of individuals, a few of whom wished to remain anonymous.

The majority of respondents agreed with all the proposals, but a minority expressed concern about the reduced length of time available for local authorities to submit their response to objections. Since there was nonetheless a majority in favour of this particular revision, no change has been made to the proposals which were subject to consultation, and regulations have been prepared which reflect the principles set out in the consultation document.

An analysis of the outcome of consultation is also available at Annex A

10. Post implementation review

Welsh Assembly Government officials will monitor compliance with the regulations carefully and note any views expressed by stakeholders to ensure that the legislation is having the desired effect without compromising the effectiveness of the consideration of statutory proposals that require determination by Welsh Ministers.

11. Competition Assessment

The proposed amending legislation will not affect business, charities or the voluntary sector.

Summary of consultation responses

List of Respondents

1. Gareth Jones, Powys County Council
2. Mr Cerith Rhys Jones
3. Canon Dr Keith Denison, Diocese of Monmouth
4. Gerson Davies, Director of Education, Pembrokeshire County Council
5. Richard Curtis
6. Keith Davies, Bwrdd yr Iaith Gymraeg, Welsh Language Board
7. Julie Hadley, Rhondda Cynon Taf County Borough Council
8. Jacqui Peplinski, Headteacher Cwmcarn High School
9. Denver Preece, Chair of Governors, Cwmcarn High School
10. Mrs K Jones, St Mary's Primary Wrexham
11. Ceri Dowsett, Newport City Council
12. Bleddyn Hopkins, Caerphilly County Borough Council
13. Michelle Jones, Blaenau Gwent County Borough Council
14. Anonymous
15. Anonymous
16. Dr Philip Dixon, ATL - The Association of Teachers and Lecturers
17. Iwan Guy, National Association of Head Teachers (NAHT)
18. Governors Wales
19. Robert Sully, Director for Department for Education and Children, Carmarthenshire County Council
20. Angharad Reed, Estyn
21. Karl Narpieralla, Neath Port Talbot County Borough Council
22. Rex Phillips, NASUWT
23. Julie Ratti
24. Anonymous
25. Graham Dalton, Cardiff Local Authority
26. WLGA and ADEW
27. Christine Fischer, Catholic Education Service for England and Wales
28. Cath Sheen, Monmouthshire County Council
29. Keith Towler, Children's Commissioner for Wales
30. Kelly Small, City and County of Swansea
31. Dilwyn Price, Conwy County Council
32. Rebecca Williams, UCAC
33. Ceri Owen, Swyddog Datblygu RhAG

Question 1: Do you agree that it would be better if changes to schools were decided more quickly, once statutory notices have been published in the newspaper and at the school? If you do not agree, please say why.

The majority of respondents agreed that it would be better if changes to schools were decided more quickly, once statutory notices had been published. Views expressed in support indicated that it would alleviate uncertainty; allow for savings to be invested in proposals rather than maintaining the status quo during a protracted period; ensure the smooth administration of the admissions process; ensure co-dependent proposals can be managed effectively for the benefit of learners; and in the event of a proposal being rejected, would also allow proposers to move ahead with an alternative solution more quickly.

Those who supported a quicker process also urged the Welsh Assembly Government to make time savings in its consideration of proposals. One consultee suggested that savings could be made by reducing the requirement to circulate paper notices and display these in public places.

The minority who did not agree that the process should be expedited, indicated that often, local authorities do not consult adequately and that to speed up the process would allow less time to challenge unsuitable and unacceptable proposals. In addition, there would be undue pressure on the Head teacher, Governors and other staff at schools who would not be able to give due time and consideration to the proposal. One consultee found the question misleading and misconceived and did not believe changing the regulations would ensure quicker decision making without time constraints also being placed on the Welsh Ministers. Another consultee commented that children and young people may require more time to access information and respond.

These comments will be considered as work progresses on the wider changes being considered for the statutory process for the reorganisation of schools.

Question 2: Do you think that 1 calendar month is enough time for objectors to let local authorities and others know that they oppose the change? If you do not think that this is enough time, please make an alternative suggestion, with brief reasons.

The majority of respondents agreed that one calendar month was enough time for objectors to let local authorities and others know that they opposed the change, providing there had been adequate consultation and sufficient information provided to inform a view.

Around 18% of consultees disagreed with the proposed timing especially in the event of inadequate consultation. They suggested that either the status quo should be retained or an increase to 3 months would be more appropriate. Consultees commented that a reduction in time would disadvantage certain groups, in particular, children and young people, who would not have enough time to respond or to become actively engaged in the process from the outset. Consultees also noted reducing the time ignored the fact that some objections are often complex and can require the collation and analysis of a high volume of information.

As the majority of respondents agreed with our proposal, we will be revising the timescale set out in the regulations for interested parties to express their opposition to statutory proposals, from 2 months to 1 month.

Question 3: Do you think that 2 weeks is enough time for local authorities to refer the objections on to the Welsh Ministers, together with their comments on the objections? If you do not think that this is enough time, please make an alternative suggestion, with brief reasons.

A majority, including 5 local authorities who provided responses, agreed with our recommendations, and a further 2 agreed with reservations. Reservations expressed suggested that a number of factors would affect the capacity for a response within this timescale and suggested that if objections were particularly numerous, it should be possible to seek an extension to the deadline. The WLGA shared this view.

A significant number of respondents (around 30%) also disagreed, including 5 local authorities, most of which have been involved in a substantial volume of statutory proposal work in the recent past. The general consensus of those opposed was that the time would be insufficient to fully consider the issues and provide adequate observations. Some consultees pointed to cases with large volumes of objections received at a very late stage, which were complex and technical in nature. Some local authorities also highlighted the timetable for their Cabinet meetings which would not allow for their approval of comments prior to submission. A number of alternative suggestions to the timescale were made, including: retaining the status quo and extending the timescale in exceptional circumstances; extending the timescale to two months; or for the local authorities to cease to produce summaries and send the objections to the Welsh Assembly Government to be summarised.

There was a clear divide between local authorities on this matter, with the WLGA supporting a truncating of the period with reservations. There is some merit in the view that insisting on an earlier submission will be likely to detract substantially from the quality of response and that this could lead to delay in processing proposals once they reach the Welsh Ministers. Regulations could be drafted to provide that where objections numbered more than a set amount, further time could be allowed, but the benefits of this might be limited, since it is often the case that a relatively small number of complex objections provide more challenge than hundreds of brief objections of a standard nature. Whilst the new timetable will prove challenging, the implementation of the regulations can be carefully monitored including the effect of this change.

Question 4: Do you agree that if the objection period is reduced to 1 calendar month, proposals should not be published during school holidays? If you do not agree, please let us know why.

A large majority of respondents (around 80%) were content with our proposals. A number of local authorities which responded indicated that this was already their current practice. Several responses stated that proposals should not be published during school holidays regardless of whether the objection period is reduced to 1 calendar month or not. One consultee suggested more clarity was needed as to what constitutes 'a significant amount of time over a holiday period,' and another felt school holidays should not include half terms. Another consultee added that if the objection period is maintained at 2 calendar months up to 25% of the period could be allowed outside of term time

A small minority of respondents did not agree. They commented that the situation could be open to abuse, in that a proposal could be published the day before a school holiday. One consultee expressed the view that attempting to avoid short school holidays such as half terms and Easter could result in an unnecessary delay in publishing proposals, or, a number of proposals being 'bunched' together and published at the same time, leading to an uneven workload. It was suggested by some that only August should be avoided. We will, as proposed in consultation explicitly state that publication should take place on a school day and must include a minimum number of school days ensuring that the majority of the publication period is during term time.

Question 5: If a proposal were to be published in term time, do you agree that the objection period should include at least 15 school days? (This would be approximately 75% of the objection period). If you do not agree, please let us know why.

The majority of respondents agreed with our recommendations. Some also commented that local authorities should strive to publish at a time to ensure the objection period of one calendar month falls completely during term time. A few consultees also suggested that the 15 days did not have to run consecutively and that inset days and enforced closures should not be discounted as they cannot all be anticipated.

A minority of respondents disagreed with our proposals. Reasons for opposition varied, some taking the view that the objection period should only need to include 10 school days. Others took the view that the objection period should cover at least 20 school days, whilst those opposing the reduction of the objection period saw the need for an objection period including 45 school days. Those taking the view that this provision would be too restrictive stated that delays would be introduced, unless inset days and bank holidays were counted.

It is intended to take forward the proposal as set out in consultation, as local authorities and others should find sufficient flexibility in the revised arrangements. Most local authorities already make every effort to ensure that a significant proportion of the objection period covers school time.

Question 6: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

A number of additional comments, many of them substantial, were received, which related to the whole statutory process, rather than the specific aspects of the consultation. These included the suggestion that a wider review of the Education (School Organisation Proposals) (Wales) Regulations 1999 was needed. A number of consultees also expressed disappointment that a more fundamental review of the procedures for school organisation had not been mooted, as indicated by the Minister for Children Education and Lifelong Learning in June 2010.

Consultees also raised the following additional points:

- Welsh Assembly Government officials should raise queries on proposals more quickly, providing checklists to local authorities to aid the process.
- A capacity for local authorities to modify proposals at the end of the

- consultation process would save time and resources.
- Welsh Ministers should issue clearer guidance on the minimum viable size of a school and a clearer definition of what constitutes a small school.
 - More clarity on the role of Estyn was requested.
 - It was suggested that decision letters should be clearer, provide a better indication of what constitutes 'better value for money' and also who has had an input.
 - The reduction of the timetable for schools in special measures could be considered.
 - Consultation exercises such as this should include children and young people.
 - Single objectors or those raising matters not of relevance should not be allowed to stall the statutory process.
 - Proposals resulting in a low number of objections could be fast-tracked by the Welsh Assembly Government.
 - The delegation of powers to local authorities regarding post 16 education in voluntary aided or foundation schools is not acceptable.
 - Parents of pupils affected by a school closure should have guarantees that acceptable alternative arrangements are made in time.
- Whilst many of the additional points made are not directly relevant to the outcome sought from this consultation, they will provide valuable input to the wider consideration of more fundamental review of legislation on school organisation which is underway and which will be subject to its own consultation in due course.