

## **Explanatory Memorandum to The School Governance (Transition from an Interim Executive Board (Wales)(Regulations 2012**

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 School Governance (Transition from an Interim Executive Board (Wales) Regulations 2012.

Leighton Andrews  
22 June 2012

## **1. Description**

These regulations make provision relating to the transition of a school's governing body from being constituted as an interim executive board in accordance with Schedule 1A to the School Standards and Framework Act 1998 to being a governing body constituted in accordance with Section 19(1) of the Education Act 2002.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters of special interest.

## **3. Legislative background**

The powers enabling these regulations to be made are contained in paragraph 19(2) and (3) of schedule 1A to the School Standards and Framework Act 1998 and section 19 of the Education Act 2002. These powers have been transferred to the Welsh Ministers. The SI is to be made using the negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

The Regulations concern the means by which a governing body of a maintained school makes the transition from an Interim Executive Board ("IEB") to a normally-constituted governing body. The intended effect is to provide a smooth transition from the IEB to normal governing arrangements.

## **Policy Background**

A local authority may apply to the Welsh Ministers for consent to appoint an IEB to replace the governing body of a school where the school has failed to comply with a warning notice from its local authority or has been deemed by Estyn to require significant improvement or special measures.

The IEB's main functions are to secure a sound basis for future improvement in the school and promote high standards of educational achievement. Once a decision has been taken for the local authority to put in place an IEB at a school, it issues a notice which provides that from a date specified, the governing body is to consist of interim executive members.

This notice may also specify the date when the IEB is to become a normally constituted governing body, or this may be specified in a later notice. IEBs normally operate for between 12 to 24 months.

Schedule 1A to the School Standards and Framework Act 1998 provides that arrangements for the transition from an IEB back to a normally constituted governing body may be prescribed in Regulations made by Welsh Ministers.

The School Governance (Transition from an Interim Executive Board)(Wales) Regulations 2012 make provision relating to the transition of a school's governing body from being constituted as an interim executive board in accordance with Schedule 1A to the School Standards and Framework Act 1998 to being a governing body constituted in accordance with Section 19(1) of the Education Act 2002.

The regulations require that at least six months before the IEB ceases to operate the local authority make arrangements to establish a Shadow Governing Body (SGB). The Regulations set out the arrangements for the appointment of a Chair, Vice Chair and a Clerk of the Shadow Governing Body and minuting of meetings. The SGB will be constituted in the same way as the school's governing body. The SGB may determine its own procedure but must exercise any functions delegated to it by the Interim Executive Board. When the IEB steps down, the SGB is treated as if it were the normally constituted governing body of the school.

If these regulations are not made there will be no clear arrangements for the transition of a school governing body from an IEB to a normally constituted governing body. Local Authorities would be able to determine their own transitional arrangements.

Placing a requirement in regulations for the local authority to establish a shadow governing body to run in parallel with the IEB for a minimum of six months will allow for the IEB to coach the SGB and the SGB to mirror good behaviours in preparation for the SGB becoming the normal governing body.

## **Guidance**

Guidance on IEBs is currently contained within *Schools Causing Concern: Guidance for Schools and Local Authorities, Welsh Government, February 2012*. The Schools Standards and Organisation (Wales) Bill contains provision to allow the Welsh Ministers to issue statutory guidance on schools causing concern. The intention is to use this power to issue revised guidance on a statutory basis subject to the Bill receiving Royal Assent.

## **5. Consultation**

The Department for Education and Skills undertook a 12 week e-consultation on the draft regulations between 28 February 2012 and 22 May 2012. The consultation was drawn to the attention of all major stakeholders including schools, Governors Wales, Local Authorities, Estyn and teachers unions. The Consultation posed five questions relating to the establishment of a shadow governing body, its constitution and arrangements for the SGB to become the normal governing body once the IEB steps down.

The Department received eleven responses to the consultation, of which three were from local authorities, two from school governors, four from Trade Unions, one from a charity and one from Estyn. There was broad support for the

proposals and no amendments were made to the legislation as a result of the consultation.

All those who responded agreed that the shadow governing body should be established at least six months before an IEB steps down and that its composition should mirror that of a normally constituted governing body. They agreed the proposed arrangements for the appointment of a Chair, Vice Chair and a Clerk to the SGB and minuting of meetings. All respondents also agreed that from the date the IEB stands down the shadow governing body should be considered the normally constituted governing body

The majority of respondents agreed that the Shadow Governing Body should be able to determine its own procedures and that it must carry out any functions delegated to it by the IEB. Guidance on transitional arrangements from an IEB to a normal governing body will be contained in forthcoming statutory guidance on intervention in schools causing concern.

A full summary of the consultation is attached and will be made available on the Welsh Government Website.

## **6. Regulatory Impact Assessment (RIA)**

An Impact Assessment has not been prepared for this instrument, as the policy has no impact on the private sector or businesses. The policy will ensure the smooth arrangement from an IEB to normal governing body arrangements and in doing so reduce the burden on local authorities associated with maintaining an IEB.