

Explanatory Memorandum

The Education (Consultation on School Term Dates) (Wales) Regulations 2014

Explanatory Memorandum to the Education (Consultation on School Term Dates) (Wales) 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 Education (Consultation on School Term Dates) (Wales) Regulations 2014.

I am satisfied that the benefits outweigh any costs.

Huw Lewis
Minister for Education and Skills

4 June 2014

1. Description

The Education (Consultation on School Term Dates) (Wales) Regulations 2014 (the Regulations) provide the detail on the consultation which the Welsh Ministers are to carry out prior to the use of their power of direction to effectively “set” school term dates for maintained schools in Wales. The Regulations are required as a result of legislative changes to the way in which school term dates are set in Wales, which were made by section 42 of the Education (Wales) Act 2014 (the 2014 Act) inserting new sections 32A and 32B into the Education Act 2002 (the 2002 Act).

Section 42 also inserts a new section 32C into the 2002 Act to consolidate the law on school session times.

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

These are the first set of Regulations to be made using the new powers in section 32B(4) of the 2002 Act. These new powers, as well as the new regulation-making powers in section 32A(6) of the 2002 Act, came into force on Royal Assent due to section 50(2) of the 2014 Act.

While these Regulations are made and laid after Royal Assent, they will not come in to force until after the expected commencement by order of the remainder of sections 32A & 32B of the 2002 Act. It is expected that section 32C will be commenced at the same time.

3. Legislative Background

Section 42 of the 2014 Act made changes to the legislative arrangements for school term date setting in Wales by inserting sections 32A and 32B into the 2002 Act. It also consolidated the law on school session times by inserting section 32C into that Act.

One of the changes to legislative arrangements was to give the Welsh Ministers the power to direct local authorities and the governing bodies of voluntary aided and foundation schools (relevant governing bodies) on their school term dates. Before exercising this power, section 32B(3) of the 2002 Act places a duty on the Welsh Ministers to carry out “*such consultation as they consider appropriate*”.

Regulation-making powers in section 32B(4) and 210 of the 2002 Act enable the Welsh Ministers to make such further provision about the consultation process as they think “*necessary or expedient*”. This may include regulating for the detail of the consultation process including who is to be consulted, the length and method of the consultation and when it may not be practicable for consultation to take place.

These Regulations are made subject to annulment by the National Assembly for Wales (i.e. negative resolution procedure).

4. Purpose & intended effect of the legislation

The Welsh Government's aim in introducing changes to legislative arrangements on term date setting into the 2002 Act is to ensure that school term dates are harmonised for all maintained schools across Wales, with variations in dates occurring very occasionally and only where they can be justified.

New section 32A(1) to (4) provides that local authorities and relevant governing bodies retain the duty to set school term dates for their schools, but have a new duty placed on them to co-operate and co-ordinate with each other when setting term dates, so that the dates set are the same or as similar as can be.

The Welsh Government hopes that this will lead to the harmonisation of term dates for all maintained schools across Wales. However, it is possible that, despite their best efforts, local authorities and the relevant governing bodies are unable to agree on term dates. If this happens, or if the term dates which have been agreed need amending, the Welsh Ministers will have the power to intervene and direct local authorities and the relevant governing bodies on what their term dates must be.

As the Welsh Ministers are already under a duty in the 2002 Act to consult as they think appropriate before use of their direction-making powers, these Regulations will provide clarification on what to expect by way of consultation.

The Regulations provide:

- the period and method of that consultation (Regulation 3(1) and the Schedule);
- where there is doubt about the date on which notice of the event or circumstances which "triggered" the Welsh Ministers' intervention in term date setting was received, then the Welsh Ministers may reasonably determine what that date is deemed to be (Regulation 3(2));
- when the Welsh Ministers have discretion on whether to carry out a consultation (Regulation 3(3)); and
- the persons to be consulted (Regulation 4).

5. Consultation

Details of consultation undertaken are included in the RIA below.

PART 2 - REGULATORY IMPACT ASSESSMENT

Options

Two options have been considered in this Regulatory Impact Assessment:

- Option 1 – Do Nothing
- Option 2 – Make Regulations which provide for what to expect from any consultation which the Welsh Ministers carry out prior to use of their powers of direction on term date-setting.

Costs & benefits

Option 1 - Do nothing

The Education (Wales) Act 2014 made changes to the Education Act 2002 which included placing a duty on Welsh Ministers to consult as appropriate before using their powers of direction on term dates. The RIA for the 2014 Act included an assessment of the costs associated with Welsh Ministers using their powers of direction on term dates. As identified in that RIA, there is a degree of uncertainty around the cost of the powers since it will depend upon whether and how frequently the Welsh Ministers need to use their powers of direction.

If Welsh Ministers do not need to use the powers then the cost to the Welsh Government will be zero. It is expected that **if** the Welsh Ministers need to consider using their powers of direction, the Welsh Government will finance an official to carry out the work associated with such tasks as liaising with stakeholders when gathering the information required to advise the Welsh Ministers, monitoring the views of stakeholders and undertaking consultation on any proposed term dates. In such a scenario, our best estimate of the resource requirement is that a higher executive officer would be employed for 2 working days a week to carry out these tasks, which would be at a cost of £15,320 per annum.¹

As it is anticipated that Welsh Ministers will need to consider using their powers for the first 2 years after these legislative arrangements come into force, this would make a total of £30,640 costs to the Welsh Government. However, these total costs could be more or less, depending on whether or for how long Welsh Ministers need to consider using their term dates powers.

The full analysis of the possible additional cost to the Welsh Government associated with the changes to the legislative arrangements on term date-setting are set out in the explanatory memorandum to the 2014 Act , which can be found at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=7186>

¹ Based on a mid-range higher executive officer, and taking account of National Insurance and pension costs to the Welsh Government.

However, doing nothing means that there is no regulatory process in place to clarify what to expect by way of consultation. This regulatory “gap” would mean that there would be greater uncertainty for interested parties about what to expect from any Welsh Ministers’ consultation prior to use of their powers of direction on term date-setting.

Option 2 – Make regulations – preferred option

There are not expected to be any additional costs from this option over and above those set out under Option 1. As noted above, the 2014 Act included placing a duty on Welsh Ministers to consult as appropriate prior to using their powers on term dates. The Consultation Regulations simply provide clarification on when there will be a consultation, and what the consultation process will entail.

This option will ensure that there is an appropriate regulatory process in place to give greater certainty about what to expect from any Welsh Ministers’ consultation.

There should be no further real costs for local authorities and relevant governing bodies associated with this option. They have only to decide on whether or not to respond to any consultation on proposed term dates, which should be absorbed within their day-to-day work.

Benefits

Option 1 - Do Nothing

There are no additional benefits associated with this option.

Option 2 – Make regulations – preferred option

Making the Regulations will ensure that there is greater certainty for interested parties about what to expect from any consultation prior to use of Welsh Ministers’ powers of direction.

Consultation

The consultation on the proposed policy principles which underpin the Regulations commenced on 4 December 2013 and ran until 21 February 2014. The consultation document was published on the Welsh Government’s website, DYSG Newsletter and promoted via direct electronic mailings to a 10% sample of governing bodies of maintained schools in Wales, teaching unions and other interested parties including Her Majesty’s Inspectorate for Education and Training in Wales amongst others.

Proposals included varying the consultation process and length where Welsh Ministers need to consider using their powers to amend term dates which have been harmonised by local authorities and relevant school governing bodies. Variations would be dependent upon the period of notice the Welsh Ministers had of the events

or circumstances which have caused them to consider using their powers to vary term dates.

There were 34 responses to the consultation, which may be categorised as follows:

Local Authorities	4
Diocesan Authorities	2
Unions	8
Schools/Headteacher	5
Representative and other bodies	5
Individuals/anonymous	10

One of the responses, from the Catholic Education Service, was from outside Wales.

Concerns were raised about the Welsh Ministers being able to change harmonised term dates without a full 12 week consultation. Both the proposals in the consultation and the provisions of these Regulations are for a shortened consultation (or in emergency circumstances no consultation at all) to take place only where there is less than a year's notice of the possible need to alter term dates. In all cases the length and detail of the consultation will reflect the length of notice the Welsh Ministers have of the event or circumstance which has caused them to consider altering term dates.

A summary of consultation responses is available at:

<http://wales.gov.uk/consultations/education/school-term-dates-regulations/?status=closed&lang=en>

Competition Assessment

The making of these Regulations will not affect business, charities or voluntary organisations in ways which raise issues related to competition.

Post implementation Review

The Welsh Government expect to review how school term date setting is operating following school year 2016-17, and report in the autumn of 2018.

Summary

The proposed Regulations are required to ensure that there is greater certainty for interested parties about what to expect from any consultation prior to use of Welsh Ministers' powers of direction.