

EXPLANATORY MEMORANDUM & REGULATORY IMPACT ASSESSMENT FRAMEWORK

Explanatory Memorandum to: The Control of School Premises (Wales) Regulations 2008.

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.

Description

1. Sections 31 and 210 (7) of the Education Act 2002 enable Welsh Ministers to make regulations concerning the control by governing bodies of the occupation and use of school premises.
2. They also allow for the transfer of that control to any party whose purpose is to promote the community use of school premises.
3. This Instrument will replace Schedule 13 to the School Standards and Framework Act 1998, which is repealed by the Education Act 2002.

Matters of special interest to the Subordinate Legislation Committee

4. None.

Legislative Background

5. The powers enabling the Instrument to be made are contained in sections 31 and 210 (7) of the Education Act 2002. The powers under the 2002 Act have been conferred on the National Assembly for Wales and transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Responsibility for issues relating to the contents of this Instrument has been delegated to the Minister for Children, Education, Lifelong Learning and Skills. The Instrument is to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

6. This is largely an administrative exercise as the Instrument replicates provision made in Schedule 13 to the School Standards and Framework Act 1998, which is repealed by the Education Act 2002.
7. There are some minor changes to Schedule 13 to SSFA 1998 to update the provision in line with the Government of Wales Act 2006.
8. The Instrument provides that it is the governing body of a community school, community special school and maintained nursery school that is responsible for the occupation and use of its school premises.
9. The Instrument enables the governing body, with the consent of the LEA, to enter into a transfer of control agreement if the

purpose of the agreement is to promote community use of the school premises.

10. The Instrument makes similar provisions in relation to foundation and foundation special schools, and voluntary schools, with certain exceptions.
11. The only policy development to Schedule 13 to the School Standards and Framework Act 1998 is the inclusion of provision for maintained nursery schools. As the status of nursery schools is the same as any other maintained school, there is no reason for them to be omitted from the provision.

Implementation

12. The proposed regulations will be made on 23 January and will come into force on 31 March. The provision to make these regulations is now five years old because it is in the Education Act 2002. The regulations replace the repealed Schedule 13 of the School Standards and Frameworks Act 1998 and delay, or failure to make them, will mean that the education law for Wales is not up to date.

Consultation

13. The Control of School Premises (Wales) Regulations (2008) take the place left by the repeal of Sch 13 SFFA 1998. Making the regulations is an administrative exercise to update the law. The regulations do not legislate for new matters or a change of policy. The only change is the extension of the law to include maintained nursery schools. This is in line with the established policy and law that has made such schools part of the family of schools in Wales. The Welsh Assembly Government has therefore decided not to consult on these regulations.

Regulatory Impact Assessment

1. A Regulatory Impact Assessment has been carried out in relation to this Instrument. The Instrument will have no impact on statutory duties or on the statutory partners, as outlined under sections 77-79 and 73-75, respectively, of GOWA 2006. As the Regulations replicate provisions made under the School Standards and Framework Act 1988, and as there is no evidence that those provisions have proved burdensome to the statutory partners, to this point, there is no expectation of any impact as a result of making the new Regulations.

Options

2. Option 1 – Do Nothing

If the Instrument is not made then the statute book will not be updated in accordance with the Education Act 2002.

3. Option 2 – Make the Legislation

By making the Instrument, there will be up to date regulations to replace those which were repealed under the Education Act 2002.

Benefits

4. Option 2 has the benefit of keeping education law up to date. Option 1 has no benefit.

Costs

5. The provisions of this Instrument will not incur additional costs. There will be no extra burden on schools or Local Authorities.

Competition Assessment

6. Not applicable.

Consultation

7. We have not undertaken consultation on this Instrument, as per the Explanatory Memorandum. With the exception of the inclusion of provision for maintained nursery schools, this Regulation merely replicates provision made under Schedule 13 to the School Standards and Framework Act 1998.

Post implementation review

8. We do not foresee a need for an active review of the impact of this Instrument as it is not introducing anything new, merely replicating provision which was repealed under the Education Act 2002. However, we will monitor any impact through casework.

Summary

9. As this regulation replicates provisions made under Schedule 13 to the School Standards and Framework Act 1998, the costs incurred and benefits identified will not change.

10. By making the Regulations, we show our commitment to exercising our powers in respect of primary legislation. We also ensure that we have up to date Regulations to replace those that were repealed under the Education Act 2002.