

REGULATORY APPRAISAL

EDUCATION, WALES

THE EDUCATION ACT 2002 (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) (WALES) REGULATIONS 2005

Purpose and intended effect of the Measure

1. These Regulations apply transitional provisions to those parts of the Education Act 2002 which are being commenced in accordance with the proposed Education Act 2002 (Commencement Order No. 7) (Wales) Order 2005. They also make consequential amendments to a number of other Regulations, which will apply to nursery school governing bodies once they have been established in accordance with the provisions contained in the Government of Maintained Schools (Wales) Regulations 2005, which are due to come into force on 31 October 2005.
2. The effects of the Regulations are:
 - Regulation 3 - amends section 28D(7)(a) of the Disability Discrimination Act 1995, to apply the duty to provide accessibility plans to nursery school governing bodies;
 - Regulation 4 - amends the definition of 'proprietor' in section 579 of the Education Act 1996 to include a reference to a governing body of a nursery school;
 - Regulation 5 - provides for a school's existing instrument of government to continue in force until it has been replaced by a new instrument made under section 20 of the Education Act 2002;
 - Regulation 6 - allows the provisions of the School Standard and Framework Act 1998 to continue to apply to a temporary governing body of a new school constituted under section 44 of the 1998 Act before 31 October 2005. It also modifies section 44 of that Act and the Education (New Schools) (Wales) Regulations 1999 so that such temporary governing bodies need not reconstitute as a permanent governing body until the date notified to them by the Local Education Authority;
 - Regulation 7 - provides that governing bodies of nursery schools, which are to be established between 31 October 2005 and 31 March 2006 are to have all the powers of a governing body from the date they are constituted;
 - Regulation 8 - provides that the provisions of the 1998 Act relating to the financing of maintained schools apply to nursery school governing bodies in relation to financial years on or after 1 April 2006;

- Regulation 9 - allows parent governors of governing bodies constituted under the 1998 Act to be treated as parent governor representatives on local authority education committees in accordance with section 499 of the Education Act 1996;
- Regulations 10-15 - ensure that provisions contained in other regulations will also apply to maintained nursery school governing bodies when they are established in accordance with the Government of Maintained Schools (Wales) Regulations 2005. Those Regulations are:
 - The Parent Governor Representatives and Church Representatives (Wales) Regulations 2001;
 - The School Government (Terms of Reference) (Wales) Regulations 2000;
 - The Changing of School Session Times (Wales) Regulations 2000;
 - The Education (Payment for Special Educational Needs Supplies) Regulations 1999;
 - Special Educational Needs (Provision of Information by Local Education Authorities) (Wales) Regulations 2002; and
 - The Education (Pupil Registration) Regulations 1995.
- Regulation 16 - provides that from 1 April 2006 maintained nursery schools will be able to exclude pupils in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003;
- Regulations 17 and 18 - provide for the Education (Budget Statements) (Wales) Regulations 2002 and the LEA Budgets, Schools Budget and Individual Schools Budget (Wales) Regulations 2003 to apply to nursery school governing bodies;
- Regulation 19 - amends the School Budget Shares (Wales) Regulations 2004 so that they apply to nursery schools only for financial years after 31 March 2006;
- Regulation 20 - amends the School Forums (Wales) Regulations 2003 so that from 1 April 2006 representatives of a primary school on such a forum can also include a representative of a maintained nursery school. This is to reflect that nursery schools will be given delegated budgets from that date; and
- Regulations 21-23 - makes transitional provisions in relation to school inspections of maintained nursery schools;

Risk Assessment

3. If these Regulations are not made then nursery school governing bodies will not be able to carry out the full range of functions and responsibilities as governing bodies of other maintained schools, which would disenfranchise these governing bodies and prevent them from being fully effective in helping to raise standards in the school. It would also mean that LEAs would have to take over the administration of certain functions and responsibilities and become involved in conducting the business of the school.

Options

Option 1: Do Nothing

4. If these Regulations are not made there will be no statutory basis for governing bodies of nursery schools to carry out some of the functions listed in the Regulations above. This would cause difficulties and mean that LEAs would have to take over the administration of certain functions and responsibilities and become involved in conducting the business of the school. This would cause uncertainty and confusion and the transition to the new system of nursery schools having governing bodies would not be as effective as it could be.

Option 2: Make the Legislation

5. If the Regulations are made they will make the necessary consequential amendments to a number of other regulations which will apply to nursery school governing bodies once these have been established in accordance with the provisions contained in the Government of Maintained Schools (Wales) Regulations 2005, which are due to be made on 18 October and to come into force on 31 October 2005.

Costs

6. The only financial implications associated with these Regulations are the costs of producing and distributing the Regulations for which there is provision in existing Assembly budgets. There are no cost implications for schools.

Consultation

With Stakeholders

7. No consultation has been carried out in respect of these Regulations as it was not considered necessary given that its purpose is simply to ensure a smooth and effective transition to the new system of nursery schools having governing bodies, and to ensure that there are no unintended consequences nor ambiguities relating to the coming into force of the provisions of the Education Act 2002 relating to the government of maintained schools, which enable Regulations (the proposed Government of Maintained Schools (Wales) 2005; the proposed Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005 and the Governors Allowances (Wales) Regulations 2005) to be made. These Regulations

have been subject to extensive consultation. There were therefore no new policy issues to be consulted on in relation to these Regulations.

With Subject Committee

8. The Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation on 9 March 2005 (ELL 2-03-05) (p.5), item No: ELL 35-05) and have remained static ever since. The Regulations were not identified for detailed scrutiny.

Review:

9. The working of these Regulations and related regulations will be monitored following implementation and if over time it is evident that there is a need for further change this would be considered and subject to consultation at that time.

Summary

10. These Regulations introduce transitional modifications to provisions in the Education Act 2002 which are being commenced through the Education Act 2002 (Commencement No.7) (Wales) Order 2005. They will also have the effect of applying provisions contained in the Regulations listed in paragraph 2 above to nursery school governing bodies once they are established in accordance with the Government of Maintained Schools (Wales) Regulations 2005. They are purely technical in nature.