

Explanatory Memorandum to the Government of Maintained Schools (Change of Category) (Wales) Regulations 2015

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 Government of Maintained Schools (Change of Category) (Wales) Regulations 2015

Huw Lewis
Minister for Education and Skills

14 July 2015

1. Description

These Regulations provide for all maintained schools, including federated schools, that change category to revise and replace the instrument of government and reconstitute the governing body. The School Standards and Organisation (Wales) Act 2013 largely replaced the parts of the School Standards and Framework Act 1998 and associated Regulations that made provision for schools to change category. These new Regulations revoke and replace the Change of Category of Maintained Schools (Wales) Regulations 2001 (as amended).

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

None.

3. Legislative background

The School Standards and Organisation (Wales) Act 2013 (the 2013 Act) received Royal Assent in March 2013. The 2013 Act amended the School Standards and Framework Act 1998 so that schools no longer changed category in accordance with Schedule 8 to that Act and Regulations made thereunder. Instead, proposals to change the category of school will be made in accordance with sections 45 to 47 of, and Schedule 4 to the 2013 Act. Those provisions largely replicated the Change of Category of Maintained Schools (Wales) Regulations 2001 (the 2001 Regulations).

Regulations 10 to 13 of the 2001 Regulations included requirements that the governing body and the local authority revise and replace the instrument of government and reconstitute the governing body of the school that changes category. The 2013 Act does not include these requirements but provides for the Welsh Ministers to make equivalent Regulations (Paragraph 38 of Schedule 4 to the 2013 Act). Regulations were not brought forward immediately because federated schools needed to be captured and fresh Regulations were pending. The Federation of Maintained Schools (Wales) Regulations 2014 (the 2014 Regulations) came into force on 22 May 2014 and gave local authorities powers to federate schools. Schools already had the power to federate by choice under provisions introduced in 2010. These powers were consolidated into the 2014 Regulations. When schools are federated the governing body and the local authority will need to revise the instrument of government and reconstitute the governing body. If a federated school later changes category it will need to revise and replace the instrument of government and reconstitute the governing body.

These Regulations make provision for schools (including federated schools) that change category to revise and replace the instrument of government and reconstitute the governing body.

The Government of Maintained Schools (Change of Category) (Wales) Regulations 2014 are made under section 97 of, and paragraph 38 to Schedule 4 to the School

Standards and Organisation (Wales) Act 2013 and are subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The purpose of these Regulations is to make provision in respect of dealing with the making of a new instrument of government for a school that will be changing its category in accordance with a proposal made under the 2013 Act

5. Consultation

As these Regulations are of a technical nature and improve the accessibility and coherence of legislation it was decided that consultation was unnecessary in this instance.

6. Regulatory Impact Assessment (RIA)

An RIA has not been undertaken as these Regulations do not create any additional regulatory burden and only seek to ensure the continuation of existing legislation.

The decision not to take an RIA is in line with Section 4.2 of the Welsh Ministers' RIA code which states that the Welsh Ministers policy is not to carry out an RIA *“Where routine technical amendments or factual amendments are required to update regulations etc. that have no major policy impact.”*

Given the subject matter and effect of the Regulations, it is considered that they do not have any effect relevant to the statutory duties at sections 77 – 79 of the Government of Wales Act 2006, or to statutory partners (sections 72 – 75).