

Explanatory Memorandum to the Welsh in Education Strategic Plans (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Language Division 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 Welsh in Education Strategic Plans (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams

Minister for Education

18 December 2019

PART 1

Description

The Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”) make provision in relation to:

- Duration of the Welsh in Education Strategic Plan (“Plan”)
- Form and content of the Plan
- Submission of the Plan to Welsh Ministers
- Approval of the Plan
- Timing and manner of publication of the Plan
- Consultation of the Plan
- Review of the Plan
- Revision of the Plan
- Revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013.

Matters of special interest to the Constitutional and Legislative Affairs Committee

There is no specific information which the Minister wishes to bring to the attention of the Committee.

Legislative background

These regulations are made under sections 84, 87 and 97 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”).

Section 84 of the 2013 Act requires a local authority to prepare a Welsh in Education Strategic Plan (“the Plan”) and outlines that a Plan should contain:

- a. a local authority's proposals on how it will carry out its education functions to:
 - i. improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area;
 - ii. improve the standards of Welsh medium education and of the teaching of Welsh in its area;
- b. the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
- c. report on the progress made to meet the targets contained in the previous plan or previous revised plan.

Section 84 also sets out with whom a local authority is required to consult in preparing or revising its Plan and provides the Welsh Ministers with a power to prescribe other persons with which the local authority must consult.

Under section 85 of the 2013 Act each local authority is required to submit its Plan to the Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a Plan (imposing its own plan in its place). Subsection (6) places a duty on a local authority to take all reasonable steps to implement its approved Plan.

Section 87 gives Welsh Ministers powers to make regulations which will make further provisions on matters such as the form and content of a Plan, its timing and duration, keeping the Plan under review, consultation and submission of the Plan for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

Section 87 also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions.

Section 97 of the 2013 Act provides that a power of the Welsh Ministers to make an order or regulations under the Act includes power—

- (a) to make different provision for different cases or classes of case, different areas or different purposes;
- (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
- (c) to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.

The Welsh in Education Strategic Plans (Wales) Regulations 2019 will be made under the Negative procedure.

Purpose and intended effect of the legislation

The Regulations make provision for a local authority to prepare a ten year Plan, the first to have effect from 1 September 2021, subject to the Welsh Ministers' approval. They also make provision for the following matters:

- a) The form and content of a Plan (regulation 3)
- b) The duration of a Plan (regulation 4)
- c) The date by which the Plan must be submitted to the Welsh Ministers for approval (regulation 5)
- d) The approval of a Plan (regulation 6)
- e) Timescales for submitting a review report (regulation 7)
- f) Arrangements for revising a Plan (regulation 8)
- g) The persons and bodies that a local authority must consult on the draft Plan (regulation 9)

- h) The date by which the Plan must be published (regulation 10)
- i) The manner of publication of a Plan (regulation 11)
- j) The revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 (regulation 12)

The purpose of these regulations is to improve the planning of Welsh-medium education provision by local authorities in order to support the current and future expectation for growth in Welsh-medium education. Improving the planning of Welsh medium education will also support the long-term national ambition for the Welsh language as set out in the Welsh Government's *Cymraeg 2050: A Million Welsh speakers* Strategy and the introduction of a new curriculum for Wales.

The Welsh in Education Strategic Plans and Assessing the Demand (Wales) Regulations 2013 ("the 2013 Regulations") were the first Regulations made under the powers in the 2013 Act. They, along with the 2013 Act provide the statutory framework for the planning of Welsh-medium education provision by local authorities. The first statutory Plans covered the three year period from 2014 to 2017. We are now in the second iteration spanning 2017-2020.

Whilst the 2013 Regulations improved Welsh-medium education planning by enabling local authorities to plan Welsh-medium education within a structured framework, both the enquiry by the Assembly's Children, Young People and Education (CYPE) Committee in 2015 as well as a thematic review of Welsh in Education Strategic Plans by Estyn in 2016 came to similar conclusions that Plans were not well enough aligned with the Welsh Government's national, long-term vision for Welsh-medium education.

A Rapid Review of the Welsh in Education Strategic Plans (2017) was commissioned in response to the low level of commitment and ambition presented by local authorities in their draft Plans for 2017-21. One of the recommendations was to review the legislation underpinning Welsh-medium education planning.

An independent Advisory Board was established between May 2018 and March 2019. The Board considered the changes needed to the 2013 Regulations, within the context of the Rapid Review's recommendations and wider policy developments in education (such as curriculum reform, ALN Act, school designations according to its provision of Welsh, childcare and learner travel).

In light of the above, the Board concluded that the current structure supporting the statutory planning of Welsh-medium education provision through local authority Plans no longer supported the long-term national ambition for the Welsh language. The report published by the Advisory Board in May 2019 can be found here: <https://gov.wales/improving-planning-welsh-medium-education>

Improvements the subordinate legislation will make to the current situation

Extending the duration of a Plan from its current 3 year cycle to 10 years.

The Rapid Review of the Plans called for the timeframe for delivering Plans to be extended and recommended that the timeframe was better aligned with the Welsh Government's capital funding schemes. Also, the Census, which remains our most reliable source of data to assess the vitality of the Welsh language and is the main indicator of progress in line with the *Cymraeg 2050* trajectory, is conducted every 10 years. Other planning considerations relevant to the Plans operate over a longer term. These include Local Development Plans (10 years) and Childcare Sufficiency Assessments (5 years) required under the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016/88. The aim is that Plans lead to better planning of Welsh-medium provision and an increase in the uptake of Welsh-medium education. However, effective planning can take a number of years to achieve, often beyond the three year lifespan of a Plan under the current system.

These Regulations require a local authority to prepare a Plan for the duration of 10 years. Plans will have effect from 1 September 2021 until 31 August 2031 (for the first Plan). This timeframe will ensure alignment with the 2031 *Cymraeg 2050* milestone. These Regulations also makes provision for a circumstance if, for whatever reason, the Welsh Ministers are unable to approve a Plan by 1 September, then that Plan will instead have effect one calendar month after the Welsh Ministers approve that plan. However, the Plan will still finish at the same time (31 August 2031) as all those Plans which have effect from 1 September.

Removing the duty to carry out a Welsh medium parental demand assessment and replace this duty with individual local authority 10 year targets, aligned with the Cymraeg 2050 national education target milestones.

Since the introduction of Welsh in Education Strategic Plans in 2013, the majority of local authorities have carried out at least one assessment of parental demand for Welsh medium-education. The assessments were originally intended to provide local authorities with direction and a better understanding of what Welsh-medium provision was needed, where and by when. Despite this, parental demand assessments have not, generally, led to a significant improvement to the way in which local authorities Plan their Welsh-medium provision. Due to the tendency of most local authorities to undertake an assessment once every three years, they quickly become out-dated and cannot reflect the linguistic changes seen in some rapidly changing communities.

These Regulations replace the duty to assess parental demand with a requirement for local authorities to outline in their Plan the expected increase of Year 1 children taught through the medium of Welsh in the local authority's area during the lifespan of the plan. Planning on the basis of an overarching long term target will encourage better, more strategic and ambitious planning.

With a target to aim for over a specific period of time, a local authority has the opportunity to consider the various routes and options available to it to reach that target and judge the preferred approach. It is intended that measuring the number and percentage of learners entering Welsh-medium education from the earlier Year 1 (a shift from the current indicator of 7 year olds) will enable a local authority to respond promptly and more efficiently to the demand for Welsh-medium school places. This was one of the recommendations made in the 2017 Rapid Review of the Plans.

Include provision in the Regulations requiring local authorities to have due regard to Welsh Government guidance when calculating their targets.

With regard to the individual local authority targets, the Welsh Government has introduced a methodology for calculating targets. This will be included in the guidance document to the Welsh in Education Strategic Plans (Wales) Regulations 2019 to be issued by the Welsh Ministers under section 87(4) of the 2013 Act. This methodology is consistent with the *Cymraeg 2050* milestones relating to the increase in learners in Welsh-medium education needed to reach the million Welsh speakers target by 2050. Calculations have been based on the number of Year 1 learners (5/6 year olds) taught through the medium of Welsh, according to information from the Pupil Level Annual School Census (PLASC). In addition, authorities have been grouped into different categories demonstrating the differences (whilst also acknowledging similarities) between the 22 local authorities.

We expect local authorities to calculate their 10 year target in accordance with the methodology outlined in the statutory Guidance to the Welsh in Education Strategic Plans (Wales) Regulations 2019, to which a local authority must have due regard. The Guidance will be published early February 2020.

Addressing matters relating to the form and content of a Plan

The Schedule to these regulations specifies the matters which are to be included in the Plan, which are to be set out in the form of specific targets and statements. The statements cover a broad spectrum of considerations necessary to enable strategic planning of Welsh-medium education. The Schedule in these regulations contains fewer statements than the 2013 Regulations (a reduction from 25 to 20). The statements in the Schedule to these Regulations also makes better use of data and knowledge to be collected through other legislation to inform planning of Welsh-medium education. An example of this is that the Plan must include a statement setting out how the local authority will use information derived through the Childcare Sufficiency Assessments, required under duties set out in regulation 3 of the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016. Another is the requirement for the plan to use information derived from reviews required under section 63 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

Although the statutory requirement to prepare and implement a Plan is conferred on the local authority, experience has shown that where there is strong local, regional and national collaboration, the greater the gains. As such,

emphasis has been placed on developing effective partnerships to support local authorities to deliver the changes needed to their provision of Welsh-medium education over the 10 year period.

Although some statements from the 2013 Regulations have been removed, others have been merged and new statements have been introduced. New statements include:

- statements dealing specifically with the introduction of 10-year targets.
- the use of childcare sufficiency assessment data to inform early planning of Welsh-medium maintained nursery provision
- consideration around how a local authority will increase the number of reception age children taught through the medium of Welsh.
- Increased focus on collaboration and partnership work with other local authorities and regional education consortia

Review and revision of the plan

With regard to keeping the Plan under review, we are introducing a requirement for local authorities to submit an annual update in the form of a concise review report, which we believe to be reasonable and commensurate. The aim of this new reporting structure is to reduce bureaucracy, with focus placed firmly on implementation. This is the only annual report that would be submitted to the Welsh Government.

With regard to submitting a revised Plan, provisions are included in the 2019 Regulations to revise the Plan only if, after having submitted the annual review report, it is clear to the local authority that a revised Plan is necessary.

Changing requirements around any supporting information to be included in a Plan

These Regulations no longer specify what supporting information local authorities must include in their Plans, as is the case in the current Regulations. Instead we will detail in the statutory guidance document the supporting information that should be included in the local authority Plan. We want to ensure that these Regulations remain as relevant as possible, as well as being flexible enough to respond to changes that may affect the content of Plans as the new curriculum is introduced. The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018 is one example of legislation introduced as part of the curriculum reform process that prohibits the publication of certain school data under current reporting arrangements.

Revocation of the 2013 regulations and savings of the plans made under the 2013 regulations

The Regulations will come into force on 1 January 2020. It will be a statutory requirement for local authorities to submit draft Plans to the Welsh Ministers for approval in the first year on 31 January 2021 and thereafter every 10 years in compliance with the Regulations.

Plans approved and which have effect prior to the coming into force of these Regulations will continue to have effect until the local authority's first 10 year Plan has effect.

Risks if Regulations are not made

No change to the current legislative framework underpinning the planning of Welsh-medium education would have a detrimental effect on local authorities' ability to satisfy the primary aim of a Welsh in Education Strategic Plan which is to improve the planning and standard of Welsh-medium education provision.

Welsh Government's experience of monitoring Plans, coupled with consistent feedback from local authorities and external stakeholders, as well as the various reviews into the Welsh in Education Strategic Plans already mentioned, reaffirm the collective view that the 2013 Regulations no longer support the national ambition of expanding Welsh-medium education provision. We need to be in a position where there is a greater equivalence of access to Welsh-medium education provision so that more learners have the choice of not only a first class standard of education, but also the chance to develop their linguistic skills so that they may be confident and proficient speakers of both Welsh and English, as a minimum.

The current requirements relating to keeping a Plan under review are considered overtly bureaucratic, leaving little time to focus on implementing the commitments within them. Some requirements, such as the parental demand assessments, have proven to be ineffective. The assessments quickly become out-dated and the information contained within them is unreliable and they have not resulted in local authorities adopting better Welsh-medium planning approaches as intended. If the status quo position with regard to the regulations is chosen then this particular requirement will be working directly against the ambition set out in the *Cymraeg 2050* to respond robustly and proactively to growing Welsh-medium education provision.

The advantage of moving to a framework that has, as a starting point, a clear target from which to plan, is that there are greater opportunities for local authorities to take a confident and direct approach to growing and improving the provision of Welsh-medium education in their area. Planning considerations around authority wide school organisation, or co-ordinating provision with other local authorities and agencies are given the time to develop. This all makes for a planning approach that will ultimately lead to more choice, and better standard of provision through the medium of Welsh for all learners.

There is a risk that an opportunity to make a significant and important contribution in the way Welsh-medium education provision is planned for by local authorities is missed if these regulations are not made. There is no doubt that the Welsh Government's ambition to reach a million Welsh speakers by 2050 is changing the discourse around the Welsh language, bringing with it a greater awareness of the benefits of being bilingual and multi-lingual, not only in Wales but further afield. Building on the foundations of an already established Welsh-medium education model is critical to ensure the opportunities are there for children, young people and their families to develop the linguistic skills they are likely to need in a bilingual Wales.

Consultation

The Welsh Government published a 15-week consultation, between 30 May and 13 September 2019, to seek views on the draft Welsh in Education Strategic Plans (Wales) Regulations 2019 and Guidance.

During this consultation period, Welsh Government also held four public consultation events in schools in Ceredigion, Conwy, Newport, and Rhondda Cynon Taf. Approximately 100 stakeholders attended the engagement events, including head teachers; local education authority representatives; Welsh language stakeholders; Teacher union representatives; FE colleges and University representatives. The events also included discussions on the promotion of Welsh-medium education and the benefits of bilingualism. Furthermore, a young people's session was held on 1 June 2019 during the Urdd National Eisteddfod with members of Bwrdd Syr IfanC, (the Urdd's national youth committee).

In addition to the stakeholders already referred to above, written responses were received from education bodies such as ESTYN, WLGA, regional consortia, Qualification Wales and The Association of Directors of Education in Wales (ADEW); as well as the Welsh Language Commissioner, the Children's Commissioner, other bodies and individuals. Welsh Government received a total of 72 written responses to this consultation.

We are satisfied the changes proposed in the draft 2019 Regulations during consultation have been welcomed overall. Responses have been generally in favour of the two most significant changes which are extending the timeframe of a Plan to 10 years and removing the requirement to undertake a parental demand assessment and replacing it with an individually calculated target to reach by the end of the new 10 year timeframe.

Responses received reaffirmed our view that a 3 year planning cycle and the duty to undertake a costly and ineffective demand assessment is detrimental to our national commitment to develop Welsh-medium education provision and future bilingual citizens. The regulatory framework as it currently stands does not provide the necessary infrastructure needed to realise our ambitions for the Welsh language. For example, several responses voiced frustration around the

time spent currently updating the three-year Plan instead of developing and implementing the commitments within them. Others referred to the opportunity a 10-year Plan brings in terms of improved strategic planning and the benefits around working towards a long-term goal and vision.

Responses around the requirement for local authorities to outline in their Plan the expected increase of Year 1 children taught through the medium of Welsh in the local authority's area during the lifespan of the plan indicated that the introduction of these targets would be viewed as sensible and reasonable. The proposed methodology to calculate these targets, which formed part of the consultation on the draft 2019 Regulations and were generally welcomed by responders and stakeholders, demonstrates a clear link between individual targets per area and the *Cymraeg 2050* ambition.

Responses generally supported the move towards local authorities planning their Welsh-medium education provision in a much more proactive way. Even so, a few wished to note that there must be recognition of factors that are out of a local authority's control. Factors such as the current political climate, workforce capacity issues and financial insecurities.

We appreciate that a local authority is not able to respond to all elements of Welsh in education planning by itself, and that other stakeholders need to support this work. The shift in focus in some statements (outlined in the Schedule to regulation 3) relating to authorities working in partnership instead of being the sole deliverer is recognition of this fact.

We are clear that it is Welsh Government's responsibility to lead the national response to matters such as initial teacher education, learner travel, workforce and resource issues. However, we need local authorities and other stakeholders to support us in identifying the gaps that need addressing. This is why these matters continue to be included in Plan requirements.

Some minor changes have been made to the 2019 Regulations post-consultation. Regulation 7 has undergone some redrafting to ensure clarity around the annual reporting arrangements. Particular consideration has also been given to the Schedule to the Regulations, as, whilst many respondents agreed the manner in which the statements were set out, a few were critical of the wording, stating that clear targets were needed instead of statements, particularly around matters relating to learner progression. These matters have been addressed by some minor redrafting and by incorporating targets, where practicable to do so.

A summary of the consultation responses is available at:

<https://gov.wales/draft-welsh-education-strategic-plans-regulations-wales-2019-and-guidance>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

1.1 This Regulatory Impact Assessment considers two options.

- Option 1: Keep the status quo – Local Authorities would continue to prepare Welsh in Education Strategic Plans under the current arrangements.
- Option 2: Introduce the Welsh in Education Strategic Plans (Wales) Regulations 2019 as drafted.

2. Costs and benefits

OPTION 1: Keep the status quo (i.e. No change)

2.1 Currently, local authorities prepare plans under section 84 of the School Standards and Organisational (Wales) Act 2013. Plans are prepared in a 3-year cycle from 1 April to 31 March (for example 1 April 2015 – 31 March 2018) and draft new plans have to be submitted to the Welsh Ministers for approval in the December of the year before existing plans are due to end. Under this option these statutory arrangements will continue.

Costs

2.2 This is the no change option and as such there are no additional costs associated with this option. The following section presents a summary of the costs associated with the current requirements. The costs of the current system were originally estimated in the Regulatory Impact Assessment for the School Standards and Organisational (Wales) Act 2013¹.

Welsh Government Administration Costs

2.3 The administration costs for the Welsh Government are associated with administration of the processes involved in preparing and reviewing plans. Local authorities are required to submit their draft plans for approval and the plans are subject to annual monitoring once approved. This involves the deployment of staff to oversee the submission of plans and to undertake the approval and monitoring process.

2.4 The tasks undertaken by Welsh Government staff include assessing each individual draft Plan, providing written and verbal feedback to local authorities, receiving and responding to updates on progress and revisions, and advising Ministers on the content of Plans and on progress made. The work also includes undertaking project management duties associated with

¹[http://www.assembly.wales/Laid%20Documents/PRI-LD9157-EM%20-%20Revised%20Explanatory%20Memorandum%20-%20School%20Standards%20and%20Organisation%20\(Wales\)%20Bill-08012013-241929/pri-ld9157-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/PRI-LD9157-EM%20-%20Revised%20Explanatory%20Memorandum%20-%20School%20Standards%20and%20Organisation%20(Wales)%20Bill-08012013-241929/pri-ld9157-em-e-English.pdf)

implementation of Plans, for example, reviews into effective delivery of Plans by local authorities, research into models for delivering Welsh-medium education by schools including Welsh language latecomer provision, developing alternative teaching provision using digital technologies as well as monitoring effective delivery of Welsh-medium capital grants. These duties often change on an annual basis. The Welsh Government has administered the system since 2013 therefore have a firm evidence based understanding of the staffing levels required to deal with the system. The agreed complement of staff is currently 1 Executive Band 2; 4 full time equivalent (FTE) Management Band 1 officers and 1 FTE Management Band 2 officer deployed to work on the plans. These staffing levels would continue under this option. The current recurring annual staffing costs are as follows:

| Staff Grade | Number | Cost* | Total Cost (to nearest £'000) |
|------------------|--------|---------|-------------------------------|
| Executive Band 2 | 1 | £76,308 | £76,000 |
| Management Band1 | 4 | £57,977 | £232,000 |
| Management Band2 | 1 | £45,644 | £46,000 |
| | | | £354,000 |

**Cost is based on the average annual gross salary costs for 2018-19. The staff costs include on-costs (i.e. the employer's National Insurance and pension contributions).*

In addition to the staff costs outlined above the travel costs incurred to meet with local authorities amount to approximately **£2,000 per annum**. These are annual recurring costs already funded from the Welsh Government Direct Running Costs.

The total cost to Welsh Government is therefore £356,000 per annum.

Local Authority estimated costs

2.5 Costs involved in the preparation and implementation of Plans:

Local authorities allocate officer time to prepare and submit Welsh in Education Strategic Plans, and respond to feedback from the Welsh Government. Officer time is also allocated to support the implementation of the plans in their local area, which includes leading on Welsh in education forums. As a rule, this is not a full time officer role within local authorities. On the basis of Welsh Government's experience of dealing with local authorities since these arrangements have been in place. We estimate that it entails the time of a FTE Management Band 1 and a Management Band 3 officer in each local authority for a period of approximately 4 months per year.

Local authorities are under duties to publish their Plans. They tend to do this by publishing them on their own websites and may print copies on demand if required. The costs associated with this are negligible and most local authorities do not routinely publish hard copies of their plans.

The recurring staffing costs per annum for all 22 local authorities in Wales are estimated to be as follows:

| Staff Grade | Number | *Cost (to nearest £'000) |
|--------------|--------|--------------------------|
| MB1 | 0.33 | £19,132x 22 = £421,000 |
| MB3 | 0.33 | £11,576 x 22 = £255,000 |
| Total | | £676,000 |

**Cost is based on the Welsh Government average annual gross salary costs for 2018-19. The staff costs include on-costs (i.e. the employer's National Insurance and pension contributions)*

2.6 Conducting surveys to measure the demand for Welsh-medium education

The Welsh in Education Strategic Plans and Assessing the Demand (Wales) Regulations 2013 requires local authorities to assess parental demand for Welsh-medium education provision. The assessments are intended to provide local authorities with direction and a better understanding of what Welsh-medium provision is needed, where it is needed, and by when. This requirement would continue under option 1.

The average costs of administering and analysing surveys is estimated at a maximum of £15,000 per survey. The guidelines recommend undertaking surveys once every 3 years. Therefore, the likely maximum average cost for conducting such surveys is estimated at a recurring cost of £5,000 per annum, per local authority. Due to their mechanisms of categorising schools, Gwynedd and Anglesey local authorities do not conduct surveys therefore the cost relevant to 20 local authorities, not 22.

Total Cost: £5000 per annum in 20 local authorities = **£100,000** recurring cost per annum.

Total Administration Costs of the Status Quo option

2.7 The **total recurring administration per annum costs** are as follows:

| | |
|------------------------------|-------------------|
| Welsh Government staff costs | £356,000 |
| Local authority staff costs | £676,000 |
| Conducting Surveys | £100,000 |
| TOTAL | £1,132,000 |

Costs of implementing the plans

- 2.8 Once the plans are approved by the Welsh Ministers they should be implemented by local authorities.
- 2.9 There are costs associated with increasing the provision of Welsh-medium education. These costs may include building new or repurposing schools, expanding current provision or running immersion centres. Whilst recognising the administrative, learner travel, staffing (nursery, statutory age as well as ALN co-ordinators) costs incurred as a result of these developments, this should be regarded as expenditure on the education system rather than expenditure on delivering Welsh language policy. To a degree, expenditure on increasing Welsh-medium education provision displaces expenditure that would be spent otherwise on educating through the medium of English.
- 2.10 Funding for statutory age education in schools in Wales, as for other services delivered by local government, is provided in the main by the Welsh Government through the local government revenue settlement which includes the Revenue Support Grant (“RSG”). The funding is not ring-fenced, as the Welsh Government considers that local authorities are best placed to judge local needs and circumstances and to fund schools accordingly. The Plans assist them in identifying Welsh-medium provision needs and deciding how to plan their schools expenditure. Once the RSG has been distributed to local authorities, it is the responsibility of individual authorities to set budgets for their schools which are determined by a local funding formula. The School Funding (Wales) Regulations 2010 require 70% of funding for schools’ budgets to be distributed on the basis of pupil numbers. However, local authorities may decide how to weight these pupil numbers according to a number of factors, such as Additional Learning Need and language medium.
- 2.11 Authorities have discretion, albeit within a context of competing priorities and tightening budgets, to distribute the remaining 30% on the basis of a range of factors so that they can take account of individual school circumstances. In accordance with the regulatory framework, local authorities may take into account in their funding formula whether a pupil is being educated through the medium of Welsh and fund schools accordingly, taking into account the costs involved with delivering the same service through the medium of the Welsh language.
- 2.12 The Welsh Government also distributes £150m per year via the four regional consortia in the form of the Regional Consortia School Improvement Grant (“RCSIG”). This is made up of a collection of other Welsh Government education grants for local authorities and schools, packaged into a single funding stream, of which £118m was the Education Improvement Grant (“EIG”). The purpose of this funding programme is to support the regional consortia and the related authorities within the consortia in delivering the aspirations and priorities for schools and education outlined within the Welsh Government’s national strategy, *Prosperity for All*, and our plan of action for education, *Education in Wales*:

Our national mission.

- 2.13 *Education in Wales: Our national mission* sets out how the school system will move forward over the period 2017-21, securing implementation of the new curriculum with a focus on leadership, professional learning, and excellence and equity within a self-improving system. The action plan focuses on raising standards for all, reducing the attainment gap, and delivering an education system that is a source of national pride and public confidence, which are our overarching aspirations for education in Wales.
- 2.14 One of the funding criteria agreed with the consortia is to support the delivery of local authority Welsh in Education Strategic Plans.
- 2.15 Therefore, the duty to ensure that suitable educational provision is made available to all children rests with local authorities and the amount of funding each authority sets aside for school budgets is entirely for the authority to determine. Local authorities are expected to organise their schools as efficiently as possible in order to make the best use of resources for the benefit of all pupils. Implementing their Plans and the costs linked to that should therefore be viewed within the wider context of funding the authority's education system.

Benefits and dis-benefits

- 2.16 The benefits of this current status quo option is the Welsh Ministers and local authorities take a shared responsibility for creating a more effective planning system for Welsh-medium education which reflects local needs. The statutory requirement on local authorities to prepare a plan, and the requirement that the Welsh Ministers must approve and monitor that plan, ensures that there is a local and national planning and accountability system for Welsh-medium education. The fact that plans are statutory has improved Welsh-medium education planning insofar as they enable local authorities to plan Welsh-medium education within a structured framework.
- 2.17 The main dis-benefit of this status quo option is that the current pace of change in Welsh-medium education provision is not sufficient in order to effectively contribute to the Government's target of a million Welsh speakers by 2050. As referred to in part 1, this has been supported by an enquiry by the Assembly's Children, Young People and Education Committee in 2015² and by a thematic review of Plans by Estyn in 2016³. Both came to similar conclusions which were that the plans were not well enough aligned with the Welsh Government's vision for Welsh-medium education and that the partnership between local authorities and the Welsh Government in setting targets in Plans could be strengthened.
- 2.18 The external reviews referred to in 2.17 (above), the Rapid Review, and the work of the Ministerial Advisory Board undertaken in 2017 (referred in

² <http://www.assembly.wales/laid%20documents/cr-ld10475/cr-ld10475-e.pdf>

³ <https://www.estyn.gov.wales/thematic-reports/local-authority-welsh-education-strategic-plans>

Part 1) , as well as Welsh Government's experiences in approving and monitoring Plans all point towards the main dis-benefit of the current system and strengthen the case for change. That being if the way most local authorities plan their Welsh-medium education provision does not change, the additional number of children needed in Welsh-medium education to deliver the national education targets set by *Cymraeg 2050* will not be met. These Regulations emanate from the recommendations made by the Advisory Group and address the dis-benefits of the status quo option.

OPTION 2: Introduce the Welsh in Education Strategic Plans (Wales) Regulations 2019

Costs

2.19 Option 1, above identifies the following categories of costs:

- Welsh Government Administration Costs
- Local Authority costs (administration / surveys)
- Costs of implementing the plans

2.20 We do not believe that following Option 2 and introducing these Regulations would have a significant impact on Administration Costs associated with preparing and monitoring Plans. The move from producing 3 year Plans to producing a 10 year Plan will reduce the number of Plans that have to be prepared by local authorities. Currently, local authorities consult upon and submit a revised Plan every year. On a practical basis this will not impact upon the Welsh Government's work of monitoring the Plans' implementation or on the work of advising authorities and updating Ministers on progress as the Plans will have to be continually monitored throughout their 10 year lifespan. Also, the fact that authorities will have to prepare an annual review report, and may have to produce revised plans if the progress is not satisfactory, will have a negligible impact upon the workload of local authorities.

2.21 The Regulations that will be presented if Option 2 is pursued removes the duties on local authorities to plan their provision of Welsh-medium education based on the results of a parental assessment of need. Under the costs section of Option 1, it was estimated that this duty incurs a total recurring cost per annum of £100,000 (total cost across 20 local authorities). Under Option 2 this cost would not be incurred therefore would be saved.

2.22 There are potential increased costs in the work of preparing Plans under Option 2 compared to the status quo. These costs would be administrative in the sense that authorities may have to engage with more staff during the initial target setting process, including statistical, finance and school organisational colleagues. However, this would not be an annual incurred cost but a one off cost which would be incurred during the preparation of the 10 year Plan.

2.23 It is the view of the Welsh Ministers that there are negligible differences in the administration costs between Options 1 and 2.

Costs of implementing the plans

2.24 As noted in Option 1, above, the costs of implementing Plans developed under the proposed Regulations will still have to be met from the local authorities' revenue settlement as provided to them by Welsh Government. Under this option, the regional consortia will also continue to receive EIG funding (incorporated within the RCSIG) from the Welsh Government to support the delivery of the aspirations and priorities for schools and education outlined within the Welsh Government's national strategy, *Prosperity for All*, and the plan of action for education, *Education in Wales: Our national mission*.

2.25 It is expected that the Regulations proposed under this Option 2 will lead to a step change in the planning and ultimately in the provision of Welsh-medium education. This will be required if the target of having a million Welsh speakers by 2050 is to be met. This will mean a re-organisation of education provision in many local authorities resulting in more learners receiving Welsh-medium education.

2.26 However, the Regulations in themselves will not lead to authorities having to educate more children as the Regulations will not impact upon population or demographic trends. But more school places may need to be considered in order to provide an adequate provision of school places.

2.27 As an indirect consequence of increasing Welsh-medium provision in line with the Plans, there is likely to be a need for additional Welsh-medium teaching capacity. This is already being considered as part of wider education reforms due to the targets in *Cymraeg 2050* to increase the Welsh-medium workforce. Therefore the costs involved are not being accounted for in this RIA. It is worth noting however, that the Welsh Government has during the past year announced cash incentives for new teachers, some aimed specifically at increasing provision of teaching Welsh as a subject and through the medium of Welsh. Alternative routes to teaching, such as part-time and distance learning are also being introduced.

2.28 The 1996 Education Act defines a local authority's 'education functions'. It states that local authorities have a statutory duty to secure provision of sufficient school places and, in so doing, to have regard to the general principle that pupils should be educated in accordance with the wishes of parents, so far as that is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure. If the proposed Regulations are made then authorities would still have to comply with those core duties when planning their education provision.

Benefits and dis-benefits

2.29 The main benefit of introducing the Regulations as proposed in this option is policy related in that it responds to the challenges set by the Welsh Government's 2017 Welsh language strategy, *Cymraeg 2050*, and its headline target to have a million Welsh speakers by 2050. Expanding Welsh-medium education is critical to the successful implementation of the strategy. 438,000 additional Welsh speakers are needed to achieve the 1 million target by 2050. For this to be achieved, certain transformational changes within the education sector must take place. These include the following outcomes:

- More nursery children/3 year olds receiving their education through the medium of Welsh
- More reception class children/ 5 year olds receiving their education through the medium of Welsh
- More children continuing to improve their Welsh language skills when transferring from one stage of their statutory education to another
- More learners studying for assessed qualifications in Welsh (as a subject) and subjects through the medium of Welsh
- More opportunities for learners to use Welsh in different contexts in school.
- An increase in Welsh-medium education provision for learners with additional learning needs (in accordance with duties determined by the ALN Act)
- An increase in the number of teaching staff able to teach Welsh (as a subject) and teach through the medium of Welsh

2.30 Benefits will also arise from changing the plans from following a three year cycle as is the case in option 1, to a ten year cycle as proposed in this option. The introduction of Plans as 3-year plans emanate from financial rather than strategic policy delivery needs. Prior to the current arrangements, the Welsh Language Board had been using its powers under the Welsh Language Act 1993 to require local authorities to draw up and agree a Welsh Education Scheme (WES). These WES were produced in addition to local authorities' Welsh Language Schemes. Both schemes followed a 3-year cycle. Although this change entails preparing a single Plan for a 10 year period we do not believe that this will result in any financial cost savings as local authorities will still have to prepare an annual review report. Therefore the administrative tasks and workload associated with preparing, implementing and monitoring a plan is unlikely to decrease.

2.31 The Plans developed under these Regulations should lead to more Welsh-medium schools opening, built or extended, as well as planning the implementation of other innovative proposals to enable more children the opportunity of becoming confident Welsh speakers. Major policy and capital developments such as these can take a number of years to achieve. Therefore there would be benefits associated in moving towards 10-year plans:

- The timeframe for plans would coincide with the Welsh Government's capital funding schemes.

- The Census, which remains our most reliable source of data to assess the vitality of the Welsh language and is the main indicator of progress in line with the *Cymraeg 2050* trajectory, is conducted every 10 years.
- Other planning considerations relevant to planning Welsh-medium education provision, such as the Childcare Sufficiency Assessments required under the Childcare Act 2006, and individual development plans (IDPs) for children and young people with additional learning needs (ALN) introduced by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as well as LDPs are conducted every 5 -10 years.

2.32 It is logical and beneficial therefore that the Plans developed under these Regulations are for a longer period than the current three years so that they are better aligned with the above planning cycles. It would encourage a more long-term, meaningful and ambitious planning of Welsh-medium education. In addition, the proposed Regulations would result in having Plans that would come into force on 1 September. Having Plans that operate in line with the academic school year allowing better analysis and review of school data, would also be beneficial to the planning process.

2.33 There is a risk that Option 2 could result in a dis-benefit by removing the statutory duty on local authorities to assess parental demand for Welsh-medium education - this option could create a void in locally sourced data and evidence. However, whilst the assessments were originally intended to provide local authorities with direction and a better understanding of what Welsh-medium provision was needed, there has not been sufficient evidence that they have given local authorities a robust evidence base on which to plan. In addition, the assessment can become quickly out-dated. Despite the potential dis-benefit removing the duty to assess parental demand, responses during consultation on the draft Regulations highlighted some benefits in continuing to gather information about parental need, others agreeing this could form part of knowledge gathering exercises related to Welsh-medium education promotional strategies or campaigns. We therefore believe that the approach proposed by Option 2, that will see local authorities setting their own targets having given due regard to Welsh Government guidance, will produce better planning approaches that will be consistent with the long-term strategic aims of *Cymraeg 2050*.

Conclusion

2.34 As noted above, the Welsh Government believes that the difference in administration costs incurred by Option 2 compared to option 1 would be negligible therefore the policy related benefits that would result from pursuing Option 2 are justified. It is likely that Option 2 would lead to increased implementation costs through having to create more school places to offer a genuine choice to parents. However this could still be within the constraints of the revenue support provided to authorities and would be subject to the local democracy process and the duty in the 1996 Education Act to secure provision whilst avoiding unreasonable public

expenditure. In terms of capital grant support, additional school capital funding has been channelled by Welsh Government to enable authorities prepare for the next cycle of Plans. The introduction of the Welsh in Education Strategic Plans support programme, aimed at providing practical advice and support to individual local authorities on aspects of implementation, as well as an annual conference to share good practice should further strengthen efficient delivery. Considering that this change is required in order to meet the aspirations of *Cymraeg 2050* the Welsh Ministers propose that option 2 is followed and believe that any additional costs are justified.

3. Consultation

3.1 The draft Regulations and RIA was subject to a public consultation between 30 May and 13 September 2019.

3.2 During the consultation events and in the written responses received, polar views were expressed around the approach taken in the draft RIA. Local authorities in particular expressed strong views around the increased financial implications changes proposed in the Regulations could, in their view, entail. Despite agreeing with the policy intent, many felt the current state of school budgets and the system in place for educational funding did not support development of Plans and separate, additional funding invested in education in Wales was needed. Others on the other hand, including some education bodies, agreed strongly with Option 2 of the RIA, noting that the benefits of making new Regulations outweighed the dis-benefits. The main benefit being the new Regulations respond robustly to the challenges presented by the *Cymraeg 2050: A million Welsh speakers strategy*.

3.3 Adequate funding to support the requirements outlined in the Schedule to the Regulations featured heavily in local authority responses. It should be noted that these Regulations include fewer statements than the 2013 Regulations (5 less). Any new statements propose that authorities use information and knowledge derived from duties that must already be adhered to by other legislation (regarding Childcare sufficiency and ALN provision). Making the best use of data and information already available has been a consistent drafting consideration of these Regulations. The remainder of the statements are already required under current Plan arrangements.

3.4 In terms of specific support, the Welsh Government established a combined Welsh medium Capital and Childcare offer grant fund of £46m in 2018 to support the growth in Welsh medium education provision. This enabled Welsh Government to support some 46 projects across 20 local authorities which will, when all projects are realised, lead to an additional 2818 school and childcare places for Welsh medium learners. This funding boost will go some way to support the increase in provision needed to respond to the *Cymraeg 2050* ambition and the new arrangements. This funding is included in the £110 million additional grant funding allocated to local

authorities and colleges via the Childcare Offer Capital Grant, Community Hubs Grant, Reducing Infant Class Sizes Grant, VA Urgent Repairs Grant, and Digital 2030 Grant.

3.5 This funding is also an addition to the rolling 21st century schools capital grant programme to support school modernisation and organisation, which forms part of the Government's delivery programme for Wales. The total investment from Welsh Government and delivery partners for Band A, 21st Century Schools and Colleges Capital Programme currently stands at £3.7 billion, with over £1.4 billion invested over the last five years, and a further £2.3 billion investment planned for the next phase.

3.6 That is not to say that we do not recognise the challenges faced by local authorities at a time when school funding locally, regionally and nationally is constrained. We remain confident, however, that the proposals introduced by the draft regulations will lead to better planning, reduced bureaucracy and greater efficiency.

4. Competition Assessment

4.1 The proposed legislation has no effect on business, charities or the voluntary sector therefore a competition assessment has not been undertaken.

5. Post implementation review

5.1 The new process for developing Plans outlined in the proposed legislation will include a proportionate level of monitoring in order for local authorities and Welsh Government to have a consistently clear understanding of progress made. A 10 year plan will be produced and annual review report submitted to the Welsh Government. This process will entail a consistent dialogue between the Welsh Government and local authorities over the lifetime of the Plan. This will enable local authorities and Welsh Government to quickly identify any difficulties with the legislation, as well as enable the Welsh Government to ascertain the support needed by local authorities.