

Explanatory Memorandum to the Education (Hazardous Equipment in Schools) (Removal of Restrictions) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Hazardous Equipment in Schools) (Removal of Restrictions of Use) (Wales) Regulations 2017

Kirsty Williams AM
Cabinet Secretary for Education

5 October 2017

1. Description

The Regulations repeal provisions that require maintained and non maintained schools and further education institutions to apply to the Welsh Ministers for consent to use ionising radioactive materials. They also repeal provisions relating to the inspection of boarding hostels for pupils with special educational needs (SEN).

The provisions are contained in:

- The Education (Schools and Further and Higher Education) Regulations 1989.
- The Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994.

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

None.

3. Legislative background

Regulation 7 of the Education (Schools and Further and Higher Education) Regulations 1989 and paragraph 7 of Schedule 1 of the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 require maintained and independent schools and further education institutions to gain approval from the Welsh Ministers to procure and use ionising radioactive materials.

Regulation 9 of the Education (Schools and Further and Higher Education) Regulations 1989 provides for the inspection of boarding hostel for pupils with SEN provided by the local authority.

The powers to make regulations repealing the provisions are set out in sections 347(2), 544(2), 546 and 569(4) and (5) of the Education Act 1996 and sections 203(3) and 210(1) of the Education Act 2002. The functions in the 1996 Act were conferred on the Secretary of State and transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of paragraph 30 and Schedule 11 to the Government of Wales Act 2006. The functions in the 2002 Act were conferred on the National Assembly for Wales and are now vested in the Welsh Ministers by virtue of paragraph 30 and Schedule 11 of the Government of Wales Act 2006.

The Regulations follow the Negative Procedure.

4. Purpose & intended effect of the legislation

The purpose and intended effect of the legislation is to:

- remove the requirement on maintained and non maintained schools and further education institutions to apply to Welsh Ministers for consent to procure and use ionising radioactive materials; and
- to remove the requirement for Estyn to inspect boarding hostels for pupils with SEN in Wales provided by the local authority.

Background

In relation to the requirement on schools and further education institutions to apply for consent to use ionising radioactive materials, approval is currently sought using the Welsh Government form IR(C), which is submitted via their respective local authorities to the Education Directorate. The form was evaluated by the Welsh Government's Chief Environmental Scientific Adviser in respect of the risk, and by Estyn regarding the curriculum requirement.

The Welsh Government considers the requirement should be removed for the following reasons:

- There is no worth in the consent system as schools gain approval for the use of radioactive materials which are otherwise controlled through more descriptive UK health and safety legislation. Section 2 of the Managing Ionising Radiations and Radioactive Substances in Schools and Colleges (CLEAPSS, May 2017) guidance refers to the legal background and regulations that govern most of the acquisition, use and disposal of radioactive substances used in school science. The Ionising Radiation Regulations 1999 specify how employers must ensure the safety of their employees who work with ionising radiations and the Environmental Permitting (England and Wales) Regulations 2010 regulate the acquisition, security and disposal of radioactive substances. The legislation applies to schools and further education institutions.
- A consultation that was carried out in 2010/11 reviewing several consent systems, including the consent from Welsh Government to use ionising radioactive materials in schools found that there was no appetite to retain the requirement.
- In reviewing the effectiveness and necessity of the consent system, local authorities in Wales were contacted and it was found that some of them were unaware of the requirement to gain approval from Welsh Government.
- The consent system is complex and unnecessary and a burden for all involved.
- Very few applications have been made to the Welsh Government. Nineteen applications were made between 2008 and 2014 and only two have been made since 2014.
- The Welsh Government's Chief Environmental Scientific Adviser at the time identified the difficulty in judging the merit of applications and the

Estyn advisor at the time strongly supported the reduction in bureaucracy in relation to radiation approvals.

- In England, similar regulations, the Education (Hazardous Equipment and Materials in Schools) (Removal of Restrictions on Use) (England) Regulations 2008, have been repealed and guidance provided by the Administrative Memorandum 1/92 has been superseded through the Consortium of Local Authorities for the Provision of Science Services (CLEAPSS) guidance, which has also been adopted in Wales.

Repealing the requirement removes an unnecessary burden on schools and further education institutions to apply to Welsh Ministers for consent to use ionising radioactive materials that are otherwise controlled through other UK health and safety legislation.

Regarding the requirement to inspect boarding hostels for pupils with SEN, Welsh Government officials consulted internally with SEN policy officials and also with Estyn and CSSIW to ask whether this provision is used. All parties have advised that there are currently no boarding hostels for pupils with SEN in Wales and there are no plans to introduce any. Therefore, there is no requirement for the provision. The provision has also been repealed in England.

Repealing the requirement removes a provision in legislation that is not used.

5. Consultation

The Welsh Government carried out a 6 week public consultation on “Repealing provisions in the Education (Schools and Further and Higher Education) Regulations 1989 and the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994” between 14 June to 26 July 2017. The consultation sought views on repealing the provisions mentioned above.

Three respondents replied to the consultation. A summary of the consultation responses will be published here:

<https://consultations.gov.wales/consultations/repealing-provisions-education-schools-and-further-and-higher-education-regulations>

Two out of the three respondents supported both of the proposals. The other respondent neither agreed nor disagreed.

6. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been prepared in respect of these regulations as they are making a minor amendment to existing legislation and have no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06) and do not impose any additional costs.