

REGULATORY APPRAISAL

EDUCATION, WALES

DESIGNATION OF SCHOOLS HAVING A RELIGIOUS CHARACTER (WALES) ORDER 2007

Background

1. This Order designates schools that have a religious character and states what that religious character is. Designation as a school with a religious character does not change the religious character of a school. Such a change could only be achieved by publication of statutory proposals to close the school and open a new school. Religious character is not acquired or lost by virtue of being designated or not designated: designation is the recognition of a religious character, which a school already has as a question of fact.

Tests of Religious Character

2. Under the Religious Character of Schools (Designation Procedure) Regulations 1998, a foundation or voluntary school, which existed on 1 September 1999, shall be designated as a school, which has a religious character if it satisfies one of the following tests:
 - at least one member of the governing body of the school is a person appointed as a foundation governor to represent the interests of one or more religions or religious denominations; or
 - the school premises when first established were provided on trust so that if, for example, the school were closed, any proceeds of sale would be applied for the benefit of one or more religions or religious denominations; and
 - the school premises when first established were provided on trust in connection with: (a) the provision of education; or (b) the conduct of an educational institution in accordance with the tenets of one or more religious denominations.

Effect

3. The intended effect of the Order is to update the list of schools in Wales that have a religious character by adding four new schools, which do not yet appear in the Designation of Schools Having a Religious Character (Wales) Order 1999 (the 1999 Order) as amended by the Designation of Schools Having a Religious Character and Amendments (Wales) Order 2004 (the 2004 Order). It removes twelve schools, which have closed and amends the designation of three further schools, which have, as the result of statutory proposals, changed category. This Order will revoke and replace the 1999 and 2004 Orders.
4. The Order designates four new schools to be added to the list of designated schools and sets out what is the religious character of those

schools. These schools meet the test for inclusion as required by Regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998. They are:

Church in Wales

- Ysgol Ger Y Llan Church in Wales Voluntary Controlled School, Pembrokeshire; and
- Osbaston Voluntary Controlled Primary School, Monmouthshire.

Roman Catholic

- St Francis Roman Catholic Voluntary Controlled School, Cardiff;

Joint Roman Catholic and Anglican

- St Joseph's Catholic and Anglican High School, Wrexham.

5. The Order also amends the 1999 Order (as amended by the 2004 Order) by removing from the list twelve schools, which have closed. These schools are:

Church in Wales

- Tredafydd Voluntary Controlled Primary School, Pembrokeshire;
- Letterston Voluntary Controlled School, Pembrokeshire;
- Ysgol Llanfihangel Ar Arth, Carmarthenshire;
- Llandowror Voluntary Controlled Primary School, Carmarthenshire;
- Penarth Church in Wales Primary School, Vale of Glamorgan;
- Llanellen Church Voluntary Junior and Infants School, Monmouthshire;
- Osbaston Church Voluntary Junior School, Monmouthshire; and
- Penally Voluntary Controlled Church in Wales Primary School, Pembrokeshire.

Roman Catholic

- St Francis Roman Catholic Junior School, Cardiff;
- St Francis Roman Catholic Infant School, Cardiff; and
- St Joseph's Roman Catholic High School, Wrexham

Church of England

- Sarn Church of England School, Powys

6. Three Church in Wales schools listed on the 1999 Order have, as the result of the publication of statutory proposals and with approval from the National Assembly for Wales, changed category from Voluntary Controlled to Voluntary Aided in accordance with the Change of Category of Maintained Schools (Wales) Regulations 2001. This Order will reflect these changes. These schools are:

- Ysgol Trefnant, Denbighshire
- Ponthir Church in Wales School, Torfaen; and
- Llanfair Kilgeddin Church Voluntary School, Monmouthshire

Risk Assessment

7. Once the Assembly is aware that a school has a religious character it must, by law, designate that school. If this Order is not made and the schools are not designated, there is a risk that the Assembly would be open to judicial challenge.

Options

Option 1: Do Nothing

8. Subsection (3) of Section 69 of the School Standards and Framework Act 1998 states that a foundation or voluntary school has a religious character if it is so designated by an Order. In Wales, such Orders are made by the National Assembly. There is no alternative to making this Order once the National Assembly is satisfied that the schools have a religious character. If this Order is not made and the schools are not designated, there is a risk that the Assembly would be open to judicial challenge. The standing of the schools would remain unclear.

Option 2: Make the Legislation

9. This Order designates four new schools to be added to the list of designated schools and updates the list to remove twelve schools, which have closed. It also recognises the change of category of three schools.

Benefits

10. This Order is to be made as a result of a statutory duty. Schools being designated will benefit by being able to appoint staff on the basis of their religious beliefs.

Costs

11. There are no cost implications for the Assembly, Local Authorities or for the schools involved as a result of making this Order.

Consultation

With Stakeholders

12. Consultation was considered unnecessary because this Order simply updates the schools in the 1999 Order, as amended by the 2004 Order. There is no decision or exercise of judgement to be made as schools, which in fact have a religious character must be designated. Schools, which have closed must be removed from the list.
13. The Diocesan Authorities, which are the promoters of the four new schools to be designated by this Order, wrote to the Assembly seeking designation in October and November 2006. Their applications were considered and found to comply as required with the Religious Character of Schools (Designation Procedures) Regulations 1998. The four new schools themselves and the relevant Local Education Authorities involved are already fully aware of the religious character of these schools and of the need for designation. All the changes being recognised in the Order are the result of statutory proposals published under the School Standards and Framework Act 1998, which were the subject of full public consultation.

With Subject Committee

14. This Order was notified to the Education, Lifelong Learning and Skills Committee, via the list of forthcoming legislation, on 20 September 2006 (ELLS (2)-12-06 Paper 2, item number (ELL-22-06)), and has remained on the list ever since. It has not been identified for detailed scrutiny.

Review

15. The effects of this Order will be monitored via the school inspections, organised by the governing body of the schools under Section 50 of the Education Act 2005, to secure that: (a) any denominational education given to pupils; and (b) the content of the school's collective worship are inspected. The list of schools contained in the Order will be monitored and if statutory proposals take effect, which change the religious character of any of the schools, or create any new schools with a religious character the Order will need to be amended accordingly.

Summary

16. The schools being named in this Order will benefit from designation as schools with a religious character by determining the form of religious education and collective worship that takes place in the school, as well as allowing them to take religious affiliation into account in staffing matters. Designation will affect the disposal of assets and the inclusion of a statement of ethos in a school's instrument of government. There is no alternative method of designating the schools; it must be done by an Order by the National Assembly for Wales.