

Explanatory Memorandum to the Education (Specified Work and Registration) (Wales) Regulations 2010

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Specified Work and Registration) (Wales) Regulations 2010. There are no direct or indirect costs to the education service in Wales in complying with the terms of the regulatory change and I am satisfied that the benefits attached to the making of the regulations outweigh any administrative costs to the Assembly Government.

Leighton Andrews AM

Minister for Children, Education, and Lifelong Learning

9 November 2010

1. Description

The Education (Specified Work and Registration) (Wales) Regulations 2004 (“the 2004 Regulations”) set out the respective roles of qualified teachers, other teachers and other staff in schools in relation to the carrying out of ‘specified work’ (i.e. teaching), and set out circumstances under which certain kinds of staff may undertake specified work.

The Education (Specified Work and Registration) (Wales) Regulations 2010 (“the 2010 Regulations”) are an updated replacement for the 2004 Regulations. The principal changes alter the list of ‘other teachers’, the persons who are not qualified teachers but who may carry out ‘specified work’. These changes would see some redundant categories of persons deleted, and two new categories added to the list in order to clarify their position: trainees on initial teacher training courses leading to Qualified Teacher Status; and qualified Further Education (FE) teachers delivering vocational courses in maintained schools within the local curriculum under the Learning and Skills (Wales) Measure 2009.

There are also some miscellaneous changes and general updates, including some alterations to reflect current equalities legislation.

2. Matters of special interest to the Constitutional Affairs Committee

There are no matters of specific interest to be brought to Committee’s attention.

3. Legislative background

Under the provisions of section 133 of the Education Act 2002, the Welsh Ministers (by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006) may make regulations which provide that specified work may not be carried out by persons in a school unless they are a qualified teacher, or satisfy specified requirements.

Under the provisions of section 134 of the Education Act 2002, the Welsh Ministers may make regulations which provide that specified work may be carried out in a school by a qualified teacher only if they are registered with full registration under section 3 of the Teaching and Higher Education Act 1998 (i.e. a register maintained by the General Teaching Council for Wales).

The 2004 Regulations set out the respective roles of teachers and other staff in schools in relation to carrying out ‘specified work’ relating to teaching and learning, and specify circumstances under which certain staff may undertake specified work. The 2004 Regulations also provide for qualified teachers carrying out specified work in schools to be registered with the General Teaching Council for Wales.

This replacement statutory instrument will be made via the negative resolution procedure.

4. Purpose and intended effect of the legislation

Specified work can be undertaken by qualified teachers; by 'other teachers' (categories of persons who are not qualified teachers but who meet designated requirements and are able to carry out specified work in a school on the same basis as qualified teachers); and by other persons (providing it is to assist or support the work of qualified teachers or 'other teachers' in the school, and providing they are subject to the direction and supervision of that teacher). The 2010 Regulations will introduce two new categories to the list of people in the 'other teachers' group in the 2004 Regulations who can carry out specified work:

- a) trainees on initial teacher training (ITT) courses during any period in which they are undertaking practical teaching experience for the purposes of that course. This change is intended to ensure that everyone involved in the delivery of ITT, including the trainee, are clear what trainees on courses of ITT may do as part of their statutorily required period of practical teaching experience in maintained schools.
- b) qualified FE teachers delivering vocational courses within the published local curriculum under the Learning and Skills (Wales) Measure 2009 in maintained schools. This change is intended to allow the teaching of vocational courses in local curricula, which might have been organised as FE college-based provision, to be delivered to 14-19 year olds in maintained schools by qualified FE teachers. It would provide a flexibility which is a key feature of 14-19 policy and would help to ensure that the travelling of young people to undertake their chosen curriculum is kept to a minimum. This is likely to be more cost effective and aligned to the principles of sustainable development than young people having to always travel to their local FE colleges to undertake their chosen vocational course.

The 2010 Regulations also change the categories of teacher included in the 2004 Regulations under the 'other teachers' list by removing the "Graduate teachers" and "Registered teachers" categories as they are now redundant. They referred to people who would have been undertaking the Graduate Teacher Programme (GTP) or Registered Teacher Programme (RTP) when they were operated as separate schemes, before the introduction of the wider Employment-based Teacher Training Scheme (EBTTS), which incorporates the GTP and RTP and which remains a current category. There are no trainees now authorised to teach who would fall into the separate "Graduate teachers" and "Registered teachers" categories; all authorisations are done under the EBTTS.

A number of detailed changes are made to clarify the legislation further and to ensure the 2010 Regulations reflect more recent Acts of Parliament, and subsequent related subordinate legislation, introduced since the 2004 Regulations were made.

These include changes that provide that where any provision of the 2010 Regulations allows a person to carry out specified work for a designated period of time only, that period shall be extended to take account of any period when the person is absent from work because of maternity leave, parental leave,

paternity leave, adoption leave or pregnancy. In relation to maternity, parental, paternity and adoption leave, this change is added to reflect provisions introduced in the Work and Families Act 2006.

Although a large part of the provisions introduced in the 2004 Regulations would remain in place, we are revoking the 2004 Regulations completely and replacing them with a new set of regulations for ease of use.

5. Consultation

An electronic consultation exercise was carried out for a period of 12 weeks between 18 June 2010 and 10 September 2010. Further information is contained in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do nothing

If the 2010 Regulations are not made the 2004 Regulations will remain in force.

Benefits

There are no specific benefits to be gained from not replacing the 2004 Regulations with the 2010 Regulations which aim to provide clarity, update the list of persons who are not qualified teachers but who may carry out 'specified work' in maintained schools in Wales, and remove redundant definitions and provisions that no longer apply.

Leaving the 2004 Regulations in place has a number of potential adverse consequences:-

- Qualified FE practitioners will not be able to undertake specified work on a clear and regular basis (i.e. teach) to deliver vocational courses under the published local curriculum in maintained schools under the Learning and Skills (Wales) Measure 2009, resulting in adverse implications for the policy delivery of the 14 -19 Learning Pathways agenda.
- Young people might experience difficulty in accessing vocational courses under 14 – 19 local curricula because of the geographical location of their nearest FE College or one that offers their preferred choice of course of study.
- There will not be a clear, separate category for trainees on ITT courses to cover those undertaking specified work on their practical teaching placement in school.

- Provisions allowing a person to carry out specified work for a designated period of time only would not explicitly refer to the rights that were introduced by the Work and Families Act 2006.

It is not considered that retaining the status quo would outweigh the clear benefits of introducing the replacement regulations.

Costs

There are no savings to be made by the Welsh Assembly Government, local authorities, higher education institutions, schools or FE colleges if the 2010 Regulations are not introduced.

There are likely to be additional cost implications for local authorities, schools or FE colleges if the 2010 Regulations are not introduced. If qualified FE teachers are not able to deliver vocational courses within the local curriculum it is likely to mean increased travelling for young people to undertake their chosen curriculum and a less cost effective delivery of those courses.

Option 2: Do the minimum

Because the provision for who can undertake specified work (i.e. teach) in a maintained school in Wales is already a statutory requirement set out in the 2004 Regulations, any more minimal approach such as the provision of non-statutory guidance or voluntary codes of practice would first require large parts of the 2004 Regulations to be revoked.

Benefits

It is not considered that doing the minimum through a non-statutory guidance or voluntary codes of practice is a feasible option. There are no benefits to be gained as attempting to set out which individuals might undertake specified work via non-statutory guidance or voluntary codes of practice would not be sufficiently robust to put into effect the measures required. The regulatory approach ensures that teaching work in all maintained schools is undertaken through a common approach, to common standards. Under a non-statutory or voluntary approach there could be no certainty that this could be maintained.

Attempting this change of approach would require a further consultation on a revised approach. During this period, the 2004 Regulations would remain in place and the problems listed in the 'do nothing' option would apply, including creating difficulties for young people trying to access vocational courses.

Further difficulties would be caused in respect of related and interlinked legislation setting out qualification requirements and requiring qualified teachers to be registered. Problems would arise with legal requirements covering qualification and registration if we adopted a non-statutory or voluntary approach to the work such qualified and registered teachers undertook.

Costs

There are no savings to be made by the Welsh Assembly Government, local authorities, higher education institutions, schools or FE colleges if a minimal approach is introduced. There could be additional cost implications for schools with a non-statutory or voluntary approach, as in organising teaching work or in dealing with applications for vacant posts, for example, they would need to provide more input on the individual school's approach instead of relying on known common standards which everyone worked under.

Option 3: Make the Legislation

The 2010 Regulations are made and replace the 2004 Regulations.

Benefits

In making the 2010 Regulations, two new categories will be included in the list of people currently covered in the 'other teachers' group in the 2004 Regulations who can carry out specified work.

The inclusion of trainees on initial teacher training courses will clarify for the benefit of partnership schools, HEIs and to trainees themselves what trainees on courses of initial teacher training may do as part of their statutorily required period of practical teaching experience in maintained schools.

The inclusion of qualified FE teachers delivering vocational courses within the local curriculum under the Learning and Skills (Wales) Measure 2009 in maintained schools will allow the teaching of subjects in the local curriculum which might have been organised as FE college-based provision to be delivered to 14-19 year olds in maintained school setting by qualified FE teachers. The 2004 Regulations currently do not allow FE teachers to teach on a general basis on a maintained school's premises. Allowing provision for qualified FE teachers to teach in maintained schools in this way would ensure the policy on 14 – 19 Learning pathways is not compromised. It would also ensure that the cost to young people of travelling to undertake their chosen curriculum is kept to a minimum and does not prejudice their choice of subjects/courses.

The removal of redundant definitions and provisions which no longer apply, together with a number of detailed updating changes will clarify the legislative requirements.

Introducing changes that recognise and reflect equalities legislation will help to ensure that where specified work can be undertaken for a designated period of time only, any person being absent from work because of maternity leave, parental leave, paternity leave, adoption leave or pregnancy will not be disadvantaged by having that absence count against their designated teaching time.

Costs

The introduction of the 2010 Regulations has no adverse cost implications for the Welsh Assembly Government, maintained schools, FE institutions, HE institutions or trainee teachers.

This option is estimated to avoid potential expenditure by helping to ensure that the cost of learners travelling to undertake vocational courses in their chosen curriculum can be kept down.

Summary

In summary, the chosen option is to introduce the 2010 Regulations. This decision is made in view of the benefits to be gained as set out above, including:-

- the clarity to be gained in clearly identifying those categories of people who can undertake specified work in maintained schools
- the introduction of more flexibility into the delivery by qualified FE teachers of vocational courses under a local curriculum
- the avoidance of disadvantaging young people from undertaking their chosen vocational courses of study on grounds of cost or inflexibility of arrangements
- the support for equalities legislation and issues.

7. Consultation

On 24 May 2010 the Minister for Children, Education, and Lifelong Learning agreed to consult on the proposed version of the 2010 Regulations.

An electronic consultation exercise took place on the terms of the replacement regulations for a period of 12 weeks between 18 June 2010 and 10 September 2010.

Those consulted included:

Local Authorities

General Teaching Council for Wales

Initial Teacher Training providers in Wales

The Higher Education Funding Council for Wales

Principals at FE Institutions in Wales

Head teachers and Governing Bodies in a 10% sample of primary and secondary Schools in Wales

School diocesan organisations

Estyn

Representative bodies and teaching unions

Department for Education and Department for Business, Innovation and Skills

Professional education organisations, schools and FE sectors

The consultation documents and consultation response document are available on the Welsh Assembly Government's website at:

<http://wales.gov.uk/consultations/education/workregs/?lang=en>

<http://wales.gov.uk/consultations/education/workregs/?skip=1&lang=cy>

A total of 11 responses were received. A significant majority of respondents agreed, or agreed with qualification, to the specific questions posed.

The majority of responses received welcomed the changes, recognising the need for qualified FE teachers to be able to undertake specified work in the delivery of vocational courses for pupils in the 14-19 age range under the Learning and Skills (Wales) Measure 2009.

The proposal that trainee teachers on courses of initial teacher training should be recognised separately in the 'other teachers' category also received support, provided there were requirements to ensure trainees were supervised during their practical training placement. We agree with the responses that the regulations should recognise that trainee teachers will receive training and experience teaching in school under appropriate supervision. To address the views of respondents on this point, we have amended the wording of the 2010 regulations to make it clear that trainees can only undertake specified work during any period in which they are undertaking their practical teaching experience (for the purpose of completing a course of initial teacher training with an accredited ITT provider) under the supervision of a qualified teacher.

The majority of respondents were also supportive of the need to align the replacement regulations with equalities legislation by ensuring that individuals extend teaching periods which were time limited to cover absence from work because of maternity leave, parental leave, paternity leave, adoption leave or pregnancy.

Concerns were expressed in some responses about the differences that exist between qualified teachers and qualified FE teachers on registration requirements, as well as in matters such as professional standards and continuing professional development. Most of these issues were outside the scope of the 2010 Regulations. The Welsh Assembly Government is currently looking at future registration requirements as part of on-going work on continuing professional development, qualifications and professional standards, and will be considering the issues raised in this consultation in that context.

8. Competition Assessment

The competition filter is not required as the introduction of the 2010 Regulations would not affect business or have any wider economic impact.

9. Post implementation review

The introduction of the 2010 Regulations will modify in some discrete areas the existing requirements on the undertaking of specified work whilst other requirements will continue as now. Refreshed guidance on the specified work legislation will be produced. It is not proposed to implement any additional post implementation review procedures.