

Explanatory Memorandum to the Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014

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 Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Carwyn Jones AM
First Minister

8 May 2014

1. Description

These Regulations amend the following regulations:

- The Education (Inspection of Nursery Education) (Wales) Regulations 1999;
- The Inspection of Education and Training (Wales) Regulations 2001;
- The Education (School Inspection) (Wales) Regulations 2006; and
- The Inspection of Careers and Related Services (Wales) Regulations 2006.

The Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014 remove the link between past and forthcoming inspections but ensure that inspections of schools and education settings are conducted at least once within every 6 year period. They allow Her Majesty's Chief Inspector (HMCI) Estyn greater scope to vary the date on which schools or education settings are inspected in order to reduce predictability and allow Estyn to inspect schools that are causing concern more frequently and those who are not, less frequently. The Regulations also remove the requirement that schools have to provide 3 weeks notice regarding a pre-inspection parents meeting and reduce the time period for production of post inspection action plans (PIAP) to 20 working days.

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

None.

3. Legislative background

The Welsh Ministers have the following relevant powers in relation to the following settings:

Maintained Schools:

Section 28 (to prescribe inspection intervals for maintained schools) and section 50 in relation to the inspection of religious education at maintained schools, section 39 and 42 (to prescribe time to prepare post inspection action plans), and paragraph 6 of Schedule 4 (to prescribe notice of meetings between inspectors and parents) and Schedule 6 in respect of inspection of denominational education at maintained schools, of the Education Act 2005.

Nursery Education:

Section 122(1) and paragraph 6B of Schedule 26 (to prescribe inspection intervals) to the School Standards and Framework Act 1998.

Careers Services and services related to careers services:

Section 55(4) and 56(3) (to prescribe inspection intervals), 57 (to prescribe time to prepare post inspection action plans) of the Education Act 2005.

Further Education:

Section 77 (to prescribe inspection intervals) and section 80 (time to prepare post inspection action plans) of the Learning and Skills Act 2000.

The functions in the Learning and Skills Act 2000 and the Education Act 2005 outlined above were conferred on the National Assembly for Wales but are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006. The functions in the School Standards and Framework Act 1998 outlined above were conferred on the Secretary of State and were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 but are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

This statutory instrument is subject to annulment (the negative procedure).

4. Purpose & intended effect of the legislation

Estyn carried out a review of its inspection arrangements in 2012 which raised two issues:

Removal of the link between past and forthcoming inspections and a requirement that schools and education settings are conducted at least once within every 6 year period

One of the issues was how schools and education settings could predict when their next inspection would take place. Existing regulations require that inspection must take place within 6 years of the last inspection which allows education settings to predict, fairly accurately, when their next inspection is due.

Removal of the requirement that schools have to provide 3 weeks notice regarding pre inspection parents meetings

The other issue raised was regarding the notice period when an inspection would commence. Existing regulations include a requirement for maintained schools to hold pre-inspection meetings between inspectors and parents and for schools to take such steps as is reasonably practicable to provide at least 3 weeks notice to parents for this meeting. To comply with this provision, Estyn has to give a minimum of 4 weeks notice to schools of an inspection taking place. The requirement is an obstacle to Estyn reducing its notice period for inspection and allows schools a certain amount of time to prepare for their inspections.

Reduction of the time period for production of PIAPs to 20 working days

Another issue was raised by officials regarding the current inequalities between sectors relating to the length of time schools, FEIs and other settings had to prepare their PIAPs following receipt of an inspection report. Current regulations allow schools 45 working days from the receipt of the inspection report to prepare a PIAP. The inspection report is submitted to schools 35 working days from the end of an inspection. In other sectors such as Post 16, education settings are obliged to provide a PIAP around 4 weeks after publication of the Estyn report.

5. Consultation

Details of consultation undertaken are included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Removal of the link between past and forthcoming inspections and a requirement that schools and education settings are conducted at least once within every 6 year period

Options

Do nothing – by not amending the existing regulations:

- Schools and other education settings would continue to be able to predict, fairly accurately when their next inspection would take place. They would over prepare for inspections and possibly lapse into complacency between inspection intervals and would not be encouraged to be ‘inspection ready’ on a continual basis.
- It would also limit Estyn’s flexibility to inspect better performing schools and education settings less frequently and lower performing schools and education settings more frequently. Whilst it is possible for Estyn to bring forward some inspections to carry out spot inspections, bringing forward too many would have implications for Estyn’s work programme and skew the year on year evidence base that informs Estyn’s annual report.

Benefit of making the legislation

These amending Regulations remove the link between past and forthcoming inspections which would significantly limit the ability of schools and education settings to predict when their next inspection will take place. These Regulations require inspection to take place once in every 6 year period commencing 1st September 2014. For example, if a school or other education setting is inspected in the first year of a new inspection period (2014-2020), they could be inspected any time within the next 6 year period (2020 – 2026) which could be less or more than 6 years since their last inspection. By removing the link to the last inspection, the majority of settings would not know when inspection was due, would be less likely to over prepare for the inspection and it would encourage them to be ‘inspection ready’ on an ongoing basis. It also provides Estyn with the flexibility to inspect better performing schools and education settings less frequently and lower performing schools and education settings more frequently.

Removal of the requirement that schools have to provide 3 weeks notice regarding pre inspection parents meetings

Options

Do nothing – by not amending existing regulations:

- Would not allow Estyn to reduce the amount of notice it gives to schools about forthcoming inspections. It would also continue to provide schools with a certain amount of time to prepare for their inspections which doesn’t enable inspection teams to see schools as they are on a daily basis.

Benefit of making the legislation

By removing the requirement for schools to provide a 3 week notice period for the pre-inspection parent’s meeting would provide Estyn with the flexibility to reduce the amount of notice it gives to schools about forthcoming inspections. A reduction in the notice period for inspection would reduce the amount of time a school has to

prepare for inspection allowing it to be seen as it is on a daily basis and encourage the school to be inspection ready consistently.

Reduction of the time period for production of PIAPs to 20 working days

Options

Do nothing – by not amending existing regulations:

- There would continue to be inequalities between sectors relating to the length of time schools, FEIs and other settings had to prepare their PIAPs following receipt of an inspection report.
- Schools would continue to have an inordinate amount of time for action planning and production of their PIAPs. This contradicts the Welsh Government's view that action planning should take place with pace and urgency and issues raised within a school or other education settings inspection should be addressed as soon as possible.

Benefit of making the legislation

A member of the school, FEI or other settings' staff is a nominee during the inspection process and will have a clear view of the issues. The nominee will also attend the feedback session at the end of the inspection where a provisional assessment is given. The inspection team provides detailed recommendations at the end of each inspection, which forms the basis of action planning. In relation to schools, from the time the initial feedback is provided at the end of the inspection, to when the final inspection report is submitted (35 days later) to when an action plan is to be submitted to Estyn (45 days later), schools have up to 80 working days to prepare their action plan.

The Welsh Government's view is that action planning should take place with pace and urgency and issues raised within a school or other education settings inspection should be addressed as soon as possible. The Welsh Government therefore feels that the length of time for production of a PIAP for all education settings should be the same and a reduction to 20 working days from the date of receipt of the inspection report is reasonable.

Costs

There are no costs associated to these regulations for the Welsh Government, Estyn, schools or other education providers.

Competition Assessment

The making of these Regulations has no impact on business, charities or the voluntary sector.

Consultation

There is no requirement to consult on these regulations as the proposed changes have already been consulted on. The Welsh Government and Estyn jointly undertook a series of public consultations on proposed changes to Estyn's inspection cycle and timings for PIAPs. The consultation focused on:

- the requirement for Estyn to inspect within a set interval from the date of the last inspection;
- the length of those inspection intervals;
- the period notice of inspection given to maintained schools and providers by Estyn;
- the requirement for maintained schools to hold pre-inspection parents meetings;
- the requirement for parent/carer and learner questionnaires; and
- the time for the preparation of a post inspection action plan.

An electronic public consultation was launched on the Welsh Government website on 6 February 2013 and closed on 1 May 2013. It was drawn to the attention of schools, pupil referral units, further education, adult community learning, youth support services and work based learning. We received 131 responses to the consultation.

The Welsh Government and Estyn produced a child friendly version of the consultation document. Workshops were held with 196 pupils from 73 primary and 123 secondary schools across North, South and Mid Wales to gather their views to the consultation questions.

The Welsh Government also commissioned the People and Work Unit to carry out a study regarding the Estyn inspection requirements to gain views of groups of individuals who were not education providers and who were not usually reached through conventional consultation processes. The study used focus groups and interviewed participants to collect responses - 65 participants took part.

There was overwhelming support to reduce the predictability of inspections. The majority of respondents considered that a 6 year period for inspection was the best option and agreed that the pre-inspection parents meetings and parent and learner questionnaires should be retained. Responses were mixed regarding reducing the notice period for inspection and reducing the timeframe for preparation of the post inspection action plan. However, the majority of respondents agreed that there should be a consistent period to prepare post inspection plans for all education sectors and suggested that the current period of time (45 working days) was the most appropriate time.

A full summary of the consultation responses including the Welsh Government's and Estyn's response to the findings and proposals for change was published on the Welsh Government website in February 2014 and can be found at:

<http://wales.gov.uk/consultations/education/proposed-changes-estyn-inspection-regulations/?lang=>

Post Implementation Review

Estyn, through their bilateral meetings with the Minister for Education and Skills will advise of the effect of these changes to the inspection process and ultimately to standards of education.

Summary

The overall objective of these changes is to improve standards of education for all learners. These Regulations will remove predictability of inspections and encourage schools to adopt the mind-set that they need to be 'inspection ready' on a daily basis, in turn providing a high standard of education consistently. It will also allow Estyn to inspect lower performing schools more frequently which will in turn force schools to address their issues more frequently. Reducing the amount of time allowed for preparation of PIAPs will ensure that action planning to make improvements within schools and education settings takes place with pace and urgency.