

Explanatory Memorandum to the Federation of Maintained Schools (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 Federation of Maintained Schools (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Huw Lewis,
Minister for Education and Skills
29 April 2014

1. Description

1.1 The Education Wales Measure 2011 provided local authorities with the power to establish a federation of two or more schools using a process to be set out in regulations.

1.2 In summary these Regulations set out the process local authorities and governing bodies are required to follow to federate, de-federate or dissolve a federation; set out the constitution and membership of a federated governing body, which is between 15 and 27 governors; impose a cap of six on the number of schools which may federate and set out the governance framework within which federated governing bodies operate and conduct their business.

1.3 In addition they consolidate, with some amendments, the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 and revoke those Regulations.

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

2.1 None

3. Legislative background

3.1 The Welsh Ministers' powers to make the Federation of Maintained Schools (Wales) Regulations 2014 are contained in sections 19(2), (3) and (8), 20(2), (3) and (4A), 34(5), 35(4) and (5), 36(4) and (5), 210(7), and 214 of the Education Act 2002, and sections 6, 10, 11, 12, 13, 14, 15, 18 and 32 of the Education (Wales) Measure 2011.

3.2 Section 14 of the Education (Wales) Measure 2011 lists the provisions which may be included in regulations which include the dissolution of governing bodies on the formation of a federation; enabling the governing body of a federation to continue as a corporate body if schools join or leave the federation; the circumstances and process in which a federation may be dissolved or schools to leave the federation; the reconstitution of single governing bodies for schools that leave a federation; the transition from one governing body to another; the transfer of property, rights, and liabilities between governing bodies or between local authorities and governing bodies and any other matters.

3.3 The powers of the National Assembly for Wales in the Education Act 2002 were transferred to the Welsh Ministers under Section 162 and Paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

3.4 The Federation of Maintained Schools (Wales) Regulations 2014 are subject to annulment and are being made using the negative resolution procedure.

4. Purpose & intended effect of the legislation

4.1 The purpose of the Regulations is to set out the process to be followed by local authorities and schools when making proposals to federate between two and six schools using their powers in the Education (Wales) Measure 2011. The intended effect is to ensure that as many schools as possible take advantage of the opportunities and benefits which federation can offer to improve school performance and raise standards of attainment.

4.2 Raising educational standards and improving school performance is a key objective of the Welsh Government. Enabling local authorities and school governing bodies to take forward structural options such as federation, where this would strengthen schools and support good governance, is key to this.

4.3 Evidence from various reports and from schools that have federated highlight the benefits of federation in terms of:

- personalised learning;
- a wider range of learning opportunities for children;
- centralisation of administration functions and reducing the amount of finance, HR and estate management that falls to the headteacher so freeing up his/her time to focus on teaching and learning;
- helping to stabilise a school population and address accommodation sufficiency issues;
- greater buying power of pooled budgets to bulk buy shared equipment and facilities that schools may not be able to afford on their own e.g. shared IT and Communication Technology;
- cross phase working for pupils transferring between primary and secondary schools;
- curriculum development and the development of single integrated curriculum and pastoral policies;
- the potential for shared leadership to help weaker schools as part of a federation with stronger performing schools;
- cross boundary working with schools in a neighbouring local authority;
- promoting integration of pupils with SEN statements;
- promoting the broader welfare of students by offering potential for bringing together pastoral, health, careers youth and other services to meet their all round needs;
- having a single governors' report to parents covering the achievements of every school in the federation;
- providing flexible opportunities for the deployment of staff;
- sharing good practice and producing single policies for pupil behaviour, staff discipline, complaints etc.;
- building knowledge as some schools are too small to be self sufficient as effective learning institutions for the staff who teach in them; and
- providing more opportunities for small schools, especially those in more isolated areas to share management, resources etc.

Links to the various reports are attached:

http://www.hefcw.ac.uk/documents/council_and_committees/council_papers_and_minutes/2010/10%2062%20PWC%20annex%20A%20part%202%20colour.pdf

http://www.hefcw.ac.uk/documents/council_and_committees/council_papers_and_minutes/2010/10%2062%20PWC%20annex%20A%20part%202%20colour.pdf

<http://www.ofsted.gov.uk/news/federated-schools-see-improved-outcomes-%E2%80%93-ofsted>

<http://dera.ioe.ac.uk/7054/1/download%3Fid%3D17200%26filename%3Dhard-federations-of-small-primary-schools.pdf>

<http://www.tes.co.uk/article.aspx?storycode=6014609>

<http://www.devonnewscentre.info/successful-federation-leads-to-great-benefits-for-children-at-two-south-devon-primary-schools-3/>

4.4 Not all schools that will be able to take advantage of all of the benefits listed. Each federation is individual and the benefits derived will depend on the particular circumstances of the schools within that federation. The ultimate aim of any federation must be to improve school performance and raise standards of attainment for its pupils. When planning a programme of federations local authorities should carefully consider the costs and benefits of each federation, and should be clear about the opportunities to be gained by each school from being part of a federation. This would include extending the learning experiences of the pupils and the professional development of the staff as well as any financial gains. This information should form an integral part of the consultation report with stakeholders.

4.5 Schools that are federated share a single governing body with up to a maximum of five other schools. Each school retains its own identity, character, individuality and ethos, as well as its own budget, name and school uniform. However, having a single governing body means that the schools are able to work closely together with other schools to learn from one another and share resources that should enhance learning experiences for the pupils and improve performance of both schools and the pupils. Federation may be considered as a possible alternative to school closures allowing schools to remain open in their community for the benefit of the pupils and parents and wider school community. Federation proposals should, therefore, form an integral part of local authorities' school organisation proposals.

4.6 Under the current system where every school has its own governing body, governors naturally focus on the needs of their own school, but evidence from schools that have federated show that there is increased potential benefits to schools who work together and share good practice to improve performance. Federation also reduces the demand on local authorities who are required, by law, to provide governing bodies with support, training and advice. Federation can also benefit small schools which often struggle to fill governor vacancies and usually have a smaller pool of 'social capital' of skills and knowledge amongst the persons who are willing to be governors.

4.7 Regulations have been in place since 2010 allowing schools to federate under a single governing body. However, schools have been slow to take advantage of the benefits that federation can offer to date. Informal consultation at the time of the Measure suggests that schools regard the federation process to be complicated and burdensome as it involves a series of meetings between the schools, producing reports and consultation. The Education (Wales) Measure provided local authorities with the power to federate schools using a process to be set out in regulations.

4.8 The new 2014 Federation Regulations will give effect to local authorities; power to federate schools in the Education (Wales) Measure 2011, whilst at the same time maintaining the power for governing bodies to federate voluntarily ensuring that federation becomes more widespread and that more schools will be able to benefit from the opportunities federation can offer. This will contribute to the Welsh Government's aim of driving school improvement through schools working together and learning from one another.

4.9 Local authorities are in a unique position to propose federation as they have a strategic overview of school organisation as part of their planning of school places. With their overarching knowledge of educational developments within their area, local authorities are able to develop a clear focus on pupil and school improvement across local schools and identify which schools would benefit from federation.

4.10 Both local authorities and governing bodies will be required to consult stakeholders in the school community including parents, pupils, staff and trade unions on their proposals to federate. Welsh Government guidance is clear that local authority proposals for federation should never come as a surprise to the schools concerned. The Welsh Government expects local authorities to have had prior discussions with those schools about the benefits of federation and the expected outcomes, so that governing bodies are fully aware of what federation entails and the process to be followed. When considering proposals to federate local authorities and governing bodies would need to be confident that the schools identified for federation had:

- a shared sense of vision and common purpose;
- shared identity between schools i.e. geographical proximity and having common aims on curricular and non curricular activities;
- clear leadership and management structures; and
- trust and commitment at every level of school leadership and management through a shared sense of openness and willingness to commit time and resources to ensure that joint working was effective and sustainable.

4.11. The new Regulations set out the governance framework requirement for federated schools including the process for forming and joining a federation and for the dissolution or de-federation of schools. The Regulations impose a limit on the number of schools that can federate up to a maximum of 6, and set out the individual membership for each federation model based on minimum numbers of governors for each category of governor. The overall size of a

federated governing body in the 2014 Regulations has been set at between 15 and 27 governors which will enable voluntary aided schools to federate and maintain their majority of foundation governors.

4.12 The Regulations also allow:

- the admission arrangements for each school to continue to be determined by the appropriate admission authority;
- each school to be treated individually for the purpose of changes in school organisation proposals;
- each school to retain its religious ethos (where there is one), character and medium of delivery of education; and
- schools that federate to be separate legal entities retaining their name, registered pupils and budget.

4.13. Unlike the current Federation Regulations not all categories of school will be able to federate. The Charity Commission maintains that it should not be possible to federate schools whose governing bodies hold charitable trust status with schools whose governing bodies do not. This is because these charitable trusts have a commitment to give consideration to their charity only which in reality means making decisions purely for the benefit of the pupils in that school. This does not fit with the principle role of a governing body of a federation which is to make decisions for the benefit of all the pupils in all of the schools in the federation. As a consequence these new Regulations do not permit community, community special and maintained nurseries to federate with voluntary controlled schools, voluntary aided schools and foundation schools. However, schools with a similar ethos and charitable Trust can federate. For example, a voluntary aided school may federate with a voluntary controlled school where the Trusts have a similar basis.

4.14 An additional element of the new Federation Regulations is that they will allow for a shorter process for federating small schools. A small school will be defined by the Small Schools Order (which is being made at the same time as the new Federation Regulations) as a school having fewer than 91 pupils on the third Tuesday in January. This is the date when the annual census is carried out and schools are required to submit their PLASC data. A separate Explanatory Memorandum has been prepared for the small Schools Order.

4.15 Once a local authority has defined a small school the requirement to consult on the federation process is limited to the governing bodies and school councils of those small schools that are being federated, instead of the wider school community. Local authorities may consult the wider school communities on federation proposals if they wish, but there is no requirement to do so.

4.16 In addition, the period allowed for the small school federation process has been reduced from 125 days to 100 days to enable local authorities that have a large number of small schools (usually in more isolated rural areas) to federate these small schools more easily.

4.17 However, where a small school is being federated with a 'normal' sized school the local authority or governing body must consult those identified in the wider school community, in accordance with the usual procedures set out for school federations.

4.18 The Welsh Government has also prepared comprehensive statutory guidance for schools, governing bodies and local authorities to explain the federation process and their roles in the process. The guidance makes it clear that federation initiated by local authorities should not come as a surprise to the schools identified and that local authorities must engage schools to discuss their proposals and explain to them what the expected benefits and outcomes would be.

5. Consultation

5.1 A 12 - week consultation on the new federation proposals took place between 17 January and 14 March 2013. The consultation was brought to the attention of key stakeholders including local authorities, Governors Wales, diocesan authorities, school governing bodies, school staff unions and community councils.

5.2 The consultation sought views on the process of federation; the constitution and membership of a federated governing body and the process to dissolve a federation or for a school to leave a federation, which virtually mirror the provisions set out in the existing Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010.

5.3 Twenty five responses were received in total. The majority of respondents agreed and supported the federation proposals. However respondents strongly disagreed with the proposal that an unlimited number of schools should be able to federate. Respondents supported the need for there to be a cap, so that the federations did not become too unwieldy and ineffective which would take up an unacceptable amount of time for governors who are volunteers. The view was that smaller federations would be easier to manage and allow governors to better focus on school improvement to achieve better outcomes for learners. An analysis of the consultation responses is available at:

<http://wales.gov.uk/consultations/education/maintrain/?status=closed&lang=en>.

6. Regulatory Impact Assessment (RIA)

6.1 The new 2014 Federation Regulations are permissive as they impose no duties on local authorities to federate schools, as such do not give rise to any significant costs. The purpose of the Regulations is to set out the relevant processes a local authority must follow when federating between two six schools. Any costs incurred by local authorities through federation and benefits achieved will vary depending on the number and size of the federations being established, the location of the federation and the level of support necessary. Local authorities will be aware of these costs when they plan their programme of federations, which should form an integral part of their school organisation proposals.

6.2 A full Regulatory Impact Assessment was completed for the Education (Wales) Measure 2011. The provisions for giving local authorities the power to federate schools were included as part of this RIA and is available at <http://www.assemblywales.org/ms-ld7481-em-r-e.pdf> .

6.3 The Education (Wales) Measure 2011 enables local authorities to make proposals to federate:

- two or more maintained schools;
- an existing federation and one or more maintained schools;
- two or more existing federations.

6.4 The Measure also includes:

- a requirement for local authorities to publish proposals for federation;
- a requirement for local authorities to consult in accordance with regulations, the governing bodies of the schools involved which includes the staff; any body that may represent the interests of the school staff, and the pupils and parents, except where the federation proposals only includes small schools when only the governing body and school council is consulted;
- that a small school will be defined in a small school's order;
- the requirement that local authorities cannot federate any foundation or voluntary school unless the relevant bodies associated with a school Trust have first given their consent;
- how federation proposal are to be implemented;
- that regulations may be made covering the dissolution of a federation, how a school or schools can leave a federation, the transfer of property, rights and liabilities between governing bodies or between local authorities and governing bodies and any other matters relating to federation; and
- the power of Welsh Minister's to direct a federation of schools.

Benefits of federation for local authorities

6.5 In accordance with the Education Act 2002 local authorities are required to provide support, advice, information and training for governors. Federation of schools will result in reduced costs to local authorities associated with the provision of support and training to fewer governing bodies and for clerking services where this is provided to schools. The person in the local authority most likely to carry out the administrative support to the federation process is likely to be the local authority Governor Support Officer. Under the new National Model for Regional Working in Wales there are plans to develop the Governor Support Officer role on a regional consortia basis to schools federating within the consortia area, which could lead to further cost savings

6.6 Federation will also mean that local authorities can ensure that provision of education for pupils in their area is improved as stronger schools will be able to federate with weaker schools to help improve standards and performance.

6.7 Federations are intended to be long term arrangements and must be given time to bed down so that local authorities and schools can more easily work together to improve outcomes for learners. The federation process in the Regulations is explicit and involves consultation with stakeholders. Accompanying statutory guidance will assist local authorities and schools. The guidance clearly explains that federation should not come as a surprise to the schools identified for federation. The document sets out our expectations that local authorities will be working closely with the school community and governors to explain the benefits of federation, how it will work and the opportunities it can offer schools. However, there is a process set out in the regulations for schools who wish to leave a federation if after the bedding down process it is apparent that the federation is not working or where a school or schools simply wish to leave a federation.

Costs/risks of federation for local authorities

6.8 It is likely that some local authorities will already be incurring some very minor salary and administrative costs as they will be supporting schools that wish to federate under the current legislation by helping them prepare a report for consultation, collating and analysing responses to the consultation, facilitating meetings etc.

6.9 However once local authorities have the power to federate schools there may be a slight increase in the costs associated with the time taken to facilitate and implement federation proposals, as local authorities will be able to determine whether they wish to pursue a federation programme and the pace of implementing that programme. These costs are expected to be minimal and no more than £5,000 per federation for a federation of between two and six schools. However these costs are likely to be lower between £2,000 and £3,000 per federation as the majority of federations are likely to consist of two or three schools. It must also be kept in mind that these costs relate only to the establishment of federations. Once a federation is established the only costs for a local authority would be those associated with carrying out their primary

role of supporting governing bodies to be effective – a role they currently carry out on behalf of all their schools. Any minor costs incurred by local authorities are likely to be outweighed by some of the potential benefits referred to in paragraphs 6.5-6.7 above.

6.10 The estimated costs per federation have been based on the salary of local authority Governor Support Officers who would be the person most likely to carry out most of the tasks in support of the federation. We do not have access to the salary structures in place in local authorities, and salaries obviously vary between local authorities but at the time the Education (Wales) Measure 2011 was being made the salary range for a full time governor support officer was in the region of £33,000 to around £35,000 per annum. As there has been a virtual pay freeze for public sector staff since then we do not believe that these salaries have increased significantly but we have increased them by one percent which gives salaries of between £33,330 and £35,350.

Benefits of federation for schools

6.11 There are likely to be some positive financial advantages for governing bodies when these Regulations and the Small Schools Order come into force, as once schools are federated the single governing body will be able to pool resources i.e. the schools' delegated budgets, staff, facilities and other resources for the benefit of the pupils and staff at the school to improve school performance and enhance the educational experience of pupils.

6.12 Federation has been slow to establish in Wales but is more widespread in England. Evidence taken from information contained in Annex 9 of a Department for Children, Schools and Families Report (now the Department for Education) issued in September 2009 – Research Report DCSF RR162 – shows that small rural schools that federate could achieve savings on salary costs if they shared a headteacher ranging from a net minimum of £12,000 - £54,530 depending on variables such as the pay point and salary scale of the headteachers, on costs and numbers of schools in the federation. These costs will have increased since 2009 in light of the small pay rises that teaching staff have received.

6.13 In England, where federation has been established for some time, further benefits for schools have been identified in a survey undertaken by Ofsted (Office for Standards in Education, Children's Services and Skills) in September 2011 on the impact of federated schools in England. It found improvements were evident in three key areas of teaching and learning, behaviour and pupil achievement. The report stated that school leaders and governors interviewed were positive about the benefits of federation. They saw professional development, staff retention, greater availability of resources and the ability to attract high quality leaders as the key reasons why federation led to improvements.

6.14 In response to a question about why the schools federated, main reasons given were - some schools had been approached by the local authority to help a struggling school, others were small schools in danger of closure or unable to

recruit high quality staff, and others were seeking to strengthen the overall education of pupils in their communities.

6.15 Ofsted found that federations set up to improve the capacity of small schools were successful in broadening and enriching the curriculum and care, guidance and support for pupils. These also resulted in better achievement for groups of pupils such as the vulnerable and those with special educational needs and/or disabilities. In schools where the federation bridged primary and secondary age groups, there was better transition between schools and less disruption to pupils' progress. In all cases, a single system of assessing and tracking pupils' progress was used.

6.16 The report concluded that in good federations, leaders made the most of increased resources and opportunities for professional development and used these to achieve their priorities. Crucially, training and development were carefully tailored to meet the needs of the school.

6.17 The report recommends that schools considering federation should have a clear focus on the benefits to pupils' education, make sure governing bodies establish rigorous procedures to hold leaders to account, and communicate and consult effectively with parents, staff, pupils and the community at the earliest stage.

6.18 A copy of the report can be accessed at:

<http://www.ofsted.gov.uk/resources/leadership-of-more-one-school>

6.19 The findings of the Ofsted report on federation has shown the potential to achieve resource savings for schools, be that through sharing the curriculum, staff and staff expertise, facilities, ICT; sports equipment and facilities and possibly budgets. Sharing these assets and best practice can have a positive effect that can help every school to improve education for all its pupils. Avoiding duplication of effort and resources would leave head teachers and professionals with more time to devote to the core business of teaching and learning and improving standards and outcomes for learners, rather than administrative or management duties. Other advantages of federation include: providing groups of schools with the ability to co-ordinate curriculum provision or teaching and learning strategies into a localised coherent programme; increasing opportunities to fulfil learners' needs; and extending curriculum entitlement to help facilitate inclusion and diversity across a federation.

6.20 Other benefits offered to schools that federate is strengthening and pooling governor expertise and 'social capital' enabling governors to take a more strategic view of school improvement by gaining insight into the different contexts and dynamics of each school and having a common approach to policies and procedures, curriculum and pupil behaviour. School staff may also be able to benefit from having opportunities to develop professionally by working in more than one school to acquire new skills or to specialise in a particular skill, and creating opportunities to strengthen the school leadership team.

Costs/risks to schools through federating

6.21 Whilst the expectation and evidence from schools in England is that in the long term schools will benefit from federating some schools could incur some minor costs to schools. For example small schools in Wales often find it difficult to sustain good quality headteachers. A single governing body would be able to access the delegated budgets of the schools in the federation to fund a single headteacher post which could allow a headteacher to work across a number of schools and offer good opportunities for professional development. To encourage good quality candidates to apply could mean that the federated schools would set a higher salary range which single small schools could not do. Using the schools' budgets in this way could also be extended to employ other teachers. Therefore, whilst a single governing body could experience an initial increase in costs, the outcome is that the arrangements would enrich the learning opportunities and experience of all the pupils in the federation as well as supporting the professional development of staff.

If the new 2014 federation regulations are not made

6.22 Under existing law the opportunities set out in this Memorandum can only be achieved if school governing bodies choose to propose a federation. If schools fail to take advantage of the existing provisions in the 2010 federation regulations they will not be able to tap into the potential benefits that being part of a federation can offer. For this reason the Welsh Government is committed to securing federation of schools, by giving local authorities the power to federate schools to take advantage of the opportunities federation provides in terms of making improving outcomes for learners through best use of available resources

6.23 If these regulations are not made the current situation would continue whereby governing bodies decide for themselves whether or not to federate. To date this has not proved successful as only 20 to 25 schools have federated since the 2010 regulations came into force. This does not support the Welsh Government's policy intention of assisting local authorities to focus on and better support schools with small pupil numbers so that they can gain from the benefits of shared resources and governance expertise to improve outcomes for learners.

6.24 With regards costs to schools and local authorities, the existing 2010 Regulations are considered 'enabling', which means that schools may choose whether or not to federate under a single governing body. However, if schools continue to choose not to federate there may be opportunity for unnecessary costs to be incurred because resource efficiencies offered by a single governing body would not have been made. This situation will not change if the new regulations are not made.

Monitoring

6.25 As local authorities will be federating schools they are also best placed to monitor how the federation is bedding down and what it is achieving. Feedback

from headteachers and chairs of governors of schools that have federated have indicated that it can take about two years for the schools and their communities to develop a trust and be comfortable with the federation arrangements. Local authorities will be aware of any 'teething' difficulties schools may be experiencing and will be able to offer support, advice and training for staff and governors to help them through the early months of federation.

6.26 The Welsh Government will have a strategic oversight on the number of federations that are being established as local authorities are required in the 2014 regulations to send copies of the revised Instrument of Government which sets out the name of the new federation and the names of the schools that are federated. From this information officials will be able to monitor the pattern of federations taking place across Wales, how many and where they are being established, what type of schools are involved ie federations of small schools; federations of secondary schools; federations of secondary and primary schools. This information will also enable the Welsh Government to monitor whether federations are being effective in helping to raise standards and improve school performance as and when we are notified of a federation being established.

6.27 Consideration will also be given to discussing the possibility of Estyn undertaken a future remit review within the next three years on the benefits derived by federations of schools established in Wales similar to the review undertaken by Ofsted.

7. Competition Assessment

7.1 A competition Assessment is not required as these Regulations do not affect business, charities and/or the voluntary sector.

8. Post Implementation Review

8.1 The effect of these regulations will be monitored through regular monitoring of the information being sent to the Welsh Government and through meetings with local authorities, consortia and Governors Wales.