

**EXPLANATORY MEMORANDUM TO THE NATIONAL CURRICULUM  
(MODERATION OF ASSESSMENT ARRANGEMENTS FOR THE SECOND AND  
THIRD KEY STAGES) (WALES) ORDER 2015**

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 assessment of the expected impact of the above Order. I am satisfied that the benefits outweigh the costs.

**Huw Lewis**  
**Minister for Education and Skills**

7 May 2015

## **DESCRIPTION**

This Order introduces a statutory requirement for all schools to participate in cluster group moderation at the end of the second and third key stages and places a duty on head teachers or their representatives to take part in the moderation cluster group meetings to ensure an accurate and consistent teacher moderation by all school members following teacher assessment of pupils' school work at the end of the second and third stages. The Order also requires the head teacher to make teaching personnel at the school aware of the cluster decisions agreed at the meeting.

Article 6 of the Order provides that the chief education officer of the local authority or his/her representative in whose area the school is situated may attend meetings of the school moderation cluster group.

This Order does not apply to special schools maintained by local authorities in Wales.

## **MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE**

None

## **LEGISLATIVE BACKGROUND**

The National Curriculum (Assessment Arrangements for the Foundation Phase and the Second and Third Key Stages) (Wales) Order 2015 is made under section 108(3)(c), (7), and 210 of the Education Act 2002. Section 108(3)(c) provides a power for the Welsh Ministers to prescribe, by way of an Order, assessment arrangements for the key stages. Section 108(7) enables the Welsh Minister to confer or impose functions on a head teacher, governing body of a maintained school and a local authority.

The National Curriculum (Assessment Arrangements for the Foundation Phase and the Second and Third Key Stages) (Wales) Order 2015 requires head teachers of maintained schools to make arrangements for all pupils in the foundation phase and the second and third key stages to be assessed throughout the year by a teacher for the purpose of monitoring and supporting the pupil's educational progress.

This Order is being made under the negative resolution procedure.

## **PURPOSE & INTENDED EFFECT OF THE LEGISLATION**

The purpose of this Order is to require by law that all schools take part in cluster group moderation at the end of Key Stage 2 and Key Stage 3 and to make statutory the participation of all head teachers and/or relevant staff in moderation meetings of the relevant clusters. This Order also provides that the chief education officer of the local authority in whose area the school is situated (or his or her representative, which is likely to be the relevant Regional Consortium) may attend meetings of the school moderation cluster group.

The intended effect is to build confidence in teacher assessment by adding rigour to the system. At present, whilst schools often carry out cluster moderation meetings, this practice is not universal and the involvement of senior leaders or local authority involvement is also inconsistent. The intention of the Order is to achieve a consistent and reliable application of teacher assessment of learners' work by making this practice statutory for all schools within the cluster and for the relevant teaching personnel within these schools.

## **CONSULTATION**

See consultation paragraphs in the Regulatory Impact Assessment attached below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **OPTIONS**

#### **Option 1: Do nothing**

In the event of the Order not coming into force, we will not be able to take any steps to ensure that the teacher assessment system is reliable and consistent across Wales.

Our ambition to add rigour and robustness to the school-based moderation by introducing a statutory requirement for all maintained schools to participate in cluster group moderation will not be realised.

Our aims:

- of giving the current system of cluster moderation at the end of the second and third key stages a statutory underpinning and bringing it into closer connection with school-based moderation;
- that decisions made at cluster level should be taken into account in the participating schools' own moderation;
- of ensuring a consistent approach to teacher assessment and the resolution of any issues to mutual satisfaction and agreement through the head teachers and/or relevant senior staff's participation in the cluster moderation meetings;
- of ensuring that the local authorities (acting through regional consortia) monitor the process through the representation at cluster meetings; and
- of bringing more consistency and thus improving the transition process between the second and third key stages throughout Wales

will not be achieved.

#### **Option 2: Make the legislation**

By making the legislation we will:

- formalise, secure and strengthen the cluster moderation arrangements which will contribute to assuring the quality, consistency and reliability of teacher assessment;
- strengthen the existing system of cluster group moderation at the end of the second and third key stages by introducing a statutory requirement for all schools to participate, which will ensure that formal cluster moderation takes place at least once a year and which will make the teacher assessments more reliable and robust;
- ensure that all parties involved in teacher assessment are aware of the moderation cluster's decisions and the information on all agreements and disagreements that result from the cluster moderation meeting is used for the purpose of supporting teachers within the cluster schools as appropriate to make the teacher assessment more consistent;
- make the transition process between the second and third key stages more effective through involving the head teachers and other relevant personnel from all the secondary and primary schools within the cluster in moderation of the teacher assessment of pupils in the final year of the relevant key stages.

## **COSTS AND BENEFITS**

### **Option 1: Do nothing**

This option maintains the current policy and as such, there are no additional costs or benefits associated with this option.

However, there are potential disadvantages to not improving the current system. A report reviewing the reliability of Teacher Assessment, written by the Australian Council for Education Research (ACER)<sup>1</sup> observed that although the current teacher assessment system in Wales has all of the main components of high-quality teacher assessment systems, it had not yet achieved the level of functioning required. ACER noted that there were differences in the opinions of the local authorities, cluster coordinators, and the secondary and primary schools and recommended that the teacher assessment process needed further improvement to achieve the desired level of quality, consistency and reliability. Doing nothing would likely lead to no improvements.

### **Option 2: Make the legislation**

The evidence obtained through discussions with the four Welsh Regional Consortia and Estyn as well as the evidence submitted to the consultation indicates that most

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<sup>1</sup> An investigation into Key Stages 2 and 3 teacher assessment, prepared for the Welsh Government by the Australian Council for Educational Research (ACER), and published in June 2013

schools are already participating in cluster moderation and thus they have the relevant financial and other arrangements in place.

It should be noted that cluster moderation meetings are to be attended by the head teachers and/or other relevant senior members of staff. In many schools (although not everywhere) the head teachers carry out first and foremost administrative duties. Wherever this is the case the financial burden on schools will be smaller, because although it is usual to hire supply teachers to cover a gap in the classroom, it is not a common practice to do so to compensate for an absence on the management team.

Nevertheless it is prudent to point out that under this option, there will be a financial impact on some of the schools (i.e. those which currently either do not participate in cluster moderation at all or those with only partial participation) as the relevant personnel will have to be released to attend the meetings and some of the schools will have to bear the cost of additional supply teachers. We believe that this will be more than counterbalanced by the educational benefits of taking part. The fact that a significant majority of schools take part would appear to support this.

Although there is no statutory requirement on the chief education officer of the local authority in whose area the school is situated (or his or her representatives) to attend the cluster moderation meetings, their participation is highly advisable to ensure consistency on the regional and, ultimately, national basis. It is very likely that the regional consortia will act as such representatives. Therefore this Order also might have an additional financial impact on some consortia, i.e., where they currently either do not have the relevant subject specialists at all (e.g., currently some Consortia do not have the specialists in Welsh or Science) or where their subject specialist teams are too small to attend all/the majority of the cluster moderation meetings within their areas (e.g., at present some Consortia attend only a sample of cluster moderation meetings within their areas due to the lack of staff).

Although the situation varies from one area of Wales to another, as mentioned above at present around 90% the secondary and primary schools already are taking part in cluster moderation and attending the moderation meetings within their clusters. There will be an additional cost for the remaining 10% of schools that do not currently participate in cluster moderation.

The Order provides that there will be at least one cluster moderation meeting per school year. It is anticipated that, depending on the size of the cluster, the meeting will last either one whole working day per subject (Mathematics, English, Science, Welsh or Welsh as a second language) or, where possible, two subjects per day will be moderated. Thus, cluster moderation will require the relevant personnel to devote 2-4 working days a year to cluster moderation. The meeting will require participation of up to four subject specialists from each secondary school (either one person per day or one person for half a day) and up to two members of staff from each primary school for two to four days per year (one headmaster and an end-of-key stage class teacher).

It is estimated that the total costs of the cluster moderation meetings are between £1,980,000 and £3,970,000 per annum. Based on intelligence from regional consortia, the current school participation rate is 90%, therefore it is estimated that

the additional cost associated with making the meetings statutory will be between £330,000 and £660,000 per annum. Of this additional cost, between £152,000 and £304,200 will be incurred by the regional consortia with the remainder falling to primary and secondary schools. The range for these figures reflects the potential for each meeting to last between 2 and 4 days. Annex 1 contains the spreadsheet demonstrating the detailed calculations and assumptions used to get to the above figures.<sup>2</sup>

It should be noted that the figures presented above reflect the opportunity cost associated with participation in the cluster moderation meetings (i.e. they are an estimate of the value of the participants' time) and are not necessarily an additional financial burden that will have to be met by schools or the regional consortia. That said, in some cases a school may need to hire a supply teacher to provide cover for a teacher attending a cluster moderation meeting.

Participation in cluster moderation discussions is a helpful part of teachers' working time as it adds value to teaching and learning due to improved understanding of the expectations of assessment of pupils' attainment and the type of evidence needed to demonstrate progress. It should also be taken into account that the teaching time will not be lost as pupils still will be taught during that day when the cluster moderation takes place. Thus, the opportunity cost will be absorbed and ultimately the new arrangements will stipulate the potential to add value to teaching and professional learning in the long run.

It is envisaged that this Order will:

- assure the quality, consistency and reliability of teacher assessment by strengthening the cluster moderation arrangements;
- add rigour and robustness to the school-based moderation and strengthen the cluster moderation arrangements by introducing a statutory requirement for all maintained schools to participate in cluster group moderation;
- give the current system of cluster moderation a statutory underpinning and bring it into closer connection with school-based moderation at the end of the second and third key stages;
- ensure a consistent approach to teacher assessment across Wales and an improved resolution of any issues to mutual satisfaction and agreement through the head teachers' (and/or relevant senior staffs') and, as far as possible, regional consortia's participation in the cluster moderation meetings;
- ensure that the local authorities (acting through regional consortia) have an opportunity to monitor the process through the representation at cluster meetings;
- ensure that decisions made at cluster level are taken into account in the participating schools' own moderation;
- improve the transition process between the second and third key stages;

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<sup>2</sup> Detailed calculations are contained in Annex 1. The calculations are split down between primary schools, secondary schools and the regional consortia and cover different 'current participation rates' for the different parties as appropriate.

- ensure that formal cluster moderation takes place at least once a school year, making it regular enough to allow lessons learned to be applied over the course of an academic year, before being reviewed the following year.

There is a wealth of evidence on the importance of consistent and reliable assessment for optimal educational development of learners.<sup>3</sup>

## COMPETITION ASSESSMENT

The Order will have no detrimental effect on competition.

## CONSULTATION

A full comprehensive consultation 'Teacher assessment: strengthening arrangements to improve reliability, consistency and confidence' has been undertaken between 12 December 2014 and 06 March 2015. The purpose of the consultation was to seek views on potential changes to improve reliability, consistency and confidence in teacher assessment. Key stakeholders such as Local Authorities, Regional Consortia, Schools, Teaching Unions etc. sent their responses.

The proposals covered whether, and how, to:

- require local authorities (through regional consortia) to improve the application of teacher assessment;
- strengthen the existing system of cluster group moderation by introducing a statutory requirement for all schools at Key Stages 2 and 3 to participate;
- extend the existing system of cluster group moderation at Key Stages 2 and 3 to include the Foundation Phase;
- introduce a new system of external verification for Key Stages 2 and 3.

Thus, the issue of the introduction of statutory requirement for all schools to participate in cluster moderation at Key Stages 2 and 3 was part of the consultation.

In total, **90** consultation responses were received: **59** were in favour of the proposal, **11** were against it and **20** did not express an opinion.

Most of the respondents felt that participation in cluster moderation:

- will be important for all schools as it will benefit teacher assessment reliability and ensure continuity of the staff's expectations;
- will give the staff an opportunity to agree the levels of pupils' attainment and make them feel much more secure in their judgements, while providing consistency and establishing robust procedures at the same time;
- will be a vitally important step forward to the teacher assessments being moderated locally, regionally and nationally;

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<sup>3</sup> An investigation into Key Stages 2 and 3 teacher assessment, prepared for the Welsh Government by the Australian Council for Educational Research, June 2013

- although the process will take the staff out of some lessons, it will ultimately ensure that the teacher assessments are more reliable when the teachers return to the classroom;
- will provide professional training benefits, particularly for less experienced and new teachers.

Among the concerns expressed by the respondents there were the following issues:

- potential political difficulties which arise when teacher assessments made by some schools are challenged by others;
- potential impact of statutory duties on teacher and head teacher workloads;
- cluster moderation meetings being too focused on levelling individual pieces of work rather than concentrating on the level at which a learner is operating;
- senior staff in school being too removed from the classroom, and too involved in making the school a success as a whole to accurately evaluate individual children's work and be involved in the moderation process;
- cluster moderation meetings leading to sharing bad, rather than good, practice if dominated by a misguided leader.

It is suggested that the local authorities (as mentioned above, most probably acting through the regional consortia) will offer consistent guidance and assistance to cluster groups, which should alleviate most of the concerns mentioned above. Any potential increase in teacher workloads will be compensated by the benefits resulting from the added value to teaching and learning due to improved understanding of the expectations of assessment of pupils' attainment. Teachers will better understand what demonstrates pupil understanding and application of skill at each level. As mentioned above, the new arrangements will stipulate the potential to add value to teaching and professional learning in the long run. It is also planned to keep the new cluster moderation arrangements under review in order to monitor any effects on practitioner workloads.

This Order does not apply to special schools maintained by local authorities in Wales as the cluster moderation arrangements would be significantly different for these establishments. However, the responses suggested that participation in cluster moderation would be more beneficial for special schools provided that the 'clusters':

- are composed of other similar schools and settings;
- are composed of schools and setting both inside and outside the geographical local authority areas,
- moderate the pupils' work according to similar current levels and not to age phases.

Welsh Government agrees that this issue needs further consideration and is planning to issue a corresponding guidance in the first instance.

A summary of consultation responses is available at

<http://wales.gov.uk/consultations/education/teacher-assessment-strengthening-arrangements/?lang=en>



## **POST IMPLEMENTATION ASSESSMENT**

The Welsh Government is planning to monitor the success of the new cluster moderation arrangements after the first year of statutory application. Also, monitoring of compliance will be carried out by local authorities and Estyn as part of their existing duties.