

Explanatory Memorandum to the National Curriculum (Miscellaneous Amendments) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the above Regulations.

Kirsty Williams, AM
Cabinet Secretary for Education
10 August 2016

1. Description

1.1 The National Curriculum (Miscellaneous Amendments) (Wales) Regulations 2016 amend 4 sets of regulations relating primarily to the collection and reporting of information on assessment in the Foundation Phase.

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

2.1 None.

3. Legislative background

3.1 The Regulations are made under sections 29, 408, 537, 537A(1) and (2), 563 and 569 (4) and (5) of the Education Act 1996. These powers were conferred on the National Assembly for Wales and were transferred to the Welsh Ministers by paragraph 30 and 32 of Schedule 11 to the Government of Wales Act 2006.

3.2 These Regulations are subject to annulment and are being made using the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 Revised Foundation Phase Areas of Learning for Language, Literacy and Communication Skills and Mathematical Development were made a statutory curriculum requirement from 1 September 2015. Changes to existing subordinate legislation to reflect updates to the Foundation Phase Outcomes and National Curriculum attainment targets came into force at the same time.

4.2 Additionally, the legislation introduced a statutory requirement for maintained schools, maintained nurseries and nurseries funded to provide education in Wales to conduct a baseline assessment within 6 weeks of each child entering Reception Year. The legislation included a statutory requirement to use the Foundation Phase Profile assessment tool, which is based on the revised AoLs, to produce the baseline assessment.

4.3 The legislation also sets out that the end of Foundation Phase assessment against the revised Outcomes would be phased-in on the basis of following the Reception Year cohort of 2015/16, so that the first assessment against the revised Outcomes would take place in Summer Term 2018.

4.4 The new baseline assessment in Reception Year has been well received by schools and non-maintained settings to the extent that the Foundation Phase

Profile is being used extensively on a non-statutory basis by nurseries prior to Reception Year and also by Flying Start settings.

4.5 These amending Regulations make amendments to existing Regulations as a result of the above changes. The opportunity has also been taken to update a number of other references which relate to sharing of information on children in the Foundation Phase.

4.6 The Regulations make changes to 4 sets of Regulations as follows:

- Education (Information About Individual Pupils) (Wales) Regulations 2007 – substitutes any references to a first key stage with the Foundation Phase
- Pupil Information (Wales) Regulations 2011 – corrects a mistake in a cross reference to a Schedule
- Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011 - update the reference to the revised framework document for the Foundation Phase, published in 2015
- School Performance Information (Wales) Regulations 2011 - include new statutory assessment arrangements for the Foundation Phase in general school performance reporting requirements

4.7 Additionally, an amendment is made to the Education (Information About Individual Pupils) (Wales) Regulations 2007 which relates to all phases of education. This requires schools to notify local authorities of all special educational needs for their children rather than splitting these into primary and secondary needs.

5. Consultation

5.1 No formal consultation has been undertaken on these Regulations as they make in some cases minor amendments which have been subject to extensive consultation previously as part of the roll out of the statutory assessments for pupils in the foundation phase or in other cases merely correct and update legislation to reflect legal changes which are already in force. In summary:

- Education (Information About Individual Pupils) (Wales) Regulations 2007 – merely substitute a references to a first key stage with the Foundation Phase. The first key stage is no longer in force in Wales and this is just an update to the regulations concerned. Changes to the reporting of children’s SEN remove the need for schools to categorise different types of need. There is no additional burden on schools.
- Pupil Information (Wales) Regulations 2011 – corrects a mistake in a cross reference to a Schedule. There is no additional burden on schools.
- Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011 – this is a minor consequential change which updates the reference to the revised framework document for the Foundation Phase, published in 2015. However, it does not impose any new and additional burdens on head teachers by way of reporting to parents.

- School Performance Information (Wales) Regulations 2011- this is consequential on the new statutory assessment arrangements for the Foundation Phase in general school performance reporting requirements introduced by the National Curriculum (Desirable Outcomes, Educational Programmes and Baseline and End of Phase Assessment Arrangements for the Foundation Phase) (Wales) Order 2015. The new baseline assessments were trialled before introduction in September 2015 and received positive feedback, including that the new reporting requirement did not introduce any significant new burden. As schools have provided the information on a voluntary basis during 2015-16 the introduction of the amendment does not impose any new and additional burdens on head teachers reporting to the Welsh Government.

6. Regulatory Impact Assessment (RIA)

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations. These Regulations are making only minor amendments to update references and clarify definitions.