

## **Explanatory Memorandum to the Education (Small Schools) (Wales) Order 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 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 Education (Small Schools) (Wales) Order 2014. 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 (“the Measure”) allows the Welsh Ministers to make a Small Schools Order which defines a small maintained school by a specified number of registered pupils on roll at a given date in any year for the purposes of school federation.

1.2 This Order defines a small school as being one with fewer than 91 registered pupils on the third Tuesday in January immediately preceding the date a local authority published proposals for federation. This date has been chosen to coincide with the date in January that schools complete the statistics and information for the PLASC return. The definition of a small school as having fewer than 91 registered pupils is consistent with the definition of a small school used by HMI Estyn and the Wales Audit Office

1.3 Once a school falls within the definition of a small school, the Federation of Maintained Schools (Wales) Regulations 2014 (“the 2014 Regulations”) allow local authorities to carry out a consultation on federation proposals with the governing bodies and school councils of the schools involved and to establish a federation of small schools 100 days after proposals are published. This allows for a more streamlined and proportionate process for the federation of small schools.

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

2.1 There are no matters of special interest to the committee, but they will wish to note that there is a direct link between this Order and the Federation of Maintained Schools (Wales) Regulations 2014 which makes reference to the Small Schools Order in the provisions.

## **3. Legislative background**

3.1 The Welsh Ministers’ powers to make the Education (Small Schools) (Wales) Order 2014 are contained in Section 15 and 32 (3) of the Education (Wales) Measure 2011 (“the Measure”). Such an Order would define a small school by the numbers of registered pupil on roll at a given date in any year. The date in the regulations is the third Tuesday in January immediately preceding the date on which federation proposals were published by a local authority.

3.2 This Order is subject to annulment and is being made using the negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

4.1 The purpose of this Order is to define a small school as being one with fewer than 91 registered pupils on the third Tuesday in January immediately preceding the date a local authority published proposals for federation.

4.2 The intended effect is to allow for a more proportionate and streamlined process in the federation of small schools. Once a school falls within the

definition of a small school, the Federation of Maintained Schools (Wales) Regulations 2014 (“the 2014 Regulations”) allow the local authority to carry out a consultation on federation proposals with the governing bodies and school councils of the schools involved and to establish a federation of small schools 100 days after proposals are published.

## **Policy Background**

4.3 The Education Measure 2011 which received Royal Assent in May 2011 provides local authorities with the power to propose and create a federation of schools by a process to be set out in regulations. The Federation of Maintained Schools (Wales) Regulations 2014 give effect to those powers and set out the process to be followed by schools and local authorities to federate schools.

4.4 The Measure also provides for the Welsh Ministers to make a Small Schools Order which defines a small maintained school by a specified number of registered pupils on roll at a given date in any year for the purposes of school federation.

4.5 This Order defines a small school as being one with fewer than 91 registered pupils on the third Tuesday in January immediately preceding the date a local authority published proposals for federation. The definition of fewer than 91 pupils has been chosen as it is consistent with the number used by Estyn and the Wales Audit Office and reflects consultation responses.

4.6 Smaller schools, including those in rural areas, often experience difficulties in recruiting and retaining headteachers, staff and governors and are more likely to carry long-term vacancies. Falling school numbers can make schools susceptible to school closure. Federation provides an opportunity for smaller schools to remain open in their communities and to take advantage of the benefits federation can offer in terms of sharing expertise, good practice and resources for the benefit of all schools in the federation.

4.7 This could include pooling resources to recruit a joint headteacher or a subject specialist. Avoiding duplication of effort and resources can free up time for head teachers and professionals to devote more time to the core business of teaching and learning in order to improve standards and outcomes for learners, rather than administrative or management duties.

4.8 Evidence suggests that federation can be beneficial in terms of improving the quality and range of educational provision and can make schools more efficient financially. This is because the united governance structure that federation puts in place leads naturally to synergies between schools. It stimulates joint working between school staff and shared use of resources. School federation can also strengthen school governor recruitment and retention for governing bodies that struggle to attract or retain sufficient governors.

4.9 The Welsh Government wishes to make federation more common place, especially amongst small schools. However, as recognised during the passage

of the Measure exercising this power could generate some increased work for local authorities which maintain significant numbers of small schools.

4.10 The Measure therefore included provision which allows the Welsh Ministers to make regulations which make it easier for a local authority to propose federation of schools with fewer than a specified number of pupils (to be prescribed in an Order). If a school is identified as a small school within the definition of this Order local authorities will be able to use a more streamlined and proportionate process for the federation of small schools whilst maintaining effective consultation with key stakeholders.

4.11 The Order provides that for schools that fall into this category on the prescribed date the local authority would be able to federate the school using a shorter consultation period of 20 school days rather than the usual 6 weeks for normal federations. Similarly, the timescale before the federation is established is reduced from at least 125 days to at least 100 days from the date federation proposals are published. The difference in approach in the Measure was intended to ensure a more streamlined and proportionate process to facilitate the federation of small schools which strikes a balance between appropriate consultation with key stakeholders whilst maintaining a lighter touch approach for small schools.

4.12 Many local authorities have a high proportion of small schools. The Measure 2011 provides that where a local authority is considering federating small maintained schools as defined by the Order the local authority is required to consult only the governing bodies of those small schools in accordance with the regulations.

4.13 The local authority is not under a duty to publish the federation proposals. However, in order to ensure transparency in respect of local authority proposals to federate small schools the 2014 Regulations place a requirement on local authorities to publish federation proposals by sending them to the governing bodies and school councils of the schools concerned inviting them to comment within 20 school days.

4.14 As such whilst a local authority is not required to seek comments on proposals for a small school federation from the wider school community under the 2014 federation regulations, the local authority is required to consult and invite comments from the governing body of a small school, which will include governor representation from parents, teaching and non-teaching staff, head teachers and foundation governors, if relevant.

4.15 Local authorities are also required to send copies of the federation proposals to:

- a) any other relevant local authority;
- b) the headteacher of every school;
- c) the foundation governors and any trustees (if relevant); and
- d) the relevant diocesan authority (if appropriate).

4.16 Local authorities are not required to ask these persons to submit comments, but may do so if they wish.

4.17 Where a local authority is considering federating a small school with a normal sized school (i.e. a school of 91 pupils or more), it must follow the normal federation process. The 2014 Regulations require the local authority to publish proposals by sending copies to the following persons and inviting them to respond within at least six weeks of the date proposals were published:

- a) other local authorities (if schools across borders are being federated);
- b) the headteacher of every school;
- c) the school council of every school;
- d) the foundation governors and any trustees relating to the school - if relevant;
- e) the appropriate diocesan authority or appropriate religious body -if relevant;
- f) all staff paid to work at the school;
- g) parents of all registered pupils at the schools;
- h) all trade unions; and
- i) any other appropriate persons.

4.18 In such cases the timescale for the federation to be established is at least 125 days from the date federation proposals are published. The statutory guidance which will accompany the 2014 Federation Regulations and the small schools order make clear that federation by local authorities should never come as a surprise to the school, its staff, governors, parents and the wider community. It emphasises the need for open and frank discussions on proposals. It also includes a clear step by step approach to federation and options for engaging parents and pupils, including bespoke information and a question and answer paper. Having these early discussions and interactions will help stakeholders to better understand what federation means and how it could benefit their school and should ensure that the consultation and federation processes are handled effectively.

4.19 Allowing small schools to be federated using a shorter process provides for a proportionate and streamlined process whilst maintaining effective consultation with key stakeholders. It ensures that small schools, which can often face financial difficulties, falling pupil numbers and problems recruiting and retaining staff, headteachers and governors with less likelihood of carrying vacancies. It enables schools to take early advantage of the benefits federation can offer. Federation can provide an opportunity for schools to remain open in their communities and to share good practice, resources and facilities to improve school performance and pupil attainment.

## **5. Consultation**

5.1 Consultation with key stakeholders on the new federation proposals and the small schools order took place between 17 January and 14 March 2013. The stakeholders consulted included local authorities, Governors Wales, diocesan authorities, school governing bodies, school staff unions and community councils. Twenty five responses were received in total. There was broad agreement to the consultation proposals. An analysis of the consultation

responses is available at:

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

5.2 The consultation posed questions on the process of federation; the constitution and membership of a federated governing body the process to dissolve a federation or for a school to leave a federation and proposals for the small schools order. The federation proposals do not differ much from the existing process as set out in the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010.

5.3 With regards the Small Schools Order the consultation proposed to define a small school as being one with a 100 registered pupils or less, which is aligned to the number set out the in the Government of Maintained Schools (Wales) Regulations 2005 requiring a smaller sized governing body

5.4 However, respondents considered that the definition of a small school should be consistent with the small schools definition already used by HMI Estyn and the Wales Audit Office, which is a school of fewer than 91 pupils.

5.5 Taking account of consultation responses the Small Schools Order has subsequently been revised to define a small school as being one with fewer than 91 registered pupils on the third Tuesday in January, immediately preceding the date a local authority published proposals to federate small schools. This date has been chosen to coincide with the date in January that schools complete the statistics and information for the PLASC return.

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

6.1 A full Regulatory Impact Assessment was completed for the Education (Wales) Measure 2011 which included provisions to provide local authorities with the power to federate schools and the power for Welsh Ministers to make a small school's order and is available at <http://www.assemblywales.org/ms-ld7481-em-r-e.pdf>.

6.2 In addition a full RIA has been completed for the Federation of Maintained Schools (Wales) Regulations 2014.

6.3 The Order has no impact on business, charities, or voluntary bodies. There are no direct costs arising from the small schools order as it merely defines a small school by the number of registered pupils on roll at a given date, for the purposes of federation.

6.4 Section 15 of the Education (Wales) Measure 2011, provides Welsh Ministers with the power to make provision by Order for the definition of a small maintained school by reference to a specified number of pupils registered at a school on a specified date in any year. The Measure was subject to extensive consultation and debate prior to agreement of the National Assembly for Wales as part of the legislative process. The proposals for an Order have also been subject to consultation.

6.5 In the absence of an Order there would be no definition of a small school and no distinction between a small school and any other schools for the purposes of federation. Local authorities would still have the powers to federate small schools, but without the Order would be required to use an extended process for small schools which would not be considered proportionate or appropriate for smaller schools.

6.6 The Order defines a small school as being one with fewer than 91 registered pupils on the third Tuesday in January immediately preceding the date a local authority published proposals for federation. This date has been chosen to coincide with the date in January that schools complete the statistics and information for the PLASC return. Fewer than 91 pupils has been chosen as the optimum number as it is consistent with the definition of a small school used by HMI Estyn and the Wales Audit Office and responds to consultation responses.

7.7 The Order serves to provide a definition of a small school for the purposes of federation and delivers on the policy objective of ensuring a streamlined and proportionate consultation process for proposals to federate small schools.

### **8. Costs & benefits**

8.1 There are no direct costs arising from the small schools order as it merely defines a small school by the number of registered pupils on roll at a given date, for the purposes of federation. The provisions in the Federation of

Maintained schools (Wales) Regulations are permissive and as such there is no duty on local authorities to federate schools.

8.2 However, there are likely to be indirect administrative and staff costs for local authorities in administering the federation process, should they propose to federate small schools. These costs include the cost of preparing a report, photo-copying and distributing the report to stakeholders for consultation, attending governing body meetings to discuss proposals and analysis of consultation responses, preparing an outcome of the consultation and supporting the establishment of the federation.

8.3 Given that the federation process would be less resource intensive for smaller schools than that of a federation of schools of 91 pupils or more, administrative costs are likely to be less (no more than £3,000). These costs are one-off administrative and staffing costs associated with the establishment of the federation. Federation of schools is not expected to require the services of a full time staff member). Precise costs would depend on the salary of the person involved and the proportion of their time spent.

8.4 Such consultation would extend to the governing bodies of the schools and school council concerned rather than the wider consultation for a federation of a school with 91 pupils or more although copies of proposals must be sent to other stakeholders. This allows for a more proportionate process for the federation of smaller schools.

8.5 There would also be an opportunity for the regional consortia to develop such a role on a regional basis in support of schools federating within the consortia area which offers opportunities of scale.

### **Cost savings and benefits to local authorities and schools in federating**

8.6 The ultimate aim of federations should be to improve educational outcomes of pupils. However, federating small schools is likely to result in some cost savings for local authorities associated with fewer school governors to support and train and reduced costs for clerking where a local authority offers such a service.

8.7 Small schools that are federated should also benefit from potential cost savings as the federation beds down. Evidence from schools that have federated in England where federation has been established for some years show there are clear advantages and savings that can be achieved by federated schools being able to share resources to raise standards and improve teaching and learning; improved leadership and expertise; and the single governing body utilising and having access to the budget shares of all the schools in the federation.

8.8 Federation can also offer small schools the opportunity to work together in a formal structure and to benefit from this arrangement in a number of ways. Governing body 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.

8.9 Avoiding duplication of effort and resources should 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;

8.10 Annex 9 of the UK Department for Children, Schools and Families Report (now the Department for Education) issued in September 2009 evidences some of the financial savings from the case studies of small rural primary schools federating. Based on shared headships at that time the estimated savings on headteachers salaries ranged from a net minimum of £12,000 - £54,530 depending on variables such as the pay point and salary scale of the heads; on costs; numbers of schools in the federation. Salaries of headteachers will have increased since the 2009 Report however, as each school determines the salary range for its headteacher we are unable to give a firmer idea of potential cost savings for shared headships costs.

8.11 A survey of federations of schools undertaken by Ofsted in 2011 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.<http://www.ofsted.gov.uk/news/federated-schools-see-improved-outcomes-%E2%80%93-ofsted>

There are obvious benefits to society and the economy of improving educational outcomes of pupils.

8.12 The Small School Order achieves the policy intention of putting in place an Order to define a small school for the purposes of federation and ensuring a proportionate and streamlined process for the federation of small schools. It also ensures that small schools are able to take advantage of the benefits federation can offer at the earliest opportunity.

## **9. Competition Assessment**

9.1 A Competition Assessment is not required as this Order does not affect business, charities and/or the voluntary sector.

## **10. Post implementation review**

10.1 The effect of the Order will be monitored through regular monitoring meetings with local authorities, consortia and Governors Wales.