

Explanatory Memorandum to the Religious Character of Schools (Designation Procedure) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Education Directorate 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 Religious Character of Schools (Designation Procedure) (Wales) Regulations 2016.

Kirsty Williams
Cabinet Secretary for Education

22 November 2016

1. Description

These Regulations set out the procedures to be followed by the Welsh Ministers in making an order or orders designating voluntary schools which have a religious character under section 69 of the School Standards and Framework Act 1998.

The new regulations will replace the Religious Character of Schools (Designation Procedure) Regulations 1998 (“the 1998 Regulations”) currently in force which refer to sections of the 1998 Act that have been replaced in Wales by the School Standards and Organisation Act 2013 (“the 2013 Act”). The new regulations will provide for a new voluntary school approved under sections 50, 51 or 53 of the 2013 Act to be designated by Welsh Ministers as a school with a religious character.

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

None.

3. Legislative background

Section 69 of the School Standards and Framework Act 1998 (“the 1998 Act”) relates to the duty to secure due provision of religious education in community, foundation and voluntary schools. The provision, which is required to be included in a school’s curriculum, depends on the category of school. Subsection 2 of section 69 states that the categories are:

- a) *community, foundation and voluntary schools which do not have a religious character;*
- b) *foundation and voluntary controlled schools which have a religious character; and*
- c) *voluntary aided schools which have a religious character.*

Subsection 3 of section 69 relates to the designation of the religious character of a school and states that:

For the purposes of this Part a foundation or voluntary school has a religious character if it is designated as a school having such a character by order made by the Welsh Ministers

Designation as a school with a religious character does not in any way change the religious character of a school. This can only be achieved by publication of statutory proposals to close the school and open a new school. Religious character is not acquired or lost by virtue of being designated or not designated. Designation is the recognition of a religious character which a school already has as a question of fact.

Designation is relevant as part of the mechanism to determine the form of religious education to be provided in the school, the form of collective worship, school staffing matters, admissions arrangements, the disposal of assets and a description of the school’s ethos in its instrument of government.

A school can be designated as one with a religious character if, among other things, at least one of the following criteria is met:

- 1) At least one member of the governing body of the school is appointed as a temporary foundation governor to represent the interests of one or more religions or religious denominations.
- 2) The school premises were provided on trust so that if, for example, the school were closed, any proceeds of sale would be applied for the benefit of one or more religion or religious denominations.
- 3) The school premises were provided on trust in connection with:
 - a) the provision of education, or
 - b) the conduct of an educational institution, in accordance with the tenets of one or more religions or religious denominations.

The Religious Character of Schools (Designation Procedure) Regulations 1998 (“the 1998 Regulations”) set out the current procedure to be followed by the Welsh Ministers in making an order designating a foundation or voluntary school as a school with a religious character. These Regulations apply to England and Wales.

The 1998 Regulations provide the potential for new schools to be designated as schools with a religious character, but refer to such schools as having been established as a result of proposals published under the School Standards and Framework Act 1998, and approved in accordance with Schedule 6 to the 1998 Act.

The School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) received Royal Assent in March 2013. The 2013 Act amended the 1998 Act so that proposals to establish a new foundation or voluntary school are no longer approved under paragraph 3 or 8 of schedule 6 to the 1998 Act. Instead, proposals to establish a voluntary school will be approved under sections 50, 51 or 53 of the 2013 Act. No new foundation school or foundation special school may be established in Wales.

The 1998 Regulations cover England and Wales. The new Regulations would replace the 1998 Regulations only in Wales.

At the present time all schools in Wales designated with a religious character are either Roman Catholic or Church in Wales. Although currently Church in Wales schools are the only Anglican schools in the past there have been Church of England schools in Wales. This is because some parishes that are geographically in Wales form part of the Church of England Dioceses of Hereford and Litchfield. Consequently, the new Regulations allow for the designation of a school with a religious character of Church of England.

4. Purpose & intended effect of the legislation

The purpose of these Regulations is to set out the procedures to be followed by the Welsh Ministers in making an order or orders designating voluntary schools which have a religious character under section 69 of the School Standards and Framework Act 1998.

New regulations are needed to replace the 1998 Regulations currently in force because they refer to sections of the 1998 Act that have been replaced in Wales by the School Standards and Organisation Act 2013.

5. Consultation

As these Regulations are of a technical nature and improve the accessibility and coherence of legislation it was decided that consultation was unnecessary in this instance.

6. Regulatory Impact Assessment (RIA)

An RIA has not been undertaken as these Regulations do not create any additional regulatory burden and only seek to ensure the continuation of existing legislation.

The decision not to take an RIA is in line with Section 4.2 of the Welsh Ministers' RIA code which states that the Welsh Ministers policy is not to carry out an RIA "*Where routine technical amendments or factual amendments are required to update regulations etc. that have no major policy impact.*

Given the subject matter and effect of the Regulations, it is considered that they do not have any effect relevant to the statutory duties at sections 77 – 79 of the Government of Wales Act 2006, or to statutory partners (sections 72 – 75).