

## **Explanatory Memorandum to the School Performance and Absence Targets (Wales) (Amendment) Regulations 2019.**

This Explanatory Memorandum has been prepared by Education and Public Services department 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 School Performance and Absence Targets (Wales) (Amendment) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AC/AM  
**Cabinet Secretary for Education**

6 June 2019

## **PART 1**

### **1. Description**

The School Performance and Absence Targets (Wales) (Amendment) Regulations 2019 (“the 2019 Regulations”) amend the target setting requirements in respect of key stage 4 pupils on school governing bodies in *the School Performance and Absence Targets (Wales) Regulations 2011* (“*The Target Setting Regulations*”).to:

The amendments provide greater flexibility to school governing bodies to determine suitable targets focused on the real priorities for improvement in their own individual context.

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

None.

### **3. Legislative background**

These Regulations are made under the following powers:

- Sections 19 and 54(3) and (4) of the Education Act 1997.
- Sections 30(1) and (2) and 210 of the Education Act 2002.

The Welsh Ministers’ functions in section 19 and 54 of the Education Act 1997 were conferred on the Secretary of State and were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The functions in section 30 and 210 of the Education Act 2002 were conferred directly on the National Assembly for Wales. All of the above functions of the National Assembly for Wales were vested in the Welsh Ministers by paragraphs 30 of Schedule 11 to the Government of Wales Act 2006.

These Regulations are being made under the negative resolution procedure.

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

Working with the teaching profession, local government, regional consortia, Estyn, unions and international experts, the Welsh Government has been undertaking a fundamental review of the current accountability system. Our ongoing reforms of the education system play an important part in *Our National Mission* - to raise standards for and extend opportunities for all our young people.

The place of school target setting requirements and the extent to which they

are managed and/or legislated by the Welsh Government within the future Evaluation and Improvement arrangements is part of the wider discussions and reform development that is ongoing. It is our intention that these arrangements will be tested and in place ready for the new curriculum. In the meantime, the current Target Setting Regulations do not align with imminent transitional performance reporting arrangements in schools.

Our National Mission sets out our vision for an education accountability system that is fair, coherent, proportionate, transparent, and based on our shared values for Welsh education. As part of our Action Plan, we committed to agree transitional evaluation arrangements with schools in order to support deeper collaborations between schools and secure the raising of standards for all learners – we have already made a number of changes to support this:

The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018<sup>amended</sup>, a number Regulations to stop the routine publication of Teacher Assessment data and National and Numeracy Tests data at a school, local authority and regional level – this is helping to ensure that schools can now focus on assessment of the pupil, rather than using data as part of a high stakes accountability system.

In addition to the above changes, in May 2018 the Cabinet Secretary for Education announced a suite of new Key Stage 4 ‘interim performance measures’ for secondary schools, which have been co-developed with the education sector. These interim measures will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive<sup>1</sup>, Level 2 and Level 1 threshold measures, from 2019 (i.e. the results for pupils reaching the end of year 11 in summer 2019).

The current Target Setting Regulations do not align with the implementation of these interim measures (those regulations refer specifically to current Key Stage 4 measures that will soon become obsolete). This does not make sense as such targets would no longer be realistic or measureable and therefore would not support effective self-evaluation and improvement.

It is also unreasonable to expect schools to set targets for the achievement of measures that will not be reported for that academic year. A more immediate change is therefore needed for the interim period, prior to the implementation of the new Evaluation and Improvement arrangements, and any necessary revisions to statutory target setting requirements.

The purpose of the t 2019 Regulations is to amend the Key Stage 4 target setting requirements in the Target Setting Regulations to remove the requirement for school governing bodies to set performance measure-specific targets in favour of increasing the number of non-specified targets that must be set based on school self-evaluation. The policy objectives of this approach are to:

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<sup>1</sup> The Level 2 inclusive is the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics

- i. Remove the requirement for school governing bodies to set targets for the achievement of what will soon become obsolete school performance measures at Key Stage 4; and
- ii. Move to a more flexible target setting system at Key Stage 4 which provides greater autonomy for schools to set genuine targets focused on the real priorities for improvement in the school's own context.

## **5. Consultation**

Details of the consultation to be undertaken are included in section 8 within the RIA below.

## 6. PART 2 – REGULATORY IMPACT ASSESSMENT

### Introduction

This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications of proposed changes to the target setting requirements on schools in Wales.

The Target Setting Regulations require school governing bodies to set, and submit to the Local Authority, targets in every school year for achievements relating to the performance of pupils in Key Stage 2, Key Stage 3 and Key Stage 4.

In summary, current requirements are that these targets must be set against the following prescribed achievements:

| Key Stage 2                                                                                                                                                                                                                                          | Key Stage 3                                                                    | Key Stage 4                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Percentage of pupils to achieve level 4 or above for each of the core subjects                                                                                                                                                                       | Percentage of pupils to achieve level 5 or above for each of the core subjects | Percentage of pupils to achieve the level 1 threshold                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                      |                                                                                | Percentage of pupils to achieve the level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics<br><br><i>(this is commonly known as the 'Level 2 inclusive' and is referred to as such throughout this RIA)</i> |
| The <b>three</b> achievements (at each Key Stage) set by the governing body based on its evaluation of the performance of pupils at the school in teacher assessments as set out in the data for that school in relation to the previous school year |                                                                                |                                                                                                                                                                                                                                                                        |

The 'interim' Key Stage 4 performance measures announced by the Cabinet Secretary for Education in May 2018 will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive, Level 2 and Level 1 threshold measures, from 2019. The Welsh Government will no longer be publishing information for the 'old' measures from 2019 i.e. the results for pupils reaching the end of year 11 in summer 2019.

The current target setting requirements do not align with these interim measures as they require targets for year 11 pupils at Key Stage 4 to be set against what will soon become obsolete performance measures (namely the Level 2 inclusive and Level 1 threshold measures). In addition, Schedule 2 of the regulations

specifies publication requirements in relation to 'the Level 2 threshold' which will also no longer be reported from 2019.

In view of the above changes, the requirements set out in the Target Setting Regulations no longer make sense. This is because any such targets set by school governing bodies would no longer be realistic or measureable and therefore would not fulfil their purpose in supporting effective self-evaluation and improvement.

The place of target setting requirements and the extent to which they are managed and/or legislated by the Welsh Government within the future Evaluation and Improvement arrangements is part of the wider discussions and reform development that is ongoing. It is our intention that these arrangements will be tested and in place ready for the new curriculum. In the meantime, the current target setting requirements do not align with imminent transitional performance reporting arrangements in schools

The target setting requirements will therefore need to be changed for the interim period prior to the implementation of the new Evaluation and Improvement arrangements. This will require the Target Setting Regulations to be amended.

It would not be appropriate to simply replace the current performance measure-specific targets at Key Stage 4 with equally specific targets relating to the interim performance measures, particularly given their interim nature. Moreover, it is acknowledged that the current requirements are overly specific in nature, placing a disproportionate emphasis on the achievement of quantitative performance measures. This can limit the school's ability to set genuine targets focused on the real priorities for improvement in their own context, and raising aspiration for all learners. Feedback from the sector points to a need for greater autonomy for schools.

In order to address the above issues, the Welsh Government proposes new regulations to amend the existing target setting requirements in relation to Key Stage 4 only. The proposal is to remove the requirement for school governing bodies to set performance measure-specific targets whilst also increasing the required number of non-specified targets that school governing bodies are required to set based on school self-evaluation.

At Key Stages 2 and 3, the requirements are still very much aligned with existing assessment arrangements. As such, and whilst the curriculum reform is ongoing, it would be prudent not to rush into making similar changes to requirements for Key Stages 2 and 3. This document therefore focusses solely on changes to Key Stage 4 with requirements for Key Stages 2 and 3 remaining unchanged.

This Regulatory Impact Assessment reviews the proposal, focusing on changes through proposed new regulations, *'The School Performance and Absence Targets (Wales) (Amendment) Regulations 2019'*.

## **7. Options**

Two options have been considered in the analysis of the costs and benefits. These are:

## **Option 1 - Keep the status quo**

The option of doing nothing would mean all current target setting requirements in the Target Setting Regulations remain in place. School governing bodies would continue to be required to set targets each year for year 11 pupils at Key Stage 4 in relation to:

- The percentage of pupils to achieve the Level 1 threshold;
- The percentage of pupils to achieve the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics (Level 2 inclusive);
- Three achievements based on the school governing body's evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year.

As we will no longer be reporting on these measures at a sub national level, this would be a waste of effort and resources.

## **Costs and benefits of Option 1**

### **Costs**

Avoiding change would risk a direct opportunity being lost in improving outcomes for children and young people in Wales, and an indirect opportunity cost upon the economic gains of our future generations.

The direct financial costs of the 'Do Nothing' approach should not, by definition, change, as processes would continue as normal. Those costs that are already incurred under the 'Do Nothing' approach are due to the administrative burdens and resource requirements needed to comply with current regulations. The burden of these costs are to be found upon school governing bodies, teachers, headteachers and other school practitioners, as well as Local Authorities, regional Consortia, inspection authorities etc. However, as no additional costs have been identified as part of the 'Do Nothing' option, this assessment reviews qualitative information only.

However, as the current performance measures referred to in the regulations will no longer be reported at a sub national level by Welsh Government after 2018, schools would need to use their own data to set and measure achievements against the targets which have been set. This is likely to result in additional financial burden on schools.

### **Benefits**

When used correctly, target setting is an important tool in school improvement, focussing on how schools are currently doing, what more they should aim to achieve and what they must do to make it happen. The actions that flow from an effective target setting process should lead to raised educational standards and improved outcomes for all pupils.

The 'interim' Key Stage 4 performance measures announced by the Cabinet Secretary for Education will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive, Level 2 and Level 1 threshold measures, from 2019<sup>2</sup>. The Welsh Government will no longer be publishing information for the 'old' measures from 2019.

The current target setting requirements do not align with these interim measures as they require targets at Key Stage 4 to be set against what will soon become obsolete performance measures (namely the Level 2 inclusive and Level 1 threshold measures). Schedule 2 of the Regulations also refers to the Level 2 threshold which will also no longer be reported.

Therefore, whilst the target requirements themselves would not have changed under the 'Do Nothing' approach, it would nevertheless become more difficult for schools to set meaningful targets, to monitor their progress and effectively evaluate their success. This undermines the purpose of target setting for self-evaluation, with potential consequential social costs impacting upon current and future learners receiving education.

It is acknowledged that the current requirements are overly specific, placing a disproportionate emphasis on the achievement of quantitative performance measures. This can limit the school's ability to set genuine targets focused on the real priorities for improvement in their own context. Feedback from the sector points to a need for greater autonomy for schools.

In *Successful Futures*, Professor Donaldson cites a 2014 OECD report which found weaknesses in the current approach to accountability processes in Wales, such that the balance between accountability and improvement has been poor and that there is scope for a greater emphasis on improvement. A key benefit of the alternative option (Option 2) is creating a more flexible target setting system better aligned with the general direction of travel towards subsidiarity and increased autonomy of schools and with a greater focus on self-evaluation and improvement.

## **Option 2 - Amend the Target Setting Regulations (*preferred option*)**

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<sup>2</sup> Welsh Government will be reporting on the new 'interim' school performance measures in autumn 2019 for those who will have reached the end of Key Stage 4 in the preceding summer i.e. the year 11 finishing in summer 2019.

The second option is to amend the Target Setting Regulations to:

- i) remove the requirement on school governing bodies to set performance measure-specific targets for year 11 pupils at Key Stage 4;
- ii) increase the required number of non-specified targets that must be set by school governing bodies for year 11 pupils at Key Stage 4 based on school self-evaluation.

This would mean school governing bodies would no longer be required to set targets against specified performance measures. Instead, school governing bodies would be required to set six targets (up from the current three) based on school self-evaluation including its evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year. In practice, this means school governing bodies would no longer have to set targets in relation to the following prescribed achievements:

- Percentage of pupils to achieve the Level 1 threshold
- Percentage of pupils to achieve the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics (Level 2 inclusive).

Instead, they would need to set additional non-specified targets based on school self-evaluation including their evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year. The Target Setting Regulations already require school governing bodies to set three targets in this way and this proposal would increase that requirement to six targets with additional flexibility for targets to be based on wider school self-evaluation, not solely limited to an evaluation of teacher assessments

## **Costs and benefits of option 2**

### **Costs**

There are potential costs associated with the time required for teachers, head teachers and other school practitioners to become familiarised with the new targets. However, this cost is expected to be limited due to the simple nature and limited extent of the change.

This potential cost is expected to be incurred in 2018-19. Officials have followed similar costing methods for familiarisation of similar amending regulations - The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018<sup>3</sup>. We have allowed 1.5 hours for headteachers to read and disseminate information, coming to an estimated one-off cost as follows:

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<sup>3</sup> <http://www.legislation.gov.uk/wsi/2018/766/contents/made>

- 1,391 head teachers and 186 acting head teachers. Totalling 1,577.
- 1.5 hours time at £34.68 per hour<sup>4</sup>
- Total estimated cost of familiarisation, £82,030

It has been identified that the removal of consistent measures to set targets against could lead to short term social costs to local authorities, consortia and Elected Members, due to a reduced ability to aggregate pupil level targets to cohort, school and Local Authority targets. However, the practice of aggregating targets in this way has been misused for accountability purposes and to make judgements about individual schools, Local Authorities or regional consortia. Welsh Government has made our expectation clear that school targets should only be used to support self-evaluation and should not be aggregated up in this way. This practice is an additional source of pressure on providers that can prevent the most appropriate curriculum being offered to an individual due to the external judgment on performance based solely on one or more quantitative performance measures viewed out of context.

The greater flexibility and potential wider variation in targets under Option 2 should help deter this behaviour and result in more effective target setting and improved monitoring, which is predicted to offset this cost.

## **Benefits**

This option would remove the requirement for schools to set targets for the achievement of soon-to-be obsolete school performance measures, thereby addressing the additional burden on school governing bodies and Local Authorities, which was discussed as a cost under the alternative option at Option 1.

By removing the specific nature of school target setting requirements in favour of requiring more non-specified alternatives, this will result in a more flexible approach to target setting, providing schools with greater autonomy to set genuine targets, focused on the real priorities for improvement in their own context. This addresses feedback from the sector regarding a need for greater autonomy for schools.

Improving the target setting system in this way is intended to lead to raised educational standards and ultimately result in social (educational) benefits. Whilst targets will not, on their own, raise standards or bring about improvements, effective self-evaluation, and the actions that flow from it, should deliver educational improvement and improved outcomes for all pupils.

In addition, by removing the specific nature of targets, this better aligns the target setting requirements with the emerging Evaluation and Improvement arrangements committed to in *Our National Mission*, towards subsidiarity and increased autonomy for schools to self-improve and manage their own journeys.

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<sup>4</sup> Estimated resource costs for headteachers have been calculated using hourly pay Senior professionals of educational establishments in Wales, from the provisional 2016 Annual Survey of Hours and Earnings (ASHE).

Under this option, target setting is refocused on its intended purpose to support effective self-evaluation and away from accountability.

This option should not result in any additional resource, and therefore cost, burden for governing bodies or Local Authorities given the parallel removal of the prescribed targets and their familiarity with target setting in this way.

### **Chosen Option**

Based on an analysis of the costs and benefits of each option, Option 2 has been determined as the preferred option. Whilst there are potential costs to the sector with regards to familiarisation, these are significantly outweighed by the benefits combined with the prevention of additional costs and missed opportunities that which would otherwise occur under Option 1.

The qualitative benefits of the preferred option also significantly outweigh those of Option 1. The preferred option removes an unreasonable duty on schools, is expected to lead to an improved system of target setting, providing greater autonomy to schools encouraging genuine targets focussed on improving outcomes for learners.

## **8. Consultation**

A full consultation was undertaken with a broad range of stakeholders seeking views on the policy approach. The consultation was launched on 21 January and closed on 8 March (6 weeks). A consultation report has been drafted and will be published shortly. There was a low response to the consultation with a total of only 15 responses from stakeholders including local authorities, schools, and teaching unions. Overall it is clear that stakeholders are generally in support of the proposals and policy intentions. There were some individual concerns about inconsistency with KS2 and KS3 target setting requirements as well as requests for further guidance on target setting. These concerns have been addressed as the Welsh Government Response included in the consultation report. Please see below:

<https://gov.wales/changes-target-setting-requirements-schools>

## **9. Competition Assessment**

A full competition assessment has not been completed in the case of this proposal, because the proposed legislative changes do not affect businesses, charities or the voluntary sector. There is not likely to be any detrimental effects on competition, as the proposed 2019 Regulations are intended to affect the public sector alone. A competition filter test is shown below.

| <b>The competition filter test</b> |            |
|------------------------------------|------------|
| <b>Question</b>                    | <b>Y/N</b> |

|                                                                                                                                          |    |
|------------------------------------------------------------------------------------------------------------------------------------------|----|
| <b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?                               | No |
| <b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?                               | No |
| <b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?          | No |
| <b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?                                           | No |
| <b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?              | No |
| <b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?  | No |
| <b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| <b>Q8:</b> Is the sector characterised by rapid technological change?                                                                    | No |
| <b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?     | No |