

Explanatory Memorandum to the Education (Amendments Relating to the Intervals for Inspection of Education and Training) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the 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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Amendments Relating to the Intervals for Inspection of Education and Training) (Wales) Regulations 2020.

Kirsty Williams AM
Minister for Education

20 January 2020

PART 1

1. Description

These Regulations extend the current inspection cycle for all nursery settings, maintained schools, Pupil Referral Units (“PRUs”), careers and related services and further education settings from 7 (2016-2023) to 8 (2016-2024) years for one cycle only and reverts to a 6 year cycle thereafter.

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

None.

3. Legislative background

The Regulations amend the following:

- (a) Inspection of Education and Training (Wales) Regulations 2001 – inspection post 16 education provided pursuant to the Learning and Skills Act 2000,
- (b) Education (School Inspection) (Wales) Regulations 2006 – inspection of maintained schools (including PRUs and religious education provided at such schools),
- (c) Inspection of Careers and Related Services (Wales) Regulations 2006 – inspection of careers services, and
- (d) Education (Inspection of Nursery Education) (Wales) Regulations 2015 – inspection of nursery education.

The legal power to make the Regulations proposed are contained in section 122(1) and paragraph 6B(1)(a) of Schedule 26 to, the School Standards and Framework Act 1998 (“the 1998 Act”), section 77(2) of the Learning and Skills Act 2000 (“the 2000 Act”), and in sections 28(1), 50(4), 55(4) and 56(3) of the Education Act 2005 (“the 2005 Act”).

The functions in the 1998 Act 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 the 2000 Act and the 2005 Act were conferred directly on the National Assembly for Wales. The functions in the 1998 Act, 2000 Act and the 2005 Act are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations follow the Negative Procedure.

4. Purpose and intended effect of the legislation

The purpose of the legislation is to allow Estyn to partially suspend maintained school inspections for an agreed period (September 2020 to August 2021) to allow schools time to focus on and embed the changes they need to make in line with the curriculum reforms. It also allows Estyn to support those schools during this time through engagement visits and enables inspectors to develop an understanding of the reform process, adapt their practices and ensure that future inspection is fit for purpose. The extension to the inspection cycle allows Estyn to continue its proposed programme of inspections over a longer period of time as well as provide a period for schools and Estyn to undertake the development work needed.

Whilst it is anticipated that Estyn will only be partially suspending inspections for maintained nurseries, schools and PRUs during 2020-21, the Regulations allow Estyn the flexibility to suspend inspections in other settings prescribed for in the current inspection regulations (all nursery settings, careers and related services and further education settings) if they deem necessary. It also allows for all settings to remain on the same inspection cycle during the current period and thereafter.

Background

Professor Donaldson's report 'A Learning Inspectorate' included recommendations designed to allow Estyn and school inspections to contribute directly to the education reforms. The report signalled some significant changes of how the Inspectorate would work in the future. The proposals within the report suggest a three-phased approach to transition from the current to future inspection arrangements to align with the curriculum reforms and new accountability arrangements.

Phase 1 of the transition period (September 2020 to August 2021) included a proposal to partially suspend school inspections to allow schools time to focus on and embed the changes they needed to make in line with the reforms and to allow inspectors to support schools to prepare for the changes and adapt their practices for future inspection arrangements. Schools causing concern will continue to be monitored during this period.

To assist phase 1 of the transition period, current Regulations needed to be amended to extend the inspection cycle from 7 to 8 years for once cycle only.

5. Consultation

In May 2019, Estyn undertook the first of a series of public consultations about how inspection can best support schools and other providers to manage the changes taking place in education. The first consultation focused on the proposals during the 2020-21 transition year and sought views from stakeholders on a range of issues including the proposal to partially suspend inspections for schools and PRUs to enable inspectors to support the

curriculum. The consultation closed in July 2019 and the outcome was published on Estyn's website in October 2019. A link to the outcome report is below:

<https://www.estyn.gov.wales/document/responses-consultation-estyn%E2%80%99s-proposed-transition-year-2020%E2%80%932021-academic-year>

There was overwhelming support to the proposal to partially suspend school inspections during 2020-21.

As a consequence of the outcome of the Estyn consultation the Welsh Government carried out a 6 week public consultation in October 2019 on the draft Education (Amendments Relating to the Intervals for Inspection of Education and Training) (Wales) Regulations 2020 extending the inspection cycle from 7 to 8 years for one cycle only to allow the partial suspension of school inspections to take place in 2020-21.

It was agreed that the Welsh Government consultation could be reduced to 6 weeks for the following reasons:

- stakeholders were made aware of intentions to consult on draft Regulations extending the school inspection cycle to assist the partial suspension of school inspections during 2020-21 via the Minister for Education's announcement on the new accountability arrangements on 19th February 2019;
- the proposal to partially suspend school inspections had already been considered by key stakeholders through Estyn's consultation on Phase 1 of the transition period undertaken in July 2019; and
- the policy is simple and easy to understand.

The consultation on the draft Regulations closed on 25 November 2019. Of the eighteen respondents that replied to the consultation, fifteen agreed with the proposal, while three neither agreed nor disagreed. A summary of the consultation responses were published on 20 December 2019 and can be accessed through the following link:

<https://gov.wales/education-amendments-relating-intervals-inspection-education-and-training-wales-regulations-2020>

Following the outcome of the Welsh Government consultation, Welsh Ministers agreed to pursue the making of the Regulations as drafted. No amendments were considered necessary.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

1. keep the status quo
2. adopt a non-legislative approach

3. make a different form of legislation(suspend legislation)
4. make the legislation

7. Costs and benefits

Option 1 – keep the status quo

If the proposal for a partial suspension of school inspections was not taken forward, and in turn the school inspection cycle remained the same, this would limit the capacity of schools to adopt the changes they need to make in line with the curriculum reforms and may have a detrimental effect on schools' preparedness for implementing the reforms. It would also not allow a period of time for Estyn to support schools through the reforms and limit the Inspectorate's capacity to develop an understanding of the reform process in order to adapt their practices to ensure that future inspection is fit for purpose.

There are no financial costs for schools or Estyn with this option but implications for both regarding preparation and implementation of the curriculum reforms and providing an opportunity for the development of future inspection arrangements to ensure they are fit for purpose and align with the reforms. There are no positive benefits with this option.

Option 2 – adopt a non-legislative approach

For Estyn to re-arrange their planned inspections within the current 7 year inspection window to enable the Inspectorate to partially suspend school inspections for 1 year during this period but ensure that all inspection activity planned for the 2016-2023 cycle is still achieved. This would not require a change to legislation.

There are resource (both financial and capacity) implications for the Inspectorate with this option. This would require Estyn to carry out a 7 year inspection cycle within 6 years to free up a period of time for a partial suspension of inspection to take place in which we would expect inspectors to support schools with their preparations for the new curriculum and undertake the development work needed for a roll out of a new inspection system. This option puts additional pressure on the Inspectorate and would ultimately require additional funding to be provided from Welsh Government to enable Estyn to resource additional inspectors to carry out inspections in a shorter timescale.

The benefit of this option is that it would allow a partial suspension of inspection to take place to allow schools time to prepare for the curriculum reforms. There are no cost implications for schools.

Option 3 – make a different form of legislation (suspend legislation)

Sections 1-6 of the Education Act 2002 contains a power to suspend or modify legislative requirements on a temporary basis including particular regulations. This power would allow Welsh Ministers to suspend or modify section 28 of the Education Act 2005 that contains the powers for inspecting schools, as well as associated Regulations made under it.

The process for suspending or modifying legislation by way of an Order provides that it can only be done following an application by a qualifying body. A qualifying body is defined in section 1 of the 2002 Act as:

- a local authority,
- an Education Action Forum,
- a qualifying foundation,
- the governing body of a maintained school,
- the head teacher of a maintained school,
- the proprietor of an Academy, a city technology college or a city college for the technology of the arts,
- the proprietor of any special school that is not maintained by a [local authority] but is for the time being approved by the Secretary of State or the Welsh Ministers under section 342 of the Education Act 1996,
- the proprietor of a school approved under section 342 of the Education Act 1996 (non-maintained special schools), or
- the governing body of an institution within the further education sector;

The application would have to be made by a qualifying body such as the 22 local authorities to enable an all Wales partial suspension of school inspection, or by the Welsh Local Government Association (WLGA) on behalf of all 22 local authorities who would need to seek agreement from all local authorities before applying.

This option would suspend current inspection cycle requirements and enable Estyn to undertake a partial suspension of school inspections at an agreed time. However, it is complicated, would require an application from a third party to be made and further consideration about whether it affects other provisions in law. Whilst there are no cost implications for schools or Estyn, we do not consider this is an appropriate option.

Option 4 – make the legislation

This is the preferred option as it extends the current inspection cycle from 7 to 8 years for one period only allowing Estyn to continue its proposed programme of inspections over a longer period of time as well as provide a period for schools and Estyn to undertake the development work needed in readiness for the new curriculum and inspection system.

There are no cost implications for schools or Estyn with this option and the partial suspension of inspection only affects the sectors that are affected by the curriculum reforms.

However, whilst it is anticipated that Estyn will only be partially suspending inspections for maintained nurseries, schools and PRUs during 2020-21, the Regulations allow Estyn the flexibility to suspend inspections in other settings prescribed for in the current inspection regulations (all nursery settings, careers and related services and further education settings) if they deem necessary. It also allows for all settings to remain on the same inspection cycle during the current period and thereafter.

8. Competition Assessment

Not applicable.

9. Post implementation review

During the partial suspension of school inspection period (2020-21) Estyn will be supporting schools through engagement visits. In addition to the support to prepare for the curriculum changes and to enable inspectors to develop an understanding of the reform process and adapt their practices for future inspection arrangements, these visits will also provide an understanding of the range of ways in which schools are successfully implementing the new curriculum. The information Estyn collects during the engagement visits will be disseminated through focused termly update reports and Estyn will produce a summary report that brings together the main findings from the termly update reports.