



Llywodraeth Cymru
Welsh Government

Annex D: Regulatory Impact Assessment

The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Contents

| | |
|--|----|
| Introduction | 2 |
| Option 1 – Do nothing | 3 |
| Option 2 – Amend all necessary regulations (<i>preferred option</i>) | 6 |
| Consultation | 11 |
| List of annexes | 12 |

Introduction

This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications of proposed changes to the way in which school data (teacher assessment and National Reading and Numeracy Tests) is used.

From 2018/19, Welsh Government proposes to no longer issue teacher assessment and National Reading and Numeracy Tests (test) data below the national level. At present, schools and other bodies have a statutory requirement to use this data in their roles. In response, Welsh Government proposes new regulations to ensure any current duties placed upon bodies to use teacher assessment and National Reading and Numeracy Tests (test) data below the national level, no longer apply.

This Regulatory Impact Assessment reviews the proposal, focusing on new regulations, *'The Education (Amendments Relating to Teacher Assessments) (Wales) Regulations 2018'*.

The RIA reviews two options:

- *“Do Nothing” (baseline)*. The option of doing nothing would mean that Welsh Government would continue to publish teacher assessment and test data. Therefore, no changes will be made to current Regulations. Present arrangements require schools and other bodies to use the data and information contained in the datapacks and the School Comparative Reports for a number of defined purposes. Full detail is given below.
- *Amend all necessary regulations*. The second option is to make amendments to the current suite of subordinate legislation (Regulations) necessary to facilitate the change in policy, which will cease publication of teacher assessment and test data below the national level. The proposed draft regulations will amend existing legislation to reflect changes being made to the use of teacher assessment data and test data. Full detail is given below.

Option 1 – Do nothing

Policy Context

Under option 1, Welsh Government will continue to collect data from schools (via their local authorities and with local authority authorisation and verification) on the Data Exchange Wales Initiative (DEWi) website. At present the main collections of individual pupil data include:

- **National Data Collection (NDC)** of teacher assessment data of pupil attainment at the end of Foundation Phase, Key Stages 2 and 3, and baseline assessment.
- **Welsh National Tests Data Collection (WNTDC)**. Results from National Reading and Numeracy Tests ('tests data').

Using the above data, Welsh Government produces and provides a common set of school performance data analyses to all schools and local authorities. The All Wales Core Data Sets (AWCDS or 'datapacks') and the School Comparative Reports are currently provided as analytical tools for planning purposes within a school's individual circumstances.

All Wales Core Data Sets (AWCDS)

AWCDS (known as 'datapacks') are intended for schools only. For performance comparative purposes, each school is grouped into a 'family'. The families are created by grouping schools by main language (Welsh or English), prevalence of FSM and SEN support needs, and the proportion of learners who are new to the English or Welsh languages, where relevant. Data is then pulled together to report in detail for each school (although, for data protection purposes, the data for other schools in each family is suppressed).

The resulting datapacks consist of a Contextual Pack and a Performance Pack for the Foundation Phase and for each Key Stage. These provide a suite of contextual analyses of end of Foundation Phase and Key Stage teacher assessments. Datapacks are also produced for the National Reading and Numeracy Tests.

School Comparative Reports

Although they are much smaller documents, School Comparative Reports offer a further level of performance analysis of schools, albeit for a wider audience. In particular, these reports provide headteachers with the comparative information needed when reporting to parents and governing bodies. Because of this, in comparison with the AWCDS, the data seen in School Comparative Reports is suppressed. There are two such reports. The first report generates automatically, and immediately, once a school reports its own data onto the DEWi website. The second report is produced later in the academic year (August) following the review and refinement of data.

Legal Context

There are a number of legal requirements for various bodies to use teacher assessment and tests data, as contained within the above datapacks and school comparative reports. These requirements would continue under option 1, and are as follows.

1. Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011

These Regulations require headteachers to report school performance to parents and adult pupils each school year. The reports must contain school comparative information which compares a school's performance with that of other schools in the local authority or in the 'family of schools'.

2. School Governors Annual Reports (Wales) Regulations 2011

These Regulations require that governing bodies produce a report to parents each school year. The reports must contain school comparative information which compares a school's performance with that of other schools in the local authority or in the 'family of schools'.

3. School Information (Wales) Regulations 2011

These Regulations require that governing bodies produce prospectuses for their schools. The prospectuses must contain school comparative information.

4. The Education (School Development Plans) (Wales) Regulations 2014

These Regulations require governing bodies to draw up school development plans. The Regulations require that governing bodies pay due regard to school comparative information.

5. School Performance and Absence Targets (Wales) Regulations 2011

These Regulations require governing bodies use data from school comparative information and datapacks to set (and to submit to their local authority) performance targets for learners, as well as targets to reduce school absence.

6. The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013

These Regulations require that local authorities ensure school governors receive training on understanding and utilising school data. The Regulations set the content for that training by means of statutory guidance. The current guidance referred to in the Regulations includes training on school comparative reports and tests data.

Costs and benefits of option 1

Costs

It has been argued that the 'Do Nothing' approach will lead to social costs impacting upon current and future learners receiving education. In Successful Futures, Professor Donaldson cites a 2014 OECD report which found weaknesses in current approaches 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. Avoiding change would therefore risk a direct opportunity being lost in improving the academic outcomes of 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 and uses of data collected under the current suite of regulations and policies will continue as normal. Those costs that are already incurred as under the 'Do Nothing' approach are due to the administrative burdens and resource requirements needed to comply with current regulations, firstly in the collection and provision of data, and secondly in the processing and reporting of data. The burden of these costs are to be found upon teachers, headteachers and other school practitioners, as well as local authorities, consortia, inspection authorities and Welsh Government. Financial costs will also continue in the maintenance of the My Local School website. However, as no additional costs have been identified as part of the 'Do Nothing' option, this assessment reviews qualitative information only.

As no additional costs have been identified as part of the 'Do Nothing' option, no subsequent timescale of costs has been considered.

Benefits

Current systems of data collection and use are well established. There are no further direct economic benefits as a result of continuing with option 1.

Option 2 – Amend all necessary regulations (*preferred option*)

Policy implications

Option 2 involves ceasing the publication of teacher assessment and National Reading and Numeracy Tests (test) data below the national level. It is recognised that this change will have direct implications, in particular the stopping of:

- the availability of the All Wales Core Data Sets (AWCDS) for teacher assessments and for the National Reading and Numeracy Tests for self evaluation; and
- School Comparative Reports for teacher assessments and for National Reading and Numeracy Tests.
- the publication of teacher assessment data and National Reading and Numeracy Tests data for school comparative purposes in reports and documents including:
 - Headteachers' reports to parents
 - School prospectuses
 - School governors' annual reports
- the use of school comparative teacher assessment data as part of the self-evaluation by individual practitioners for appraisal and at school level for strategic planning.

The above implications are resolved through amending Regulations detailed in 'Legislative Implications' below. However, two further policy implications are identified:

Step 1 Categorisation of Primary Schools

Regional academic consortia currently implement the national system for categorising schools in Wales. The National Schools Categorisation System (NSCS) provides a consistent national approach to support schools in their self-evaluation and development planning. The primary purpose of NSCS is to identify schools that are most in need of support, and to ensure that support and resources are directed most effectively to secure the improvements necessary and raise standards and performance in Wales. The system is not purely data-driven. It takes into account the quality of leadership and teaching and learning within schools.

Under option 2, step 1 (standards group) of the categorisation of primary schools will no longer continue. Steps 2 and 3 of the system would, however, be strengthened. There is already acceptance that the teacher assessment data at primary level is less reliable and that it should likely be removed from categorisation.

'My Local School' website.

The outcomes of the above NSCS processes are made available to the public on the 'My Local School' website. The website opens access to school data for interested parties, such as parents. The website gives access to contextual information on pupil and staff numbers,

finance, subject attainment, benchmarking, attainment and categorisation of schools, including comparison with other similar schools.

Under option 2, school comparative data below the national level and national school categorisation results will no longer be published onto the 'My Local School' website.

Welsh Government will continue to collect teacher assessment and tests data under option 2. Assessment of the effectiveness of national policy, in relation to Welsh Government's pursuits for improving educational achievements, will therefore still be possible under the proposal.

Legislative Implications

Option 2 will mean the introduction of new amending regulations, the Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018, to remove all statutory requirements to use teacher assessment and national reading and numeracy tests (test) data below the national level. A draft version of the new regulations has been included alongside this RIA at Annex A.

1. Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011

It is proposed these Regulations are amended such that head teachers' reports will no longer contain school comparative information (for teacher assessment and tests). Parents will still receive reports from headteachers, including the information they need to understand the performance of their child's school. Parents will also be able to compare their child's school performance with national information.

2. School Governors Annual Reports (Wales) Regulations 2011

It is proposed these Regulations are amended such that the governors' annual reports will no longer contain the school comparative reports (for teacher assessment and tests). Parents will still have access to reports from governors, including the information they need to understand the performance of their children's schools.

3. School Information (Wales) Regulations 2011

It is proposed these Regulations are amended such that the governing bodies' prospectuses no longer contain school comparative reports (for teacher assessments and tests). The prospectus will still have general information about the school for parents, learners and all others with an interest. They will continue to show information about the school's own performance, and comparative information will continue to be available at a national level.

4. The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013

It is proposed these Regulations are amended to point to a new guidance document. The new Welsh Government guidance to school governors for understanding performance data will be amended to no longer include references to teacher assessment and test data, in

relation to datapacks and the School Comparative Reports. The requirement to ensure school governors continue to receive the necessary training to use data to hold their schools to account will remain.

5. The Education (School Development Plans) (Wales) Regulations 2014

It is proposed these Regulations are amended such that the requirement for due regard to be paid to school comparative information (the School Comparative Report) will be removed. Access to national level data will continue to be available and governing bodies will still have data from their own schools. This will ensure schools and governing bodies continue to have the means available for self-evaluation and planning.

6. School Performance and Absence Targets (Wales) Regulations 2011

It is proposed that these Regulations are amended to remove references to comparative data as contained within teacher assessment datapacks for the second and third key stages. This is to ensure such data is not used for accountability purposes, in comparison with other, local schools. All target setting requirements for all Key Stages will remain in place (which ties in with the self improving schools policy).

Costs and benefits of option 2

Costs

There are costs associated with the time required for teachers, headteachers and other school practitioners to become familiarised with new Regulations and guidance. This cost is expected to be incurred in 2018-19. Officials have followed similar costing methods for familiarisation of similar regulations¹. Allowing 1.5 hours for headteachers read and disseminate information, best estimate for this one-off cost would be as follows:

- 1,391 head teachers and 186 acting head teachers. Totalling 1,577.
- 1.5 hours time at £34.68 per hour²
- Total estimated cost of familiarisation, £82,030

A social cost to local authorities and parents has been identified due to teacher assessment data no longer being available below a national level alongside the risk that other organisations, including local authorities and consortia, may try to replicate the data in another way. If the comparative reports are not issued to all schools as a matter of course, and if this data is not subsequently made available by headteachers, school governors and local authorities, there is also a risk of inequality in the information provided to some local authorities and schools where only those who request access to the information, have access to it.

Costs to statutory school governor training on data use have also been considered, however, as training requirements are already in place, these are sunk costs and changes are considered to have a negligible effect.

¹ https://www.legislation.gov.uk/ukia/2015/264/pdfs/ukia_20150264_en.pdf

² 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).

Other costs, listed below, will be upon Welsh Government and absorbed within relevant departmental running cost budgets.

- Since we will continue to collect teacher assessment and test data at all levels, we may be obliged under the Freedom of Information Act to release comparative data on schools on request.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 allows for costs of £25 per hour to administer FOI requests³. Policy officials within the associated branch and statisticians responsible to school information estimate each such FOI would take 8 hours to complete. It is very difficult to anticipate how many such requests would be received, but at a nominal 2 requests per month, we could estimate the annual cost at £4,800.

- Amendments to various statutory and non-statutory guidance documents will be necessary. Guidance documents to be amended are included at Annex C.

Six guidance documents will need revising as a result of the changes to legislation. Total cost of amending all associated guidance documents has been estimated as £7,170. This cost would be incurred in 2018-19. Policy officials for each responsible are of work have broken down the estimated costs for the amendments as follows:

- *Guidance on mandatory training for governors and clerks (2013)*
 - 3 days Senior Executive Officer (SEO) time = £660
 - 2 days support from School Improvement Branch at SEO = £440

Amendments to this guidance will be supported by Governors Wales.
- *School development plans (2014)*
 - 2 days Senior Executive Officer time = £440
- *Performance management for teachers and Performance management for headteachers (2012)*
 - 2 days Senior Executive Officer time = £440
- *Teachers' guides to self-evaluation (2015)*
 - 20 days Higher Executive Officer time = £3,430, plus
 - 5 days Senior Executive Officer time = £1,100
- *Regulations about reporting school and pupil information: concise guidance*
 - 3 days Senior Executive Officer time = £660

Benefits

It is intended there will be social (educational) benefits in making regulatory changes in the short term by refocusing assessment for the purposes of learning and away from accountability. That is not to say that accountability will become less effective - Non teacher-assessment sources, such as exam results for secondary schools, will still be available. Furthermore, Welsh Government recently announced plans for an improved accountability model in *Education in Wales: Our national mission*. Welsh Government will be able to use information to note improvements at a system level, but this information cannot be used to influence the behaviour at an individual school level. This means teacher assessment can be used for information purposes but not for school accountability purposes below national level, therefore re-establishing trust with schools. Teacher assessment would no longer be seen as loaded with high stakes in an accountability system, and learning targets could (and should) still be set for individual learners. In the long term, the changes will also help pave

³ <http://www.legislation.gov.uk/ukSI/2004/3244/contents/made>

the way for curriculum reform in Wales, in line with those recommendations made by Professor Donaldson in *Successful Futures*.

There are potential cost-savings from Welsh Government no longer publishing data below national level or making datapacks available, although, as these datapacks are made available electronically, such benefits are considered to be minimal. Furthermore, as outlined in the 'costs' section above, there will be an added risk of an increased number of FOI requests for school data being received by Welsh Government.

Consultation

The proposal to change the uses of teacher assessment data relies upon the powers bestowed upon Welsh Ministers in primary legislation. Several of these Acts impose a statutory duty to consult and set out who Welsh Government should consult with, for example, local authorities and associations of local authorities, as well as the bodies representing the interests of school governors and teachers. This draft Regulatory Impact Assessment has therefore been developed to support and inform the consultation process. Following the consultation period, a consultation report will be published and the Regulatory Impact Assessment amended to reflect any additional concerns prior to tabling the regulations with the National Assembly for Wales.

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 regulations are intended to affect the public sector alone. A competition filter test is shown below.

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

List of annexes

The following annexes to this document are available to view on the corresponding Welsh Government consultation webpage.

Annex A – Copy of amending regulations '*The Education (Amendments relating to Teacher Assessment Information) (Wales) Regulations 2018*'

Annex B – Table of data collection and release exercises

Annex C – Table of amended guidance documents

Annex E – Draft Children's Rights Impact Assessment

Annex F – Glossary of terms