

## **Explanatory Memorandum to the Education (Inspection of Nursery Education) (Wales) Regulations 2015**

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 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 (Inspection of Nursery Education) (Wales) Regulations 2015.

**Huw Lewis**  
**Minister for Education and Skills**  
**5 August 2015**

## **1. Description**

- 1.1 These Regulations apply in relation to nursery education provision in Wales.
- 1.2 To align with other reporting timelines for schools and maintained settings, the time prescribed for completion of an inspection report in respect of a non maintained setting funded to deliver the Foundation Phase early education entitlement to 3 and 4 year-olds<sup>1</sup> is increased to 45 working days from the day on which the inspection begins.
- 1.3 Apart from the increase in the time period prescribed for completion of an inspection report the Regulations just re-enact the Education (Inspection of Nursery Education) (Wales) Regulations 1999 (“the 1999 Regulations”) with appropriate updates to legislative references. The 1999 Regulations are revoked in relation to Wales (regulation 1(3)).
- 1.4 These Regulations therefore prescribe the period within which a report of an inspection of nursery education, whether that is provided in maintained settings, non maintained settings or provided directly by a local authority under Schedule 26 to the School Standards and Framework Act 1998 must be made; the authorities and persons to whom a copy of the report must be sent; and the intervals at which nursery education is to be inspected under that Schedule (regulations 3 and 4).

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

- 2.1 There are no matters of special interest.

## **3. Legislative background**

- 3.1 The Foundation Phase applies to children aged 3 to 7 (Section 102 of the Education Act 2002 (“the 2002 Act”). Section 122 and Schedule 26 of the Schools Standards and Framework Act 1998 (“the 1998 Act”) sets out the inspection of nursery education and section 138 of that Act sets out the power to make an order or regulation as Welsh Ministers thinks fit.
- 3.2 The functions in the 1998 Act and 2002 Act were vested in Welsh Ministers virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

---

<sup>1</sup> A non maintained setting is registered with CSSIW as a (eg. private or voluntary sector) childcare provider under section 20 of the Children and Families (Wales) Measure 2010; that setting is also approved by the local authority to deliver Foundation Phase early education (nursery education); and the Foundation Phase early education element delivered by the approved early education provider is also inspected by Estyn.

3.3 This statutory instrument follows the negative resolution procedure.

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

- 4.1 Currently in law there is a significant difference between the timescales for Estyn to publish an inspection report for a non maintained nursery and for other inspection reports (e.g. schools and maintained nursery schools).
- 4.2 Under the Education (Inspection of Nursery Education) (Wales) Regulations 1999, regulation 3, Estyn is required to publish inspection reports of nursery education (except in the case of a nursery school) 'fifteen days beginning on the day following that on which the inspection is completed, or within a further five days where it is necessary to provide a translation of the report into Welsh or into English'.
- 4.3 The Education (School Inspection) (Wales) Regulations 2006, regulation 9 states that school inspections must be completed within the period of two weeks from the date on which the inspection began and that an inspection report should be made within 35 working days from the date on which the inspection was completed.
- 4.4 The proposed new regulations will align the timescales for Estyn to publish non maintained sector nursery inspection reports and school inspection reports. The effect of the amendment would be to publish the inspection report for the non maintained setting within 45 working days from the day on which the inspection is started, rather than the current 15-20 working days.
- 4.5 The objective of the proposed regulations is twofold. Firstly the proposed regulations will align the timescale for publishing non maintained settings' inspection reports with that currently allowed to public school inspection reports (including maintained nursery schools).
- 4.6 Secondly, the proposed amendment to regulations will facilitate the piloting of a joint inspection process by Estyn (the education inspection authority) and the Care and Social Services Inspectorate Welsh (CSSIW - the childcare registration authority). There are currently different inspection regimes for childcare (day care and childminding provision registered and regulated by CSSIW under Section 20 of the Children and Families (Wales) Measure 2010) and for nursery education (Foundation Phase funded nursery education for 3 and 4 year-olds as delivered by the private and voluntary sector, and inspected by Estyn under Section 122 of School Standards and Framework Act 1998).
- 4.7 This means that if, for example, funded nursery education is provided in a childcare setting, the provider is subject to a CSSIW inspection either every year (if they are a day care provider) or every two years (e.g. playgroups, cylchs, childminders), and to an inspection by Estyn of the early education provision every six years. Potentially these two

inspections by the two Inspectorates could occur in the same year, but at different times and sometimes within weeks or months of each other.

- 4.8 Chapter 6 (Raising Standards) of *Building a Brighter Future: Early Years and Childcare Plan* (2013) committed the Welsh Government to a review of childcare and early education regulation and inspection and to take relevant action to improve the quality of childcare and early education. The report of the independent *Review of childcare and early education registration, regulation and inspection* (the Graham Review) was commissioned in 2013 and published in full on 15 August 2014. It contains 22 recommendations, including the recommendation for unified inspection of the 0-7 age group across all settings (both childcare and Foundation Phase).
- 4.9 On 15 September 2014, a joint Ministerial initial response to the Graham Review was issued welcoming the Inspectorates' (CSSIW and Estyn) collaborative working within existing systems to:

“develop and test a joint-inspection framework in non-maintained regulated care settings that also provide early education for children (before compulsory school age, where their inspection and regulatory functions currently overlap). The greater alignment of these existing inspection frameworks will help improve the quality of care and education in these settings. This joint-inspection model will aid consideration of the recommendation for a unified inspectorate/inspection for childcare and education for the 0-7 age group across both the maintained schools and non-maintained settings.”

- 4.10 As part of Inspection Wales collaboration, from September 2015, the Inspectorates (Estyn and CSSIW) will work closely together to deliver joint inspections of non maintained nursery settings. Estyn's current, shorter publication period for non-maintained nursery inspection reports:

- (1) does not accord with CSSIW's operating timeframe of up to 42 days in which publish their report online; and
- (2) makes it very challenging for Estyn to emulate the rigorous quality assurance mechanisms in place to ensure consistency in school inspections.

Providing robust quality assurance across two Inspectorates (Estyn and CSSIW), as well as sending the draft report to the setting for a factual accuracy check within fifteen working days would be difficult. Estyn and CSSIW will work towards full implementation of the joint inspection process by September 2016.

- 4.11 The regulations will ensure that Estyn and CSSIW will have sufficient time for joint quality assurance by the Inspectorates. This will ensure consistency and reliability. The new system is designed to reduce the regulatory burden on childcare providers and to be more proportionate

than the current system of two inspections by two separate and distinct Inspectorates, potentially taking place at different times within the same year.

- 4.12 The joint inspection framework will concentrate on outcomes for the child and the impact the service and professionals contribute to the child's wellbeing and learning. The Inspectorates have ensured that the joint inspection framework will align with the outcomes framework for early years and childcare published in July 2015.
- 4.13 The new framework is based on well-being and aligned to the early years outcome framework that will be announced in the 2015 progress report on *Building a Brighter Future – Early Years and Childcare Plan*. The framework is constructed around six themes and, once implemented, inspectors from Estyn and CSSIW will make one joint judgement for each theme, across the setting's whole provision. The six themes are:
- Wellbeing
  - Learning (assessed by Estyn inspectors only)
  - Care and development
  - Teaching and assessment (assessed by Estyn inspectors only)
  - Environment
  - Leadership and management
- 4.14 The joint inspection framework was considered by the sector in July (two workshops, 120 stakeholders) and feedback was positive. The joint inspection framework will be:
- piloted from October 2015 for six months;
  - subject to public consultation from February 2016;and
  - introduced from September 2016

### Benefits

- 4.15 Estyn has requested the amendment to regulations. It will primarily be the Inspectorate (Estyn) and the funded non maintained settings that benefit from the increased timeframe. The settings will have more time to be involved in checking draft reports for factual accuracy and it will provide more time for Estyn's quality assurance processes behind their reporting arrangements and for moderating their judgements to ensure consistency across the early education sector - both schools and non maintained settings.
- 4.16 From September 2015, non maintained settings funded to provide Foundation Phase early education will benefit from a more rigorous quality assurance mechanism across the two Inspectorates. Providers would be key beneficiaries through the application of a unified approach to inspection and joint visits to undertake enhanced inspection of both care and education. If the joint inspection identifies and raises issues, these are discussed with the setting at the time of inspection, so there is no delay in settings receiving negative feedback and/or improvement notices.

4.17 When the joint inspection framework is trialled / introduced, children and parents will benefit from greater clarity and consistency of an outcomes based inspection. There will also be greater integrity, improved data collection and sharing of information to more accurately monitor the quality of care and education across all non maintained settings.

## 5. Consultation

- 5.1 There is no statutory requirement for a public consultation.
- 5.2 Furthermore, there are no adverse implications of not consulting on these proposed regulations for either children as the service users or their parents, or for the Foundation Phase funded non maintained sector providers. There are no implications on non maintained sector providers having to wait a further 15-20 days until their inspection report is published. Independent and objective reporting on quality issues helps parents make informed choices and the sector recognise the importance of inspection as a key lever in improving quality. Additionally the settings benefit from a joint inspection which will reduce the current regulatory burden
- 5.3 The sector was widely consulted during the *Review of Registration, Regulation and Inspection of Childcare and Early Education* (the "Graham Review"), and the introduction of joint / unified inspections was widely welcomed. The national childcare umbrella organisations were represented in the Graham Review and have a large membership of practitioners between them which presents a significant resource of actual business expertise. Their interests cover all aspects of childcare and early education, including full day care, out of school care, playgroups, and Welsh language provision. These organisations are fully up to date with all the key issues affecting the sector, including the views of their colleagues in other parts of the United Kingdom, and are able to speak confidently for the sector.
- 5.4 Welsh Government are liaising with the local authority advisory teachers who work closely with these non maintained settings to make them aware of the proposed changes to the Estyn report publishing timeframes. At the time of inspection, Estyn will also ensure that the non maintained sector provider is aware of the revised report publishing timeframe. These Regulations will amend the law to:
1. align the timescales allowed for publishing inspection reports across the early education provider sector and between the Inspectorates; and
  2. facilitate the Estyn/CSSIW joint-inspection pilots in the Foundation Phase funded non maintained settings..
- 5.5 There are no costs or savings on the public, private, charities and voluntary sectors arising from the making of this subordinate

legislation. Estyn have the same amount of time (2 weeks) in which to undertake their inspection, the frequency of which is not changing, but they have longer to work collaboratively with CSSIW to produce and validate/quality assure a report of their joint inspection arrangement. Their report will not be distributed to additional groups or individuals.

5.6 As there are no costs or savings identified, a regulatory impact assessment is deemed not to be necessary.

## **6. Regulatory Impact Assessment**

No Regulatory Impact Assessment has been prepared as the Regulations do not impose any additional costs on business, employers or third parties.