

SL(5)570 – Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Background and Purpose

These Regulations amend paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020 (“the 2020 Act”) so as to add Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 to the list of enactments that can be disapplied by the Welsh Ministers for a specified period by notice.

Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 set out the procedure that must be followed by a local authority or a governing body of a community, voluntary controlled or community special school or a maintained nursery school to change its school session times.

These Regulations also amend the table in paragraph 7(6) of Schedule 17 to the 2020 Act so as to add the ability to modify certain sections of the School Organisation Code.

The related notices - the *Modification of School Organisation Code (Wales) Notice 2020* and the *Disapplication of Changing School Session Times Requirements (Wales) Notice 2020* were issued on 25 June 2020 and published on the Welsh Government’s website.

Procedure

Made Affirmative: the Regulations have already been made, but require Senedd approval for them to stay into force for more than 28 days.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

1. The procedural headnote refers to section 94(4)(b) of, and paragraph 8 of Schedule 17 to, the 2020 Act being the provisions which prescribe the procedure which these Regulations must follow. However, the Explanatory Memorandum provides:

*“These Regulations are made in accordance with the procedure set out in paragraph 8 of Schedule 17 to the 2020 Act.
As set out in paragraph 8 of Schedule 17, the Regulations are made without a draft having been laid and approved by the Senedd.”*

As these Regulations are made under paragraph 8 of Schedule 17 to the 2020 Act, paragraph 8(4) prescribes the relevant procedure to be followed. Section 94(4)(b) does not appear to be relevant.

2. The preamble to these Regulations cites the enabling powers as section 92 of, and paragraph 8 of Schedule 17 to, the 2020 Act.



Paragraph 8 of Schedule 17 to the 2020 Act gives the Welsh Ministers the power to make regulations which amend the list in paragraph 7(5) or the table in paragraph 7(6) of the 2020 Act so as to add an enactment relating (directly or indirectly) to children, education or training, or to vary or remove an entry.

Section 92 does not appear to be a relevant enabling power for the purposes of these Regulations.

3. The School Organisation Code (“the Code”) is made by the Welsh Ministers under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013. These Regulations contain references which cite the Code as being made under “sections 38” [*emphasis added*] rather than under “sections 38 and 39”. The incomplete references occur at the following places:

- (a) Regulation 2(3), page 4, line 19
- (b) Regulation 2(3), page 4, line 36
- (c) Regulation 2(3), page 5, line 5
- (d) Regulation 4(1), page 6, line 4

4. In Regulation 3(3) the word “before” has been omitted after the words “without a break,”.

5. In regulation 4(2) a “relevant notice” for the purpose of that regulation is defined as a notice under paragraph 7 of Schedule 17 to the 2020 Act. The Committee questions whether the definition should refer specifically to paragraph 7(6), as paragraph 7(6) permits modifications to be made to paragraphs 3.4, 3.5 or 4.1 of the Code by way of a notice.

Making reference to paragraph 7(6) rather than a general reference to paragraph 7 would be consistent with the approach taken in regulations 3(5) and 3(6), where the definitions refer to notices made under paragraph 7(5)(n) (rather than paragraph 7) of Schedule 17 to the 2020 Act.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

1. We note that no formal consultation has taken place in relation to these Regulations. The Explanatory Memorandum states that this is in light of the unprecedented situation created by the Coronavirus pandemic and the challenging timescales within which they need to be made.

It is noted that regular engagement has taken place with key representative bodies such as ADEW and local authority representatives, to help inform the policy proposals around legislative requirements that are going to be modified or disapplied. These discussions have helped to inform the provisions that are included within these regulations.

The Explanatory Memorandum also notes that there has been no regulatory impact assessment completed in relation to these Regulations as there are no associated costs or benefits. These Regulations only add areas to the list of enactments in paragraphs 7(5) and 7(6) of Schedule 17 to the 2020 Act in respect of which the Welsh Ministers can make notices to disapply statutory requirements.



In respect of notices that are made, the Explanatory Memorandum provides that the impact of these will be detailed in an integrated impact assessment.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical scrutiny point 1: We consider that section 94(4)(b) is a correct reference in the procedural headnote. This procedure attaches to regulations made under section 92 and as explained in response to Technical scrutiny point 2, is a relevant and appropriate enabling power for these Regulations.

Technical scrutiny point 2: We consider that section 92 is a relevant enabling power for these Regulations as it allows the Welsh Ministers to make provision for an enactment to have effect with modifications in consequence of any provision of this Act. This is the basis for the transitional provisions made in regulation 3 which apply where a notice has expired. Paragraph 7(3) of Schedule 17 would not have been sufficient as consequential modifications made under that provision would only have effect for the specified period.

Technical scrutiny point 3: It is acknowledged that the School Organisation Code itself refers to it being made under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013. However, section 39 itself refers to consultation requirements and procedure and therefore it is considered that the reference in these Regulations to the School Organisation Code made under section 38 is sufficiently clear, particularly given the reference to the Statutory Code document number. We acknowledge that the entries inserted into the table in paragraph 7 of Schedule 17 should read 'section 38' not 'sections 38'. We will therefore issue a correction slip for this.

Technical scrutiny point 4: We do not agree that the word 'before' has been omitted after 'without a break'. Past events is necessarily implied by the sentence taken as a whole, so the word 'before' is not necessary. The paragraph cannot be interpreted in another way. Whilst the Welsh version has 'cyn' in both places we do not consider that this affects the interpretation of the English version and does not mean that 'before' is needed in both places in the English version.

Technical scrutiny point 5: We acknowledge that this could have been drafted to mirror the approach in regulation 3(5) and (6). However, we consider that regulation 4(2) is sufficiently clear given that the definition of 'relevant notice' refers to a notice to modify paragraphs 3.4, 3.5 or 4.1 of the Code in the manner described in paragraph 7(6) of Schedule 17.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 13 July 2020 and agreed to report to the Senedd in line with the reporting points above, and to further consider the issues raised.

