

SL(5)582 – The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020

Background and Purpose

The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020 (**these Regulations**) bring into force the necessary legislative changes which:

- amend the School Governors' Annual Reports (Wales) Regulations 2011;
- amend the Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011;
- amend the School Information (Wales) Regulations 2011;
- revoke the School Performance and Absence Targets (Wales) Regulations 2011; and
- amend the School Performance Information (Wales) Regulations 2011.

The purpose and intended effect of these Regulations is to relax burdens on schools, local authorities and governing bodies in Wales. The Welsh Government recognises that schools, local authorities and governing bodies may be unable to comply with certain statutory reporting requirements. Those requirements may also pose a disproportionate administrative burden on those responsible.

The legislative changes were communicated to stakeholders in May and a three week consultation on the legislative changes ran from 22 June to 10 July 2020.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this

1. Regulation 6 of the School Performance Information (Wales) Regulations 2011 (**the Performance Information Regulations**) requires a local authority to provide the Welsh Ministers with information prescribed in the Performance Information Regulations no later than 20 school days before the end of each summer term. There is no corresponding deadline for complying with the duties contained in regulations 5 and 8 of the Performance Information Regulations.

As the summer term has ended, it appears that the effect of the disapplication of regulation 6 in relation to the 2019-20 school year is to release local authorities that have not complied with their duty from continuing to be in breach of that duty. The effect appears to operate retrospectively because the deadline by which the local authority should have provided information to the Welsh Ministers has passed.



Merits Scrutiny

The following four points are 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

2. In footnote (1), on page 4 of these Regulations concerning the Education Act 1996, the reference to “*by Schedule 30 and paragraph 67 of Schedule 31 to the Schools Standards and Framework Act 1998*” should instead refer to “*by paragraph 67 of Schedule 30 and Schedule 30*”. The same typo exists in the Welsh version of these Regulations – “*gan Atodlen 30 a pharagraff 67 o Atodlen 31*” should instead refer to “*gan baragraff 67 o Atodlen 30 ac Atodlen 31*”.

3. In footnote (4), on page 5 of these Regulations concerning the Education Act 2002, section 210(7) of the 2002 Act is said to be amended by section 21(1)(3)(c)(i) of the Learner Travel (Wales) Measure 2008. There is no section 21(1)(3)(c)(i) – it appears to the Committee that this reference should be to section 21(1) and (3)(c)(i). The same typo exists in the Welsh version of these Regulations – “*adran 21(1)(3)(c)(i)*” should instead refer to “*adran 21(1) a (3)(c)(i)*”.

4. The Explanatory Memorandum states that the Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. Although the Explanatory Memorandum states that these Regulations needed to be put in place quickly, the Explanatory Memorandum also states in the first sentence of paragraph 18 that the Regulatory Impact Assessment was not considered necessary “*Due to the likely costs and benefits of complying with these Regulations*”. That latter ground is not an exclusion recognised by the Welsh Ministers’ Code, although needing to put in place the Regulations quickly is an exclusion.

Standing Order 21.3(v) - that it imperfectly achieves its policy objectives

5. A school’s governing body is required to secure that parents and employees are given (free of charge) a copy of the governors’ report required under the School Governors’ Annual Reports (Wales) Regulations 2011 (**the Annual Report Regulations**). Regulation 5(2) of the Annual Report Regulations disapplies that duty where the governing body takes such steps as are reasonably practicable to secure that a copy of the certain information that is contained in the report, including information required by paragraphs 6 and 7 of Schedule 2 to the Annual Report Regulations, is provided free of charge instead.

The operation of regulation 5(2) of the Annual Report Regulations therefore operates to require a governing body to provide the information prescribed by paragraphs 6 and 7 of Schedule 2 to the Annual Report Regulations if it wished to rely on the regulation 5(2), even though that information for the 2019-20 school year would not be included in the governors’ report.

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. The Welsh Government does not agree that the provision has retrospective legal effect. Retrospective provision is any provision that changes the relevant law so that it has effect from a time before that provision comes into force. It has an effect on acts done or rights acquired before that legislation comes into force or it creates or changes legal consequences for past actions or events. The duty in regulation 6 of the Performance Information Regulations arises 20 days before end of summer term. That duty is not affected by the Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020 ("the 2020 Regulations") for the 2019/20 school year. In other words that duty has to be discharged before the Regulations come into force on 7 August. Irrespective of whether the 2020 Regulations were made there would be no legal obligation to provide the data for the school year 2019/20 after they came into force. The Welsh Government does not consider the effect of the provision reported is intentionally or unintentionally retrospective. The 2020 Regulations do prevent the publication of the data from the 2019/20 school year in future school years pursuant to regulation 6 of the Performance Information Regulations but that is not retrospective. It was intended that the 2020 Regulations should not require the 2019/20 school data to be reported in the 2019/20 school year but the Regulations were laid too late for that to be the case and in that respect it has no effect.

Merits Scrutiny Point

5. The Welsh Government notes the reporting point and agrees that an appropriate amendment to regulation 5(2) to address the reference to paragraph 6 of Schedule 2 to the Annual Report Regulations would have been clearer. Nonetheless we consider regulation 2(1) of the 2020 Regulations still achieves the correct legal effect. The information that would be provided pursuant to paragraph 5(2) of the Annual Report Regulations is a copy of the information that provides the basis for the report itself where that report is not provided. The effect of regulation 2(1) of the 2020 Regulations is that the information in paragraphs 6 and 7 of Schedule 2 to the Annual Report Regulations would never be included in such a report and so copies of the relevant information that would have formed the basis of the report could not be provided pursuant to regulation 5(2) of the Annual Report Regulations notwithstanding that.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.

