

Explanatory Memorandum to the Education (School Day and School Year) (Wales) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Education, Social Justice and Welsh Language Department and is laid before Senedd Cymru 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 (School Day and School Year) (Wales) (Amendment) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

18 January 2023

PART 1

1. Description

1.1 The Education (School Day and School Year) (Wales) (Amendment) Regulations 2023 amend the Education (School Day and School Year) (Wales) Regulations 2003 ('the 2003 regulations').

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 The 2003 regulations were made under sections 551 and 569(4) and (5) of the Education Act 1996.

3.2 Regulation 4(1) provides that every day on which a school meets is to be divided into two sessions which are to be separated by a break in the middle of the day unless exceptional circumstances make this undesirable. Regulation 4(2) provides that at least 380 school sessions must be held at a school during any school year (excluding nursery schools).

3.3 Regulation 5 makes provision for additional school training days.

3.4 The Education (School Day and School Year) (Wales) (Amendment) Regulations 2023 amend the 2003 regulations and are subject to the negative procedure.

4. Purpose and intended effect of the legislation

4.1 Following amendments to section 342 of the Education Act 1996, made by section 57 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, there are no longer any non-maintained special schools in Wales, nor can there be. These regulations amend the definition of "school" in regulation 3 of the 2003 regulations to reflect this, by removing the reference to a special school not maintained by a Local Authority. This will mean that the 2003 regulations will apply to schools in Wales maintained by a Local Authority.

4.2 These regulations also reduce the minimum number of school sessions which must be held in the 2022—2023 school year to 376 in order to take account of the additional bank holidays falling within the same, to mark the State Funeral of Her Majesty Queen Elizabeth II, and the Coronation of His Majesty King Charles III.

4.3 Regulation 5 of the 2003 regulations is also amended to allow maintained schools to use two school sessions (one day) in each of the school years 2022/2023, 2023/2024 and 2024/2025 for the purpose of professional learning with regard to the Curriculum for Wales, the additional learning needs system

under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and/or reducing the impact of poverty on the progression and attainment of pupils (equity in education) ('the key priorities'). This will enable schools to engage appropriately with these matters and to address school development needs accordingly.

5. Consultation

5.1 A five and a half week public consultation was undertaken, between 20 September and 28 October 2022, on the proposal to make provision for an additional INSET day in the current and following two academic years, for the purpose of professional learning in relation to the key priorities. Views were sought as part of the consultation on the timing and focus of the proposed additional INSET day. 1623 responses were received.

5.2 The consultation was drawn to the attention of a wide audience of key stakeholders including headteachers, schools, Regional Consortia, the National Academy for Educational Leadership, education workforce unions, local authorities, and Estyn. The consultation was also publicised widely on social media.

5.3 Clear support was demonstrated for the proposal, from over 80% of respondents. The consultation revealed that the additional INSET day is seen as necessary by practitioners, education workforce unions and middle tier organisations such as local authorities, Regional Consortia, Estyn, Education Workforce Council and the National Academy for Educational Leadership. Approximately 80% of respondents agreed that schools should be given the flexibility to decide the timing of the additional INSET day, and that the focus of the day should be mandated as proposed.

5.4 Those who were opposed to the additional INSET day raised concerns related to the impact on parents/carers who either use limited annual leave entitlement or use childcare for INSET days. Those who use formal childcare noted the cost, which has been magnified by the cost of living of crisis. Other respondents were concerned about the loss of learning as a result of the pandemic and commented on the length of the school holidays.

5.5 The consultation responses document contains a detailed analysis of the responses received and can be found on the Welsh Government website [\[here\]](#).

5.6 Further information on the consultation is also set out within the Regulatory Impact Assessment (RIA).

PART 2 – REGULATORY IMPACT ASSESSMENT

This assessment is concerned with assessing the costs and benefits of options in respect of proposed policy changes to the Education (School Day and School Year) (Wales) Regulations 2003.

Background

6.1 The Education (School Day and School Year) (Wales) Regulations 2003 (“the 2003 regulations”) make provision about the length of the school day, which is ordinarily divided into two sessions with a break in the middle, and for schools to meet for at least 380 sessions during any school year.

6.2 The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 made provision for an additional INSET day in each of the three academic years from 2019 to 2022 to allow practitioners to engage in Professional Learning related to the implementation of the Curriculum for Wales. This additional day supplemented the five INSET days which form part of the School Teachers’ Pay and Conditions (Wales) Document (STPC(W)D).

6.3 The Education (School Day and School Year) (Wales) (Amendment) Regulations 2023 will amend the 2003 regulations to make provision for an additional INSET day in each of the next three academic years (2022 to 2025). The additional day is required to be used wholly or mainly for training or preparation and planning in relation to reducing the impact of poverty on the progression and attainment of pupils at the school, additional learning needs reform, and/or the Curriculum for Wales. It will supplement the five INSET days which form part of the School Teachers’ Pay and Conditions (Wales) Document.

6.4 The regulations will also reduce the number of required sessions for the 2022 to 2023 school year, to take account of the additional bank holidays provided for HM Queen Elizabeth II’s State Funeral and HM King Charles III’s Coronation.

Key policy changes

6.5 In terms of the key policy changes being proposed, the options, proposals and costs and benefits are detailed below.

Options

6.6 We are proposing to provide additional time to support practitioners and ensure that they are able to make the most of their National Professional Learning Entitlement (NPLE). The following options were identified:

1. Business as usual - this would see INSET days remaining at five and practitioners continuing to undertake their Professional Learning during the time currently available.
2. Taking a legislative approach by creating one additional INSET day per year for three years, to be taken from the 190 days usually allocated for

teaching pupils, for the purpose of professional learning to support the new curriculum and other priorities.

3. Taking a legislative approach by creating more than one additional INSET day per year, to take place for more than three years.

6.7 The provision for the existing five INSET days form part of teachers' pay and conditions and are included within the Working Time section of the statutory School Teachers' Pay and Conditions (Wales) Document (STPC(W)D). This requires full time teachers to usually be employed for 195 days per year - of which no more than 190 must be days teaching pupils. (In 2022 teachers will be employed for 193 days and of these up to 188 days will be teaching pupils.) The other five have traditionally been INSET days. Teachers are also required to work "such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties", though these hours are determined by the teacher themselves.

6.8 Powers over teachers' pay and conditions were devolved in 2018 and a new annual process was established to consider both teachers' pay and conditions moving forward. These changes are specifically related to achieving our policy objectives of supporting practitioners in the development of the curriculum, ALN Reform and equity in education. They reflect a separate and specific policy response to the need to ensure that practitioners continue their professional learning and are fully up to date, rather than consideration of wider terms and conditions. We also want to maintain clarity around this change and any other changes brought in specifically for teachers under the auspices of the Independent Welsh Pay Review Body (IWPRB).

Costs and benefits

6.9 **Option 1 - Business as usual** - this would see INSET days remaining at five and practitioners continuing to prepare during currently available time.

Costs

6.10 This is the baseline option and as such there are no additional financial costs associated with this option. Schools will remain open to pupils, and practitioners will need to identify alternative methods of working together as a whole school and collaboratively with partners.

6.11 However, this option carries a high degree of risk and opportunity cost. If the additional time, which practitioners and Headteachers have been vocal that they need, is not given then we risk practitioners not being up to date and not fulfilling their NPLE commitments. This would impact upon the delivery of the curriculum and other education reforms and consequently on the outcomes for children and young people who will not benefit fully from these reforms.

Benefits

6.12 The benefits of this approach would be a potential small cost saving to parents compared to the last three academic years (2019 to 2022) as schools

would revert to their current five INSET days and children and young people would not lose a day's teaching. Keeping the current number of INSET days has no net impact on those children who are eligible for free school meals (eFSM) as children can continue to access their free school meal during all current days of term time. This is positive in terms of ensuring access to a healthy, nutritious meal for learners and reducing costs to parents who would otherwise have to feed their children at home.

6.13 However, these benefits are very short term, and we believe the increase in the risk to the delivery of the curriculum and other education priorities offsets these benefits.

Option 2 - Taking a legislative approach by creating one additional INSET day per year for three years, to be taken from the 190 days of school time allocated to pupils

Costs

6.14 This option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as it would take place on a day when schools would have been open to pupils. There may be a small cost associated in ensuring teaching assistants are able to attend INSET but this is difficult to quantify as terms and conditions of employment differ depending on the local authority area and the job role and responsibilities. The Welsh Government is investing nearly £37.5 million in the delivery of professional learning opportunities for education practitioners during 2022 to 2023 alone, to provide access to a wide and varied professional learning offer.

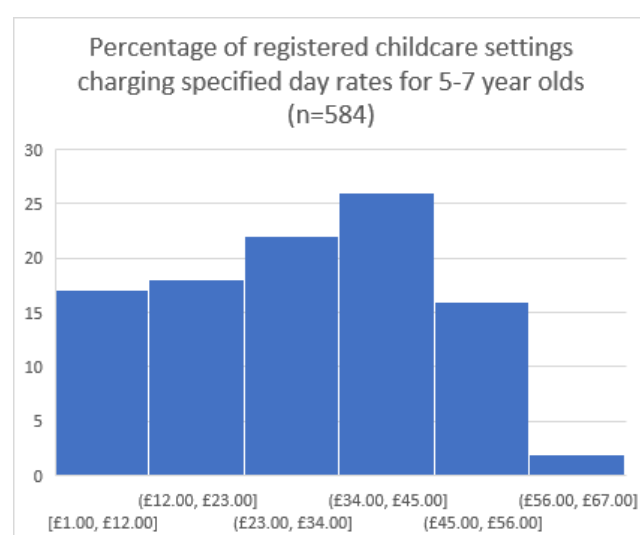
6.15 We believe the main impact will be upon children and families, particularly those on lower incomes. In considering the options, we have been conscious of the current economic context, with rising living costs and freezes to income tax thresholds expected to result in a fall in real household disposable income over the coming years. Our decision to limit the additional INSET days to one per academic year is partly as a result of conducting the equality impact assessment, as in this way we can mitigate some of the impact. The impact on children as a group will be short term as there will be a collective missed day of school for children and young people. However, in the long term this additional INSET day will enable the successful delivery of the new curriculum and other reforms, improving the standard and breadth of education they receive.

6.16 There will be a cost, although difficult to quantify, both in terms of time and money for working families, where either childcare or annual leave is used to cover the time for an additional INSET day. While some may be able to draw upon family member support for childcare, we know that other parents will need to pay for this additional childcare. This will be for one additional day for three years, until 2025. The additional days have been in place since 2019 although the pandemic may have minimised the impact due to more parents/carers working from home or working flexibly.

6.17 Data on the cost of both registered and unregistered childcare, during both term time and holiday periods, is limited. The Welsh Government Review of the Childcare Sector in Wales (2018) gives a description of some of these limitations with different data sources (<https://gov.wales/sites/default/files/statistics-and-research/2018-12/180110-review-childcare-sector-en.pdf>).

6.18 The Care Inspectorate Wales Self-Assessment of Service Statement (SASS) is an annual survey reaching around 86% of registered childcare providers and asks respondents about the rates charged for care. However, the range of costs provided is very large, illustrating the diversity of the sector and the complexity of charging arrangements. Day rates for children aged 5-7 range from £1.00 to £60.00, and there is a reasonable spread of settings charging these different rates, as illustrated in the histogram below:

6.19 Figure 1: Percentage of registered childcare settings¹ charging specified day rates for 5-7 year olds, SASS data July 2021



6.20 SASS data suggests that approximately 40,000 children in Wales of all ages access some form of after school childcare provision in an average week. This can be used as a proxy measure for the number of children in school who require childcare on a typical school day.

6.21 Additional information can be gathered through Childcare Sufficiency Assessments (CSAs), which are completed by local authorities every five years. Providers are not obliged to share their rates with local authorities, but the CSAs show significant variation in costs between those that have done so. CSAs are also informed by a large-scale survey of parents, and data from the 2022 CSA parent survey show significant variation in costs, typically ranging from £10-£200 per week. This range is informed by differences in hours of childcare used as well as differences in charges by providers.

¹ This is across all setting types for 5-7 year olds and includes childminders, daycare settings, out of school provision and open play provision

6.22 A 2019 assessment of local authority responses on costs of holiday provision suggests that the weighted average weekly rates for holiday care in Wales is £124.85, with costs ranging from 65% to 139% of the UK average (P.21 https://www.familyandchildcaretrust.org/sites/default/files/Holiday%20Childcare%20Survey%202018_Family%20and%20Childcare%20Trust.pdf).

6.23 It should be noted that the supply of childcare provision may be impacted by INSET related school closures, as some of this provision takes place on school sites. Approximately 25% of registered childcare settings record that they are located on a school site. Around 34% of children who access childcare in registered settings do so in settings based on school premises.

6.24 In addition, parents are likely to face difficulties in accessing childcare provision at short notice, with many providers structuring their provision of out of school care around termly commitments. At the time of completing the 2021 SASS, settings noted 1,024 children on waiting lists for after school provision.

6.25 This picture is further complicated given that evidence shows demand for paid for childcare varies significantly geographically, by child age, and parent employment status (see for instance, Welsh Government National Survey data which evidences variations). Furthermore, ad hoc formal childcare can be difficult to find and access. INSET days, by definition, are in term time and while they might precede or follow school holidays it's likely holiday clubs may not be open. As well as using holiday clubs, parents may also use activity clubs as de facto childcare, which further distorts data on formal childcare demand.

6.26 It is additionally worth noting that, depending on when the INSET day is scheduled, it can impact on the classification of the whole week (term-time vs holiday) for the purposes of the Childcare Offer. This will mean that some parents will not receive the full 48 weeks provision they are entitled to unless ad hoc Ministerial agreement is sought to fund additional costs.

6.27 The impact on lower income families with both parents/carers working is harder to mitigate, but there are some actions which we can take to try to reduce the impact. Schools will be advised to carefully consider the timing of the day to minimise disruption to parents, for example adding on to a half term. In addition, schools will be advised to give parents/carers as much notice as possible of planned INSET days to allow them time to make any necessary arrangements. However, we recognise that the notice given to parents may be limited for the additional INSET day in the 2022 to 2023 academic year.

6.28 Adding an additional INSET day means that on that day eFSM children are not able to access a healthy, nutritious free school meal. For some learners this may be the only hot, balanced meal they have access to in a day. It also passes the cost of providing a meal back to the family on those days which will impact, particularly in the context of increased living costs.

6.29 In primary schools there is also an impact on those learners that may be accessing free breakfast provision so, in effect, we'd be removing access to two meals in a day for the learner and passing the cost back to parents.

6.30 However, on balance, the impact of not being able to access food provision on 1 of 190 terms days (in addition to the existing 5 INSET days) is outweighed by the benefits to their education from introducing the additional INSET day.

6.31 In terms of the impact upon children, the proposal is intended to affect the lives of children positively; ensuring their teachers and those leading their schools are ready and confident to deliver our education reforms. There is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new Curriculum for Wales, ALN reforms, and ensuring equity in education. For those learners from lower income backgrounds, allowing teachers time to engage in Professional Learning focussed on tackling poverty and setting high aspirations for all would have positive benefits.

6.32 By providing dedicated INSET time which teachers and schools can use to engage in their professional learning, we should see improved outcomes for our learners in the long term. The education workforce unions have also called for practitioners to be given more time for professional learning.

6.33 The future use and approach to INSET will be considered during the evaluation of the policy. An Estyn review in 2013 conducted a small-scale sample of INSET in schools and found that generally they were used well in individual schools but could benefit from being more themed and strategic. As a result of the pandemic, INSET days in the last two years have largely been used to address immediate priorities and it was also not possible to undertake a full evaluation of the effectiveness of the increased INSET days from 2019. We are aware that INSET days are often used for statutory training, particularly in special schools, but that there is no general oversight of INSET days, including when they are taken or how they impact on practitioners and learners.

6.34 We therefore recognise a need for more evidence on the use and effectiveness of INSET and will consider with our key partners the best way of undertaking a review. It is proposed that a review will be undertaken in 2024. In the long-term children should benefit from practitioners accessing well planned and tailored professional learning which will have a positive impact on pupil learning.

6.35 In the short- term children will miss three days of school over three years. This may have a small negative impact on some children as they are missing out on a day of teaching. However, as it will be a collective missed day there will not be the usual element of 'catching up' which follows an absence. It might appear that this would affect all children the same on the surface, as all will be unable to attend school for those sessions.

6.36 However, children who are living in poverty or who are experiencing adverse childhood experiences at home may experience a more significant impact, for example missing out on the structure of the school day or on free school meals.

The drive to improve attendance over the past few years means that the impact on children of missing a day's schooling at the general population level will not be as severe as it would have been had attendance levels been lower. Going above one day per year might mean this mitigation in terms of learning time does not hold. Statistics show that in the years prior to the pandemic the percentage of half day sessions missed were 6.9% and 9.0% for primary and secondary in 2009/10, and that these had improved to 5.4% and 6.2% by 2018/19. Attendance figures for those eligible for Free School Meals (eFSM) were first published in 2014/15. The equivalent figures for eFSM attendance in 2018/19 are 7.9% primary and 10.5% secondary (Available here: <https://stats.wales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Absenteeism>)

6.37 Recent figures suggest that levels of persistent absence were higher during the pandemic. Around 10% of pupils were persistently absent during the pandemic compared to fewer than 3% before the pandemic. The gap in persistent absence between eFSM and non FSM pupils has increased from around 6 percentage points before the pandemic to over 15 percentage points in 2021/22 (Available here: <https://gov.wales/summary-absenteeism-school-and-during-coronavirus-covid-19-pandemic-september-2014-august-2022.html>).

6.38 Prior to the coronavirus (COVID-19) pandemic, when pupils were absent from school it was likely that the majority were not engaged in any formal learning. During the pandemic, whilst some pupils would not have been able to engage in remote learning, for example due to illness, the majority of pupils who were absent from school were likely to be engaged in remote learning. This is an important distinction to be aware of when looking at the data and considering what absence means for education and learning. The Welsh Government has recently provided almost £4m for family engagement officers, to establish positive relationships with parents and provide support and information on good attendance. Schools that know their families well can ensure that measures are put in place to help children maintain good engagement and attendance. The Welsh Government also provided a total of £7million in funding to support attendance during 2021 to 2022. This included the provision of targeted person-centred support for year 11 learners who were not attending school, and not likely to complete GCSEs. This was coupled with transition support for year 11 learners to support them to progress with confidence and make informed decisions about transition to next steps, targeting those learners with high levels of non-attendance.

6.39 However, although some respondents to the 2022 consultation voiced concerns about the loss of learning and impact of the pandemic, 81.49% of respondents agreed that there should be an additional INSET day.

6.40 There will also be an administrative cost, to be borne by the Welsh Government, relating to the development of the bank of digital, bilingual resources. Any costs associated with developing specific materials for the INSET days would therefore be met from within the existing Welsh Government budgets.

6.41 As highlighted by the 2019 consultation responses there is a broad continuum of needs in schools, from those at the start of exploring curriculum reform to those schools involved in the curriculum design process. The difference in the developmental journey of individual schools was also highlighted in the responses to the 2022 consultation. The INSET resources we will develop need to accommodate this diversity and we therefore envisage a range of resources being developed. They are likely to be a combination of online tools, interactive online content, and slide packs or short videos developed in conjunction with Regional Consortia and schools.

6.42 There may be a level of savings to be made for the education system as support staff are not required (or usually paid) to attend INSET sessions in the same way as teachers. However, in line with the principles of equity of access in the NAPL and the National Professional Learning Entitlement, we would strongly encourage the inclusion of support staff in these additional INSET days.

6.43 There may also be reductions in home to school travel costs, but only if Local Authorities are made aware of the additional INSET day and have sufficient time to plan for it.

6.44 The Minister will also be recommending to schools that most of the five INSET days already allocated to them under the STPC(W)D should be used to undertake their Professional Learning.

6.45 This approach reflects the feedback in the responses from 2019 consultation, where 78% of respondents felt that one additional day would not be sufficient. Respondents to the 2022 consultation also suggested that additional INSET days are needed for staff development and will be essential to support the introduction of the new Curriculum for Wales and other priorities.

Benefits

6.46 The Welsh Government is committed to developing a national approach to career-long Professional Learning which is embedded in evidence-based research and effective collaboration. This is supported by an investment of nearly £37.5 million in the delivery of professional learning opportunities for education practitioners during 2022 to 2023 alone.

6.48 To deliver our shared national commitment to truly transform education in Wales, it is vital that education practitioners are supported in their career-long development and professional learning. On 30 September, we published the new National Professional Learning Entitlement (NPLE) which sets out our clear expectations on what every professional in Wales should be entitled to. The Entitlement sets out how the continued development of practitioners will support the schools or settings in which they work and their learners to realise the four purposes of Curriculum for Wales, supporting learners with additional learning needs and embedding equity, well-being and the Welsh language across the whole-school community.

6.49 The additional INSET will therefore align with the recent introduction of the Professional Learning Entitlement. Although we do not have data on how the additional INSET days were used from 2019-2022, reports from the profession and the workforce unions suggest that the pandemic negatively impacted their ability to engage effectively with their Professional Learning. Consequently, both practitioners and unions have expressed a need for further time to be allocated.

6.50 The Welsh Government believes that in conjunction with the NAPL and NPLE, one extra day per year between 2022- 2025, to specifically focus on professional learning will provide the balance of extra support and time for practitioners, with the amount of time pupils have in school. These three years represent the key period for schools to engage with and fully implement the NPLE.

Option 3 - Taking a legislative approach by creating more than one additional INSET day per year, to take place for more than three years.

Costs

6.51 Similarly to option 2, this option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as the additional INSET days would take place on days when schools would have been open to pupils.

6.52 Many of the same considerations as those set out above apply to this option, but to a greater extent. For example, while it would give practitioners more time, and was therefore seen as beneficial within the 2019 and 2022 consultation, the cost to parents would multiply should more than one day be made available. This was shown within the impact assessments. In the light of the current economic context, and the potential impact of a greater level of collective missed schooling, it was felt that this option could not be justified.

6.53 However, the Minister will be suggesting to schools that they use other INSET days to further support the implementation of the NPLE, if they are not already doing so.

Benefits

6.54 Similarly to above, this would support teaching professionals to prepare for the delivery of the new curriculum and other priorities. This focus on professional learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum, ALN reform, equity in education and other national priorities.

Outcome

6.55 Having weighed the costs and benefits, the option chosen was option 2; to use subordinate legislation to provide one additional INSET day per year for three academic years.

Impact Assessments

6.56 In the short-term, learners and parents/carers may be negatively impacted by the additional INSET day due to loss of learning and the costs and difficulties of making childcare arrangements. However, this will only apply for one day from 2022 to 2025. As a result of the pandemic there has been an increase in flexible working or working from home. There will be one collective day of missed schooling and there will be no requirement to catch up as is the case with a normal absence. In addition, the additional INSET day was also available from 2019 to 2022.

6.57 In the long term, the proposal is intended to affect the lives of children positively; ensuring their teachers and those leading their schools are ready and confident to deliver our education reforms. There is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new Curriculum for Wales, ALN reforms, and ensuring equity in education. By providing dedicated INSET time which teachers and schools can use to engage in their professional learning, we should see improved outcomes for our learners in the long term, included those who suffer socio-economic disadvantage.

6.58 An [Integrated Impact Assessment](#) of the additional INSET day has been completed.

7. Competition Assessment

7.1 Not applicable.

8. Post implementation review

8.1 This is a short-term legislative change, for 2022 to 2025 and so a review will take place before the end of the three years. The effectiveness of the INSET day themselves will be evaluated following the first year, to ensure it is adding value.