

Explanatory Memorandum to the Education (School Day and School Year) (Wales) (Amendment and Revocation) Regulations 2022

This Explanatory Memorandum has been prepared by the Education Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister 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 and Revocation) Regulations 2022. I am satisfied the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

24 January 2022

PART 1

1. Description

1.1 The Education (School Day and School Year) (Wales) (Amendment and Revocation) Regulations 2022 amend the Education (School Day and School Year) (Wales) Regulations 2003, and revoke the Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020.

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

2.1 None.

3. Legislative background

3.1 The Education (School Day and School Year) (Wales) Regulations 2003 were made under sections 551 and 569(4) and (5) of the Education Act 1996 and came into force on 31 December 2003.

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 are required during any school year. This excludes nursery schools.

3.3 Regulation 4(3) allows for sessions where a school is prevented from meeting to be treated as if it had met as intended.

3.4 Regulation 5 provides for the number of additional school training days permitted and this is periodically amended to account for changes to the education system such as training for the new curriculum.

3.5 These Regulations are subject to the made negative procedure.

4. Purpose and intended effect of the legislation

4.1 The Regulations provide for the number of sessions (half days) that maintained schools in Wales must deliver during the 2021/22 school year.

4.2 The amendment is made to reduce the number of required sessions by two, to account for the additional bank holiday on 3 June 2022 to celebrate HM The Queen's Platinum Jubilee.

4.3 Schools may choose, in agreement with their local authority, when to close for an extra day because the additional bank holiday is scheduled during the Whitsun half term break. The School Teachers' Pay and Conditions (Wales) Document 2021 also reflects this.

4.4 The remaining requirements as set out in the 2003 Regulations are unaffected.

4.5 The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020 are revoked because the amendments those regulations made related to the 2020/21 school year and are now spent.

5. Consultation

5.1 As the Amendment Regulations are made to reflect the additional bank holiday in 2022, no consultation was undertaken.

6. Regulatory Impact Assessment

6.1 There were two options to consider in deciding whether to make these Regulations.

1. Do nothing and inform the school sector that, as the additional bank holiday falls within the Whitsun half term break, schools would not be entitled to close for an extra day.
2. Allow schools to close for an extra day in lieu of the additional bank holiday, in line with the School Teachers' Pay and Conditions (Wales) Document (STPC(W)D) 2021.

Costs and benefits to option 1

6.2 There are no financial costs to option 1. However, by treating school staff in Wales less favourably to other UK nations and differently to previous years when there have been additional bank holidays, it could be argued there would be a cost to morale. The school workforce has been pushed to its limit during the coronavirus pandemic. To renege on the STPC(W)D 2021 would be a breach of already agreed terms and conditions.

6.3 A benefit of doing nothing is that there would be no further lost days of schooling this year.

Costs and benefits to option 2

6.4 There are no additional costs to the public sector arising from option 2, however it could be argued that school staff will be paid for a day when they are not in school working. This applies to all sectors who are provided with the extra bank holiday.

Furthermore, there may be additional child care costs to families for an additional day off. The extent to which families will incur an additional child care cost is likely to come down to individual circumstances and choices. Some

families will use unpaid family members, others will take a day off work or (where possible) work from home. Where paid child care is required, the cost is likely to be in the region of £30-40 per child for the day. These impacts are described in more detail in the integrated impact assessment.

6.5 The sector was informed about the additional day in lieu of the bank holiday in June 2021, giving parents and carers as much time as possible to plan. Additionally, schools and local authorities were encouraged to carefully consider the impacts on learners and parents before deciding on and giving notice of their chosen day.

6.6 The additional day may be beneficial to school staff's and learners' wellbeing, giving them the opportunity to spend the day with family or taking part in activities to celebrate the Jubilee.

This option would ensure school staff in Wales are treated the same as those elsewhere in the UK and avoid the potentially negative impact on morale identified under Option 1.

Competition assessment

6.7 The Regulations are not expected to impact on levels of competition within Wales or the competitiveness of Welsh firms.

Post implementation review

6.8 This is a short term legislative change, applicable only for the 2021/22 school year. The impacts of the Regulations will be monitored to inform future policy on additional bank holidays.

Conclusion

6.9 Agreement to accommodate the additional bank holiday was reached in May 2021 by reducing by two the required number of sessions for teachers in the STPC(W)D 2021. This was welcomed by the sector and Trade Unions.

6.10 Furthermore, all four UK nations discussed and agreed a common approach to allow schools to close for the additional day was the best option. This approach was taken in 2011 for the Royal Wedding and in 2012 for HM The Queen's Diamond Jubilee.

6.11 Therefore the Education (School Day and School Year) (Wales) (Amendment and Revocation) Regulations 2022 are made as described above.

7. Other impact assessments

7.1 An Integrated Impact Assessment has been carried out in the making of the 2022 Amendment Regulations. The Impact Assessment will be kept under review during the period they are in force.

Welsh Language

7.2 There are no positive or adverse impacts specific to the Welsh Language.

Children's Rights

7.3 We have undertaken a Children's Rights Impact Assessment. The findings are summarised below.

7.4 Children and young people have a right to education (article 28 of the UNCRC). It could be argued that a day's loss of schooling as a result of the additional bank holiday could have a detrimental effect on learners, especially in the light of time in school lost due to the COVID-19 pandemic. Schools are working hard to ensure learners are not disadvantaged by the pandemic through Renew and Reform: our education COVID-19 recovery plan.

7.5 We have been clear in our communications with schools, local authorities and regional education consortia that we expect schools to consider plans carefully and ensure parents are given as much notice as possible.

Equality and Human Rights

7.6 We have undertaken an Equality Impact Assessment. The findings are summarised below.

7.7 Disadvantaged and vulnerable groups could be adversely affected by a day's loss of schooling. Families who live in poverty or those whose income is reliant on actual hours worked may struggle with childcare for this extra day.

7.8 The Welsh Government asked local authorities and school to provide early notification to the change of term dates to give parents the time to plan for any additional childcare needs for the additional day.

7.9 Welsh Government has taken steps to comply with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 by conducting impact assessments and ensuring local authorities are aware of their statutory responsibilities, in providing the required number of school sessions.

Privacy

7.10 The provisions in the General Data Protection Regulation 2016 are not affected by extending the amendment to these Regulations.

Justice Impact Assessment (JIA)

7.11 Whilst no formal JIA has been undertaken, no impacts have been identified when considering these Regulations.