

Explanatory Memorandum to the Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2021

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government 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) (Coronavirus) Regulations 2021.

Jeremy Miles
Minister for Education and Welsh Language
22 December 2021

1. Description

The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2021 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

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2021 will come into force less than 21 days after the instrument has been laid. These Regulations amend the 2003 Regulations to allow term time to be allocated for planning days in order for schools to assess staffing capacity and put the necessary measures in place to support the return of learners.

The making of these amending Regulations means schools will be able to meet the required number of sessions during the 2021-22 school year as set out in the 2003 Regulations.

3. Legislative background

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

Regulation 4(1) of those Regulations 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.

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

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.

4. Purpose and intended effect of the legislation

On 16 December 2021, I announced plans for the return of school learners in January 2022. These plans included the allocation of two planning days for schools at the beginning of the new school term in January 2022 to allow schools to assess staffing capacity and put the necessary measures in place to support the return of learners. These will also help ensure schools have robust plans in place should onsite learning be disrupted over the coming weeks and months. Without these Regulations, schools will not meet the required number of sessions during the 2021-22 school year.

These Regulations amend the 2003 Regulations by adding a new regulation 7, the effect of which is to allow for up to four sessions to count as sessions on which the school met if they were devoted to the preparation of schools and planning by teachers as a result of the incidence and transmission of coronavirus during the 2021-2022 school year. These sessions must be held in the first two days of the second (spring) term of the 2021-22 school year.

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

5. Consultation

During the period leading up to the laying of these Regulations, we have engaged with local authorities and the Welsh Local Government Association, in addition to other key stakeholders, including trade unions and the Children's Commissioner for Wales.

Feedback received on the planning days was generally positive, and local authorities considered that a review of contingency plans and staffing levels at that point – building in the latest intelligence on the Omicron variant – would help minimise disruption in the longer term.

As the changes applied to the return to school in January 2022, there was insufficient time to undertake a full consultation. Not making these Regulations was not a viable option as it is recognised that schools needed an opportunity at the start of the school term to review and revise arrangements, building their latest understanding of staffing levels into operational arrangements at that point. The precise impact of Omicron, across the population and for each school and its community, as well as on school provision itself is unknown at this point. This is a one-off amendment to the Regulations in response to the effect of the coronavirus pandemic.

6. Regulatory Impact Assessment

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

1. Do nothing, and those schools making use of the two planning days would then need to extend their term by the appropriate period to fulfil the requirements of the 2003 Regulations, or end their term on the expected date and would therefore not fulfil the requirements of the 2003 Regulations.
2. Making these Regulations to enable schools to allocate two days for the purposes of planning, as set out above.

Costs and benefits of Option 1

There are financial costs to Option 1. For those schools using the first two days of the spring term as planning days, schools would need to extend their term by the same period in order to meet the requirements of the 2003 Regulations. There may be additional costs incurred as a result of this extension of the term, for example additional staffing costs. There would likely also be contractual

implications of requiring staff to work for an additional two days at a later point during the school year. It could also be argued that there would be a cost to staff morale by requiring staff members to work for an additional two days at a later point during the academic year in order to ensure the school fulfils the requirements of the 2003 Regulations.

The benefit of doing nothing is that this may avoid the loss of two further days of on-site provision in what has for many learners already been a disrupted year.

Costs and benefits of Option 2

There may be some financial costs to the public sector arising from Option 2. Schools who use the first two days of the 2021-22 spring term as planning days may have to rearrange events and training scheduled for these days. Costs may also be incurred in making the necessary rearrangements for school transport, catering provision and other support services. There may also be additional childcare costs to families if these planning days result in learners returning to school later than planned. The extent to which families will incur an additional childcare cost is likely to come down to individual circumstances and choices. Some families will use family members, others will take a day off work or (where possible) work from home. Where paid childcare is required, the cost is likely to be in the region of £30-40 per child for the day.

The benefit of Option 2 is that the total period of the school term effectively remains unchanged, with learners at schools choosing to use the first two days of the 2021-22 spring term for planning purposes not attending the school site on these two days.

The impact on the public sector is on the state-funded schools sector including local authorities and school governing bodies to the extent that these bodies are responsible for the delivery of school sessions. As a result of these amending regulations, schools can open to learners two days later than originally intended in the 2021-22 spring term.

Welsh Language

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

Children's Rights

We have undertaken a Children's Rights Impact Assessment, and will publish this in due course.

Children and young people have a right to education (article 28 of the UNCRC). It could be argued that two days loss of schooling could have a detrimental effect on learners. However, the aim of these days is to minimise disruption to teaching and learning in the longer term and they are viewed as a prudent step to review and prepare for the forthcoming term.

Equality and Human Rights

We have undertaken an Equality Impact Assessment, and will publish this in due course.

Disadvantaged and vulnerable groups could be adversely affected by an extended Christmas and new year break. Families who live in poverty or those whose income is reliant on actual hours worked may struggle with childcare for these extra days.

Notifying local authorities and schools as early as possible of these changes has given parents the time to plan for any additional childcare needs for these two days, and for some it may mean that children return to school as planned if INSET scheduled days are reallocated to a later date during the school year. We have also informed local authorities and schools that on the second day, we would expect them to consider what provision may need to be put in place for vulnerable children and the children of critical workers. Schools and local authorities should also have regard to the wider needs of their community and the impact of any decisions not to put in place such provision.

Under the Childcare Act 2006 local authorities in Wales are required to secure sufficient childcare to help parents to work or train. Discussions will be held with childcare providers so that they are aware of the potential for a change in use of provision over these two days.

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, both in providing the required number of school sessions and in providing sufficient childcare.

Privacy

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

Justice Impact Assessment (JIA)

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