

SL(6)121 - The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Education (School Day and School Year) (Wales) Regulations 2003 ("the 2003 Regulations").

On 16 December 2021, Jeremy Miles MS, the Minister for Education and Welsh Language 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.

These Regulations amend the 2003 Regulations by adding a new regulation 7 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 effect of the new regulation 7 is to allow for up to four sessions (two days) 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 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. The Welsh Government's Explanatory Memorandum also provides that these Regulations will help ensure schools have robust plans in place should onsite learning be disrupted over the coming weeks and months.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Jeremy Miles MS, the Minister for Education and Welsh Language, in a letter to the Llywydd dated 21 December 2021. In particular, we note what the letter says regarding the breach of the rule:

“The purpose of the instrument is to amend the Education (School Day and School Year) (Wales) Regulations 2003 (“the 2003 Regulations”) to allow the first two days at the start of the spring term during the 2021-22 school year 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. It will also help ensure they have robust plans in place should onsite learning be disrupted over the coming weeks and months. Without these Regulations in place by the start of the spring term for the 2021-22 school year, schools will not meet the required number of sessions during the 2021-22 school year as set out in the 2003 Regulations.”

2. 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

We note that there was no full consultation prior to these Regulations being made, however the Welsh Government did engage with the Welsh Local Government Association, in addition to other stakeholders, including trade unions and the Children’s Commissioner for Wales in the period leading up to the Regulations being made. In particular we note the following in the Explanatory Memorandum:

“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 the 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.”



3. 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

We note that a Regulatory Impact Assessment has been carried out in respect of these Regulations. The Explanatory Memorandum provides that there may be some financial costs to the public sector arising from making these Regulations.

“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 Welsh Government also carried out a Children’s Rights Impact Assessment and Equality Impact Assessment in respect of these Regulations. The Explanatory Memorandum notes that the 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. We note the following paragraphs from the Explanatory Memorandum relating to the Equality Impact Assessment:

“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.”

The Explanatory Memorandum also recognizes a child’s right to education established in article 28 of the UN Convention on the Rights of the Child. We note the following paragraph relating to the Children’s Rights Impact Assessment.

“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."

The Explanatory Memorandum provides that both the Children's Rights Impact Assessment and Equality Impact Assessment will be published in due course.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2022

