

Government Response: The Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022

Technical Scrutiny point 1:

The Welsh Government notes the committee report but respectfully disagrees on this point. The Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022 (“Temporary Disapplication Regulations”) are made under section 42 of the 2021 Act. Section 44 of the 2021 Act makes supplementary provision to section 42. Section 44 states that when a head teacher makes, varies or revokes a determination under regulations made under section 42 he or she must provide the information described in subsections (3) and (4) of section 44. The determination in question is a decision by the head teacher as to whether or not a temporary exception is to be made, varied or revoked. That information includes amongst other matters the reasons for making, varying or revoking the determination. The scheme of section 44 is to require the head teacher to provide certain information, including reasons for a decision, when making a decision as to whether to make (and, we argue, implicitly or not make) a determination, vary (and, we argue, implicitly or not vary) a determination, or revoke (and, we argue, implicitly or not revoke) a determination. It is not for regulation 11 of the Temporary Disapplication Regulations to explicitly require reasons for refusing to make a determination and nor does it seek to do so – that, we say, is the effect of section 44 itself. In any event we consider that the public law principle of fairness would require the head teacher to provide reasons for his determination. The text in paragraph 8 of the explanatory note reflects the Welsh Government’s overall views on this matter.

Merit Scrutiny point 1:

The Welsh Government notes the Committee Report and agrees with its conclusion. There is a partial definition of the term “head teacher” in section 579(1) of the Education Act 1996 to the effect that head teacher includes acting head teacher. The term acting head teacher is not itself defined in the 1996 Act. The Welsh Government agrees that it would have been helpful to the reader to have referred the reader to the partial definition in section 579(1) of the 1996 Act. We will amend the 2022 Regulations to address this point at the next available opportunity.