

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 2, Senedd

Meeting date: 22 January 2024

Meeting time: 13.30

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Hybrid – Supplementary Pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

2 Residential Outdoor Education (Wales) Bill: Evidence Session

(13.30 – 14.30)

(Pages 1 – 22)

Jeremy Miles MS, Minister for Education and Welsh Language

Ceri Planchant, Lawyer, Welsh Government

Emyr Harries, Deputy Director, Education Business & Governance, Welsh Government

[Residential Outdoor Education \(Wales\) Bill, as introduced](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)–03–24 – Paper 1 – Briefing Paper

LJC(6)–03–24 – Paper 18 – Welsh Government Evidence Paper

6 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

(14.50 – 14.55)

Made Negative Resolution Instruments



**6.2 SL(6)431 – The Education (Student Finance) (Miscellaneous Amendments)
(No.3) (Wales) Regulations 2023**

(Pages 23 – 28)

Attached Documents:

LJC(6)–03–24 – Paper 19 – Report

LJC(6)–03–24 – Paper 20 – Welsh Government response

**12 Supplementary Legislative Consent Memorandum on the Data
Protection and Digital Information Bill: Draft report**

(15.25 – 15.40)

(Pages 29 – 46)

Attached Documents:

LJC(6)–03–24 – Paper 16 – Draft report

13 Elections and Elected Bodies (Wales) Bill: Draft report

(15.40 – 15.55)

(Pages 47 – 92)

Attached Documents:

LJC(6)–03–24 – Paper 17 – Draft report

Document is Restricted

Evidence Paper

Residential Outdoor Education (Wales) Bill

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1. The General principles of the Residential Outdoor Education (Wales) Bill

1.1. The proposal is for a Bill which places a statutory duty on local authorities to ensure that young people receiving maintained education are provided with the opportunity to experience residential outdoor education, for at least one week at some stage during their school years. In effect it seeks to create a statutory entitlement to at least 1 week of residential outdoor experience (ROE) for all pupils in Wales.

1.2. There is currently no such entitlement in legislation at the moment.

2. The Need for the Legislation

2.1. The Bill is unnecessary as schools already have the legal powers to provide residential outdoor education if they wish. It will add to the financial burdens of schools and local authorities and the Bill is drafted in such a way that its legal effect is unclear and is defective. The Bill makes amendments to the Curriculum and Assessment (Wales) Act 2021 (The 2021 Act) which are not appropriate as they do not fit with the legislative scheme or the principles of that Act. The Bill will have the effect of distracting schools from the vital task of implementing the new curriculum.

2.2. The new curriculum makes ample provision for outdoor experiences and the Explanatory Memorandum for the Bill does not adequately make the case for why pupils must be offered residential outdoor education. The Bill has the effect of making ROE compulsory.

3. Wellbeing of Future Generations (Wales) Act 2015 (WFG Act)

- 3.1. The Welsh government believes that the Bill does not further the aims of the WFG Act in a meaningful way and undermines the overarching aims of the principles of the new curriculum in the 2021 Act.
- 3.2. The seven goals identified in the WFG Act already press the importance of developing a healthier Wales as well as emphasising socio-economic goals, including the importance of developing a skilled and well-educated population in an economy which generates wealth and provides employment opportunities. There is ample opportunity in the new curriculum for schools to include outdoor education and residential outdoor education if that is appropriate. The new curriculum requires schools and other settings to take design their own curriculum within the legislative framework set by the 2021 Act. That will enable those schools and other settings to tailor the curriculum to the needs of its pupils.
- 3.3. The Bill adopts a one size fits all approach by effectively requiring all schools and settings to offer a ROE and for all pupils to undertake a ROE. The effect of the Bill is to make ROE compulsory and so it undermines that flexibility the 2021 Act now provides for schools and other settings.

4. Stakeholder Concerns

Consultation Responses

- 4.1. On 31 January 2023, Sam Rowlands MS launched a consultation on his proposal for the then Outdoor Education (Wales) Bill, inviting people to give their views on the policy objectives of the proposed law. The consultation closed on 17 March 2023.
- 4.2. Whilst respondees were largely in support for the principles behind the proposal, we note that eleven respondees (6%) disagreed with the principles behind the proposal, and that seven of these were head teachers, whilst another was the National Association of Head Teachers (NAHT).
- 4.3. Those in disagreement predominantly gave the following reasons:
 - Concern that funding will be diverted away from schools' core budgets, which they believe should be the priority for any available spending on education.
 - Concerns about staffing implications if this is made statutory – having sufficient numbers of school staff to accompany pupils and the impact and pressure on those that are willing to go.

- Fears that schools will not receive funding for the full costs of the staffing requirements – either paying overtime to those supervising visits or sourcing supply cover during their absence.

4.4. While broadly supportive of the principles behind the proposal, there were many observations of matters respondents believe require further consideration. These include:

- Concerns about the negative staffing implications if this is made a statutory requirement.
- Concerns as to whether this should be a universal free entitlement or whether resources should instead be targeted at those who face specific barriers, such as low-income households.
- Concerns that ROE should be seen not just a one-off but something that is consolidated with lead-up and follow-up activities and learning.
- Concerns over the quality of provision and how appropriate standards will be ensured.
- Concerns over the capacity of the sector and the arrangements in place (including governance and funding) between Welsh Government, local government and providers.
- Concerns over the range and diversity of outdoor education provided, recognising that children and young people have different needs and interests.
- Concerns that the practicalities and importance of meeting some pupils' complex needs, for example those with medical, emotional or learning needs, or disabilities.
- Concerns as to whether outdoor education necessarily needs to be residential and how it can also be embedded within school and community life.
- Questions as to how the proposed Bill can complement the promotion of the Welsh language and culture, including increasing opportunities for children and young people to hear and speak Welsh.

4.5. The Welsh Government's view of the Residential Outdoor Education (Wales) Bill recognises these concerns from those stakeholders closest to the delivery of residential outdoor education in schools in Wales and, in particular, has very serious reasons for choosing not to support it in three key areas:

- Curriculum Delivery
- Legislation
- Finance

4.6. These concerns are set out in detail in the rest of this document.

5. Curriculum Delivery

Overview

- 5.1 The Curriculum for Wales places a strong emphasis on experiential learning. Learning outside is far broader than a single residential experience. It is recognised as being of primary importance to a child's progression as well as their development, and well-being, including their social, emotional, physical, cognitive, cultural and personal development – making experiences richer and more memorable. This is especially true at early years but extends throughout learners' time in school.
- 5.2 Effective use of the learning environment is a key enabler for the curriculum across the whole 3-16 age continuum. When designing their curriculum, practitioners will need to consider how their school environment and locality, both indoors and outdoors, can support learners of all ages to experience authentic learning opportunities.
- 5.3 The statutory guidance for Curriculum for Wales, which all schools must consider, emphasises the importance of the learning environment as a key enabler of the curriculum and states that learners of all ages should experience “authentic learning opportunities both indoors and outdoors”. The pedagogical principles outlined in the guidance also emphasise the importance of learning outdoors.
- 5.4 There is therefore a clear expectation that learners engage outdoors on a regular basis and that this helps learners become healthy, confident individuals. The details of this will differ in relation to the school's physical space, the age, development and needs of learners and the focus of the learning. Schools then ensure that they embed outdoor learning in a variety of ways.
- 5.5 This recognises that what engages learners and best supports them to develop positive behaviours around the outdoors will differ from learner to learner and there is no 'one size fits all' approach.
- 5.6 This also recognises that positive, long-term behaviours need to be built over time and those behaviours are most effectively developed through continuous exposure to the outdoors in the school's context, allowing learners to appreciate the benefits of the outdoors at all ages. This is considerably wider than a single intervention.

Curriculum for Wales Framework

5.7 Outdoor learning is encouraged across the Curriculum for Wales, in particular in Health and Well-being, Science and Technology, and Humanities. This is highlighted in the “Designing your Curriculum” sections for each of the Areas of Learning and Experience (“AoLEs”), which form part of the statutory guidance provided for under Section 3 (1) of the Curriculum and Assessment (Wales) Act 2021 that all schools must consider in developing their curriculum. This includes:

Health and well-being:

- *What opportunities for physical activity will your learners find enjoyable and meaningful? What motivates them to engage in a variety of roles, responsibilities and environments (e.g. indoor, outdoor, in and around water)?*
- *For example, enjoyment of activities outdoors will influence learners’ mental health and emotional well-being.*

Science and Technology:

- *Exploration and experience of the world through inquiry, including fieldwork, investigating environments indoors and outdoors in a safe and systematic way, are crucial for all learners across the 3 to 16 continuum.*
- *This can help build learners’ understanding of different environmental issues and help them to learn to demonstrate care, responsibility, concern and respect for all living things and the environment in which we live.*

Humanities:

- *A range of opportunities to learn outdoors to:*
 - *experience and reflect on the wonder of the natural world*
 - *engage with a variety of landscapes, historical and geographical features, environments and places*
 - *learn in local natural spaces and historical sites*
 - *conduct enquires and fieldwork both independently and collaboratively, in partnership with organisations, groups and individuals when appropriate*
 - *engage with historical, cultural and religious sites, including places that are significant to those whom faith and belief are important*
 - *spending time outdoors supports learners’ social, emotional, spiritual and physical development, as well as their well-being.*
- *Being outdoors also helps them to develop an awareness of the need to show care and respect for living things.*

Pedagogy

- 5.8 Using the outdoors to extend learning beyond classroom boundaries is integral to the pedagogy of a curriculum for funded non-maintained nursery settings, providing first-hand, authentic contexts for learning. This year, for example, we have awarded funding to Mudiad Meithrin to enable eight new affiliate Outdoor Thinking trainers to qualify to deliver the new certificate in Outdoor Practice qualification through the Welsh language. The qualification is specific for the early years, enabling the practitioner to become proactive in enhancing the provision, practice and management of the outdoor environment for well-being, play, learning and development. It is also strong on child development, empowering the practitioner to enact effective early years pedagogies in their work setting.
- 5.9 The [Enabling Learning](#) guidance emphasises that while the 12 pedagogical principles should apply to all curriculum design, particular attention should be paid to key approaches that are essential to foundation learning – such as outdoor learning and play.
- 5.10 The Pedagogy section of the Curriculum for Wales framework and key parts of the Areas of Learning and Experience (AoLE) guidance, outline the importance of outdoor learning across the whole education continuum. While traditionally outdoor learning has been associated with early years education, the Curriculum for Wales encourages its use for all age groups, where it can support learning through providing authentic, inspiring experiences and contexts.

Conclusion

- 5.11 It is for these reasons (curriculum principles, pedagogy and the nature of the AoLEs) that the Curriculum for Wales does not tie outdoor learning to a specific experience at a particular point in a learner's pathway. Any additional requirement of the nature proposed, if it related to the curriculum would likely be going beyond the principles and ethos of the Curriculum, set out in the Curriculum Framework.
- 5.12 We consider the most effective way to develop learners' positive behaviours around and relationship with the outdoors to be a continuous experience of outdoor learning throughout their learning journey. We will, of course, continue to support outdoor learning through our approach to resources and supporting materials and we intend to work with the profession through the National Network, our platform for engaging with the teaching profession on the Curriculum for Wales.

6. Legislation

- 6.1 Currently there is no legal duty to provide pupils at maintained schools in Wales with a ROE in either the “old curriculum” or in the “new curriculum”. Wales is currently phasing out the old curriculum which is primarily contained in Part 7 of the Education Act 2002. At the same time, it is phasing in the new curriculum which is primarily contained in the Curriculum and Assessment (Wales) Act 2021. The last year of the transition will be for year 11 pupils in the 2026-27 school year, at which point all pupils in Wales of compulsory school age will be studying the new curriculum. It is a matter for schools as to whether they chose to provide ROE or not. There is nothing in legislation that prevents or requires it.
- 6.2 If ROE is provided as an extra curricula activity then schools are entitled to charge for the cost of providing ROE. However, if that is provided as part of the compulsory curriculum, whether under the old or new curriculum then no charge may be made for the ROE provided.
- 6.3 In light of that the EM states that: “The proposal was to establish a Bill to place a statutory duty on local authorities to ensure that young people receiving maintained education are provided with the opportunity to experience residential outdoor education, for at least one week, at some stage during their school years”. We have taken that to mean exclusively on local authorities. However, the Bill does not place the obligation to provide the residential outdoor education on local authorities, as stated in the EM, but instead places it directly on the Welsh Ministers. It requires them to provide ROE and also to seemingly fund that as if that ROE were provided by a 3rd party.
- 6.4 Separately, the Bill requires the Welsh Ministers to make it a compulsory part of the new curriculum so that the schools must provide it as part of their designed curriculum offer. Therefore the Bill is not clear what the legislative intent is as to who is to provide the ROE.
- 6.5 The EM further states that “Children and young people will be encouraged but not compelled to participate in residential outdoor education”. Unfortunately, in requiring the Welsh Ministers to make ROE a mandatory part of the curriculum, it does make it compulsory. The Bill does not add up to a sensible set of legislative provisions.
- 6.6 The new curriculum set out in the 2021 Act is a huge change for schools and other settings. They will need time and support to fully implement that in order to achieve the best results for learners. The changes proposed by the Bill, whatever the actual policy intent is, will place additional burdens on them and detract them from that mission.

Duty to provide ROE

- 6.7 As noted above, the Bill does not achieve its stated purpose of establishing a statutory duty *on local authorities* to ensure young people are provided with the opportunity to experience ROE. There are no duties placed directly on local authorities in the Bill. All duties are placed on Welsh Ministers. However, in requiring the Welsh Ministers to make it a *What Matters Statement* schools and other settings will be required to deliver it.
- 6.8 Accordingly, section 64A of the Bill seeks to place a duty on the Welsh Ministers to take all reasonable steps to ensure that ROE is provided to all pupils at a maintained school. However, there are several problems with that approach.
- 6.9 The Welsh Ministers do not *provide* education directly (i.e. deliver education to learners). Instead, their duties are confined to the provision of financial resources or other support in the form of guidance etc. It is not appropriate to place such a duty on the Welsh Ministers.
- 6.10 Such a duty is particularly out of step with the legislative scheme of the 2021 Act, where education delivery duties are placed on the settings themselves (e.g. head teachers, governing bodies, teachers in charge of a PRUs etc).
- 6.11 This duty is also phrased in terms that the Welsh Ministers must take *reasonable steps* to ensure ROE is provided. It is not clear how far that duty would require the Welsh Ministers to go to provide the ROE. The Bill provides reasonable steps includes making it a key concept i.e. a compulsory element in the curriculum and making guidance. As the Welsh Ministers appear to be required to do both of those things it is not clear what else, if anything, the reasonable steps duty would require them to do.
- 6.12 In requiring the Welsh Ministers to make it a key concept, it has the effect of making it a compulsory part of the curriculum. That means schools and other settings would be obliged to ensure ROE is provided. That is inconsistent with the statement in the EM that the purpose of the Bill is to require the local authorities to do this or the provisions in the Bill that actually require the Welsh Ministers do this. The Bill is not clear on who must provide the ROE.
- 6.13 It is also not clear what the outcome for the pupil/parent is to be if the child does not want to go on a ROE. There could be many reasons for a child not wanting to attend. If it is a compulsory part of the curriculum, then there must be some sanction for failing to take part in it. Presumably that would involve disciplinary action being taken for non-attendance at a required school curriculum event in the same way as it would for not attending a normal class session. Whilst the EM states it is to be voluntary that is not the legal effect of the Bill.

- 6.14 It is possible given what is said in the EM that the real intention for section 64A(1) is for it to only require the Welsh Ministers to exercise their existing functions so as to facilitate other bodies to deliver the ROE themselves (i.e. the local authority and/or schools), rather than the Welsh Ministers directly provide the ROE. Section 66 of the 2021 Act already provides that the Welsh Ministers must exercise their functions with a view to facilitating the performance of functions conferred on those under Part 3 and 4 of the 2021 Act. In other words, they should ensure resources in the form of money etc are there to enable the settings to actually deliver the new curriculum. However, if that was the intention of section 64A then it fails to achieve it.
- 6.15 As noted above, section 64A(2) provides that taking reasonable steps includes making ROE a key concept within an AoLE and issuing a code as to how a curriculum is to make provision for ROE. However, ROE conceptually is not a subject and therefore does not sit well as a key concept within the legislative scheme of the 2021 Act. That underscores the point that ROE does not fit in the 2021 Act. Further, making it a compulsory part of the curriculum does not mean the LA must provide it. As noted above the Bill does not have that legal effect.
- 6.16 As this is to be a compulsory part of the curriculum, then presumably Estyn will need to inspect. It is not clear how that will work given it is provided off site by 3rd parties and often private businesses. Estyn has powers to enter, inspect and remove documents in respect of school inspections but has limited powers to do that where part of a pupil's education is provided off school site. It would not extend to children attending ROE below the age of 15. No provision is made in respect of that in the Bill.
- 6.17 As a compulsory part of the curriculum and arranged by the schools, then the school will be in locus parentis. In other words, they will be held to be legally responsible for each pupil as if they were a responsible parent. That is the case when attending the school site but that it is a more onerous task if attending ROE on a 3rd party bodies premises and using its equipment.
- 6.18 Section 64A(1) provides that the duty must be discharged (i.e. a duty to ensure ROE is provided) before pupils cease to be a registered pupil at a school. The Bill only applies to maintained schools in Wales. Therefore, if a pupil ceases to be registered as a pupil at a school in Wales at any time and for any reason - e.g. in order to leave Wales, to attend a PRU, or is provided with EOTAS then the Welsh Ministers will have failed in that duty. That would be an untenable position for the Welsh Ministers as they simply cannot know when each and every pupil will cease to be registered at a school in Wales.
- 6.19 The Bill also has implications for the School Teachers Pay and Conditions Document (the STPCD). It is not clear whether teachers are going to be required to supervise and so attend these overnight residential activities. They are not currently obliged to do that and so it seems to officials there would presumably have to be an amendment to the STPCD.

Guidance

- 6.20 The draft inserts a new section 71A into the 2021 Act. That provides that the Welsh Ministers must issue guidance under section 71 of the 2021 Act. There are several problems with that approach.
- 6.21 The section 71 guidance making power is a power and not a duty i.e. it is discretionary. It is not appropriate to turn the discretionary guidance making power into a mandatory making guidance making power for the purposes of ROE. If mandatory guidance making was wanted, then it should be a free-standing provision and not linked to section 71. The proposed section 71A would introduce an inconsistency in the approach to guidance making powers in the 2021 Act. It is not clear why ROE guidance is treated differently to guidance on other important matters in the new curriculum e.g. RVE, RSE or any of the AoLEs. As it is, the Bill presents a confusing and misleading picture to the reader.
- 6.22 It is also unclear as to who is to be the target audience for the guidance issued under section 71A and 71. Section 71 has wide target audience but most of that audience is not relevant to the functions in section 64A. Section 64A only applies to maintained schools in Wales and so not PRUs, independent schools, funded non-maintained nursery education, forms of EOTAS. Yet, as drafted, the Bill provides that the Welsh Ministers would be able to issue guidance on that wider audience which have no functions in respect of ROE.
- 6.23 The drafting of the guidance provisions implies that guidance can include mandatory requirements. For example, the Bill provides that the guidance must include a number of matters including provision that ROE be provided in Welsh. It also states that the guidance may impose requirements before a person is merited to provide ROE. That is not appropriate as guidance can only contain advice and not requirements.
- 6.24 The guidance making powers also provides that any guidance must provide that ROE is not compulsory. However, the effect of other provisions of the Bill is that is to make it a compulsory part of the curriculum and so the Bill provisions are inconsistent.
- 6.25 In any event it is not advisable to include such restrictions on the Welsh Minister guidance making power. The very nature of guidance making powers is that they are to be used to help those with functions better exercise those functions. In order to do that, the guidance needs to have the scope to evolve over time. It may be that evidence will suggest in the future that the 4-day requirement is not best practice. In that case we would have to amend primary legislation before we could amend the guidance. That is not workable and inappropriate in our view.

7. Finance

- 7.1. The First Minister has been very clear with the Senedd and the public over recent months that the budget situation for public services is under extreme pressure. In response to the UK Chancellor's Autumn Budget Statement, the Finance Minister stated that the Welsh Government's "budget in 2024-25 is now £3 billion lower in than it would have been if it had grown in line with the with the economy since 2010".
- 7.2. The 2024-25 draft budget has been the most difficult budget since devolution with the Welsh Government's budget being worth up to £1.3bn less in real terms than when it was set in 2021. As a result, we have had to re-shape the indicative spending allocations within our budget to provide extra funding and protection for the services which matter most to people and communities across Wales – the NHS and the core local government settlement, which funds schools, social services and social care and other everyday services.
- 7.3. Within the Education and Welsh Language portfolio budget we have re-prioritised funding so we can protect school funding as much as possible. Unfortunately, our overall funding settlement is not sufficient to meet all pressures and allow us to do all the things we want to do. Spending more in a specific area means there is less to spend in other areas. Where hard decisions have been required, we have sought to identify those areas where the relative impacts are lesser than their alternatives and we have sought to take action to mitigate impacts as far as possible.
- 7.4. We recognise that the cost-of-living crisis is putting schools and local authorities under significant pressure, and that there are no easy answers to resolving the issues being faced. During challenging financial times visibility and transparency around funding is even more important. Through the 2024-25 draft budget we are proposing further simplification and streamlining of the funding to local authorities and schools in order to provide more flexibility for schools and local authorities in the use of the funding. The proposal in the Bill to provide very specific and directed funding goes against our principle and approach to provide more flexibility in the use of grant funding.
- 7.5. The Bill places an absolute obligation on the Welsh Government to both provide and fund all outdoor residential education provision, whatever that may be, and whatever the cost. The EM estimates the additional cost to the tax payer would be up to £19.7m a year. Whilst we sympathise with the principles of encouraging ROE, what is being proposed by the Bill is simply not affordable and prioritising funding on ROE will mean less funding in other priority areas in education, such as school budgets.

Cost implications of the Bill

7.6. The EM states that the Bill will establish a statutory obligation for providers of maintained education to be allocated funding to enable them to provide ROE. In other words, it imposes an absolute statutory duty on the Welsh Ministers to fund the entire cost of whatever is provided by way of ROE.

The costings in the EM over a 5-year period are replicated below:

| Costs (£) | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
|---|------------|------------|------------|------------|------------|------------|
| Attending outdoor activity centres (Ongoing costs) | | | | | | |
| Low range | 12,397,720 | 12,317,360 | 12,209,800 | 11,868,800 | 11,559,000 | 60,352,680 |
| High range | 16,321,040 | 16,216,240 | 16,074,080 | 15,623,920 | 15,216,720 | 79,452,000 |
| Transport (Ongoing costs) | | | | | | |
| Low range | 1,330,759 | 1,322,353 | 1,309,809 | 1,272,148 | 1,239,749 | 6,474,818 |
| High range | 1,861,574 | 1,850,044 | 1,833,195 | 1,780,829 | 1,735,735 | 9,061,377 |
| Teacher cover (Ongoing costs) | | | | | | |
| | 1,554,335 | 1,535,813 | 1,498,348 | 1,447,457 | 1,388,414 | 7,424,366 |
| Total costs | | | | | | |
| Low range | 15,282,814 | 15,175,526 | 15,017,956 | 14,588,405 | 14,187,163 | 74,251,864 |
| High range | 19,736,949 | 19,602,097 | 19,405,623 | 18,852,206 | 18,340,869 | 95,937,743 |

7.7. These costings are largely in-line with the estimates previously calculated for the Bill by officials. However, officials believe that the likelihood of these costs reducing year on year over the 5-year period, as shown above, is unlikely given the current rate of inflation.

7.8. In addition, and to be clear, the Bill imposes an absolute obligation on the Welsh Government to fund the provision whatever is provided. There is a significant risk that costs could become unaffordable in the current and future financial climate. In addition there are no indicative budgets post March 2025, therefore committing to forecast costings with no indicative budgets is risky.

Unquantified costs and disbenefits

7.9. These costings however do not cover the staffing implications of the Bill in terms of the likely required changes to the School Teachers Pay and Conditions Document (the STPCD), which has provision around the maximum hours worked in the year and when a teacher can be required to work additional hours. Supervising pupils on a week residential would be outside normal school session times and, at the moment, we presume schools manage this by asking for volunteers from teaching staff. There are also specific limits for those teachers working part-time. If a residential trip was to become compulsory, the STPCD would likely need to be amended to reflect that as that will need to be supported by teachers. The STPCD are given legal effect by an order and the content of the STPCD is negotiated with trade unions.

School financial position

7.10. There are increasing concerns within the education system of a funding crisis in Welsh schools. There are significant pressures on school budgets, and we are hearing that schools are needing to make very difficult decisions because of budgetary pressures.

7.11. The amount of funding set aside for school budgets is for local authorities to determine, the Welsh Government does not fund schools directly. The Welsh Government provides funding to local authorities for pre-16 provision in schools in Wales mainly through the Local Government Revenue Settlement in the form of the Revenue Support Grant (RSG).

7.12. Once the local government settlement has been distributed to local authorities, it is the responsibility of individual authorities to set budgets for their schools which are determined by a local funding formula. The School Funding (Wales) Regulations 2010 require 70% of funding for schools' budgets to be distributed on the basis of pupil numbers. Local authorities have discretion to distribute the remaining 30% on the basis of a range of factors so that they can take account of individual school circumstances.

7.13. Local authorities are required by law to have an established School Forum. The purpose of a School Forum is to help develop informed and confident dialogue between local authorities and their schools on budgetary issues.

7.14. The high level of reserves reported over the past few financial years has come as no surprise, due to many activities being paused during the pandemic. Schools continued to receive their normal core funding plus additional Covid-19 funding whilst having reduced expenditure due to various periods of school closure.

7.15. We knew that this would be a temporary position and although, on the face of it, schools have been in a much healthier position, the high level of reserves is depleting rapidly.

7.16. In the latest statistical release (published in October), school reserves have decreased from £301m in 2022, to £208m as of 31 March 2023; a decrease of £93m which is a 31% fall from the previous year.

7.17. In 2022, there were 44 schools in a deficit position, this number has increased to 117 schools as of March 2023.

7.18. Although school reserves still seem high, it is vital to note that they are decreasing at a significantly rapid rate and we must not forget that there are already many schools in a deficit position.

Conclusion

7.19. The Welsh Government's view is that the Bill will put significant and unnecessary additional pressure on education budgets at national, local authority and school level, at a time when they are arguably already as strained as they have ever previously been. Our view, therefore, is that the Bill is unaffordable at this present time.

SL(6)431 – The Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023

Background and Purpose

These Regulations amend various existing Regulations relating to student finance.

These Regulations are split into nine Parts:

- Part 1 makes provision about the coming into force and application of these Regulations;
- Part 2 amends the Education (Fees and Awards) (Wales) Regulations 2007 (“the 2007 Regulations”);
- Part 3 amends the Education (European University Institute) (Wales) Regulations 2014 (“the 2014 Regulations”);
- Part 4 amends the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 (“the 2015 Regulations”);
- Part 5 amends the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”);
- Part 6 amends the Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”);
- Part 7 amends the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 (“the Doctoral Degree Loan Regulations”);
- Part 8 amends the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 (“the 2019 Regulations”); and
- Part 9 makes savings in respect of the 2014 Regulations and the 2018 Regulations.

The amendments made by these Regulations:

- update the categories of eligible students in the 2014 Regulations, the 2017 Regulations, the 2018 Regulations, the Doctoral Degree Loan Regulations and the 2019 Regulations and make corresponding changes to the 2007 Regulations and the 2015 Regulations, to include certain family members of persons who are granted leave to enter or remain in the United Kingdom under the Afghan or Ukraine related immigration schemes;
- update the definition of a “person with leave to enter or remain as a relevant Afghan citizen” in the 2014 Regulations as a result of changes to the immigration rules.
- omit obsolete references to Scottish Regulations in the 2017 Regulations and the 2018 Regulations;



- require distance learning students to be in Wales on the first day of the first academic year to qualify for a grant for deoendants, unless an exception applies, under the 2018 Regulations; and
- provide for early termination of eligibility under the Doctoral Degree Loan Regulations and the 2019 Regulations, where a student ceases to have certain types of leave to enter, or remain in, the United Kingdom.

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

The following eight points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

In regulation 5(b), in the new definition of “person with leave to enter or remain as a relevant Afghan citizen”, in paragraph (a), there is a reference to “paragraph 276BA2 of the immigration rules”. However, “paragraph 276BA2” is shown as “deleted” in the immigration rules on the UK Government’s website. It is unclear if this reference require updating in the definition or if it is referring to Afghan citizens who have already been given indefinite leave to enter the United Kingdom under that paragraph. There are also other references to “paragraph 276BA2” in the amendments found in regulations 9(a) and 16(b).

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

In regulations 19(b), 21(b) and 22(b), the amendments appear to be incorrectly drafted as the words “is allowed to stay in the United Kingdom” will be missing from the new text as amended.

For example, as a result of the amendment found in regulation 19(b) of these Regulations, the new text of regulation 4(10F)(b) of the Education (Student Support) (Wales) Regulations 2017 will read as follows:

“...the period for which [the person granted leave to enter or remain] as a protected Ukrainian national has expired and no further leave to enter or remain has been granted...”

However, it does appear that the words “for which” require the additional words “is allowed to stay in the



United Kingdom” to complete the meaning of the sentence, particularly when compared with other amendments made by these Regulations (e.g., regulations 12(b) and 63). If those words were included, the amended text would read as follows:

*“...the period for which [the person granted leave to enter or remain] as a protected Ukrainian national [**is allowed to stay in the United Kingdom**] has expired and no further leave to enter or remain has been granted...”*

Therefore, these amendments require further explanation as to whether these additional words should also have been included in the final text as amended by regulations 19(b), 21(b) and 22(b) of these Regulations.

3. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 36(c)(i) and (ii), the locations of the existing text for the amendments are incorrectly described as “**sub**-paragraph (aa)” and “**sub**-paragraph (ab)” respectively but they should be described as “**paragraph** (aa)” and “**paragraph** (ab)”.

4. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 55(a) and (b), the locations of the existing text for the amendments are incorrectly described as “**sub**-paragraph (b)” but should be described as “**paragraph** (b)”.

5. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 56, the new definitions are described as being inserted “at the appropriate place in alphabetical order” in Table 16 of Schedule 7 to the Education (Student Support) (Wales) Regulations 2018. However, the new definitions haven’t been listed in alphabetical order in either the English or Welsh texts of regulation 56. The second definition ““leave application date” (for the purpose of determining if a person is a protected partner or a child of a protected partner)” should appear before the first definition in the list of both language texts if they are to be alphabetically ordered when inserted in Table 16 of Schedule 7. In addition, the formatting of the list of table entries is confusing as a single horizontal line appears after the first definition in the English and Welsh texts, and there are also additional lines in the middle of the same definition at the bottom and top of pages 25 and 26 in the Welsh text.

6. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 56, in the Welsh text, there appears to be an historical error which is maintained in the final new definition of “leave application date” found in the list for “Schedule 2, paragraph 3”. The definition is translated as “dyddiad y cais i gael caniatâd **i aros**” unlike the other definitions in the list which are translated as “dyddiad y cais i gael caniatâd i ddod **i mewn neu i aros**”. It is true that “dyddiad y cais i gael caniatâd i aros” is the definition that has been used in the Welsh text of paragraph 3(2)(b), (3)(b) and (5) of Schedule 2 to the Education (Student Support) (Wales) Regulations 2018. But the meaning of “leave application



date” in paragraph 3(5) of Schedule 2 to those Regulations is given as “the date on which the person with leave **to enter or remain** made the application that led to that person being granted leave **to enter or remain** in the United Kingdom”. Therefore, the existing translation of that term is incorrect because it means “leave **to remain** application date” rather than “leave **to enter or remain** application date”, and that historical error is maintained by the Welsh definition listed for “Schedule 2, paragraph 3” by regulation 56 of these Regulations. The Welsh text should state “dyddiad y cais i gael caniatâd i ddod i mewn neu i aros” as used for the other entries listed in regulation 56.

7. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 80(3), in the Welsh text, the definition “current Afghan scheme student” has been translated and defined as “myfyriwr **presennol** sydd ar y cynllun **Afghanistan**” for the purposes of that regulation. However, this isn’t the term that has actually been used in the Welsh text of regulation 80(1) which is “myfyriwr **cyfredol** sydd ar y cynllun **Affganistan**” (the term that was previously defined and used consistently in the Welsh text of regulation 79). It also means that the Welsh definition found in italics and brackets immediately after the definition of “current Afghan scheme student” in the English text of regulation 80(3) is incorrect.

8. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 80(3), in the English text, both the definitions of “relevant course” and “relevant student” do not include the corresponding Welsh definition in italics and brackets afterwards.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

9. 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 there has been no formal consultation on these Regulations. In particular, we note the following paragraph 5.1 of the Explanatory Memorandum:

“A consultation has not been carried out as some of the amendments are required to correct and update law arising from changes to Immigration Rules and to remove redundant regulatory provision. Other amendments which extend eligibility to student support ... the Welsh Government’s policy on being a ‘Nation of Sanctuary’”.

Welsh Government response

A Welsh Government response is required in respect of reporting points 1-8.



Committee Consideration

The Committee considered the instrument at its meeting on 15 January 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

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Government Response: *The Education (Student Finance) (Miscellaneous Amendments) (No.3) (Wales) Regulations 2023*

Technical Scrutiny point 1: Reference to paragraph 276BA2 is included to provide for persons who have previously been granted leave to enter or remain in the United Kingdom under that paragraph of the immigration rules.

Technical Scrutiny point 2: We consider that the amendment is adequate as the definition of “protected Ukrainian national” refers to those students being granted leave to enter or remain in the United Kingdom. However, we will look to make a future amendment to assist the reader in the next appropriate instrument, that is likely to be made in the autumn.

Technical Scrutiny point 3 & 4: We agree that this is an error, and that reference should be made to paragraph not sub-paragraph. We are liaising with the S.I. Registrar with a view to correcting this by way of correction slip.

Technical Scrutiny point 5: We agree that there is an error in the alphabetical order of the first two definitions being inserted. However, that does not affect the efficacy of the amendment.

Technical Scrutiny point 6: We agree that there is a historical error that requires correction and will look to make the necessary amendments in the next appropriate instrument. We anticipate that being in the autumn.

Technical Scrutiny point 7: We agree that this is an error and will look to make the necessary amendment in the next appropriate instrument. We anticipate that being in the autumn.

Technical Scrutiny point 8: We agree that the omission of the italicised Welsh definitions following the corresponding English definitions is an error and will be corrected in the next appropriate instrument. We anticipate that being in the autumn.

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