

Explanatory Memorandum to the Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by 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 Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020.

Kirsty Williams
Minister for Education, one of the Welsh Ministers
25 June 2020

PART 1

1. Description

These regulations amend paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020 (“the 2020 Act”) so as to add Regulations 3 and 4 of The Changing of School Session Times (Wales) Regulations 2009 to the list of enactments that can be disapplied by the Welsh Ministers for a specified period by notice.

Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 set out the procedure to be taken by a local authority or a governing body of a community, voluntary controlled or community special school or a maintained nursery school to change its school session times.

These regulations also amend the table in paragraph 7(6) of Schedule 17 to the 2020 Act so as to add the ability to modify certain sections of the School Organisation Code.¹

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

These Regulations are made in accordance with the procedure set out in paragraph 8 of Schedule 17 to the 2020 Act.

As set out in paragraph 8 of Schedule 17, the Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved.

These Regulations are being made under the made affirmative procedure.

The Regulations will be laid before the Senedd as soon as reasonably practicable after being made. The Regulations cease to have effect at the end of the period of 40 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

3. Legislative background

Paragraph 8 of Schedule 17 to the 2020 Act gives the Welsh Ministers the power to make regulations to add provisions relating to children, education or training to the list of enactments in paragraph 7(5) and the table in paragraph 7(6) of the 2020 Act that can be disapplied or modified by the Welsh Ministers for a specified period by notice.

¹ The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code

The Changing of School Session Times (Wales) Regulations 2009 ('the 2009 Regulations')

Section 32C of the Education Act 2002 sets out that the governing body is responsible for determining the times of school sessions. However where a local authority considers that a change in any maintained school's session times is necessary or expedient to promote the use of sustainable modes of travel or to improve the efficiency or effectiveness of its travel arrangements, it can determine the time the school's first session begins and its second session ends (or if there is only one session, its start and end).

The 2009 Regulations made under Section 32C(5) of the Education Act 2002 set out the procedure that a local authority or governing body of a community, voluntary controlled, community special school or maintained nursery school must take if they wish to change school session times.

Regulation 3 of the 2009 Regulations sets out the procedures to be taken by the local authority when it proposes to change the session times of a community school, voluntary controlled school, community special school, maintained nursery school, foundation school, voluntary aided school or foundation special school. These procedures include consulting with the governing body, head teacher and other staff at the school, and holding a meeting with the parents of pupils at the school. The authority must give at least three months' notice of the change, and that change can only take effect at the beginning of the school year. A local authority can only give a notice if they think it is necessary or expedient in order to—

- (a) promote the use of sustainable modes of travel within the meaning of section 11 of the [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), or
- (b) improve the effectiveness or efficiency of travel arrangements made, or to be made, by the authority under that Measure.

Regulation 4 of the 2009 Regulations sets out the procedures to be taken by the governing body when it proposes to change the session times of a community, voluntary controlled, community special school or maintained nursery school. This regulation does not apply to foundation, voluntary aided and foundation special schools. These procedures include consulting with the local authority and school staff and holding a meeting with the parents of pupils at the school before making a change. If the change is to the time that a school session begins in the morning or ends in the afternoon, the governing body must give at least three months' notice of the change and the change must only take effect at the beginning of a school year. Otherwise it must give at least six weeks' notice, and the change can only take effect at the beginning of a school term.

The School Organisation Code

The School Organisation Code is made under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013. It imposes requirements in accordance with which relevant bodies (the Welsh Ministers, local authorities, governing bodies and other promoters) must act.

Section 48 of the 2013 Act requires that before proposals are published they must be subject to consultation. Paragraph 3.4 of the Code stipulates that the consultation document must be published on a school day of the school or schools subject to the proposal and consultees must be given at least 42 days to respond to the document, with at least 20 of these being school days. A school day² is any day on which there is a school session at the school. A school session can be a morning or afternoon session, so a school day is any day when the school meets for all or part of the day.

Paragraph 3.5 of the Code states that proposers must make suitable arrangements to consult with pupils of any affected school. As a minimum, this must include consultation with the school councils of the affected schools. Governing bodies must help facilitate this aspect of the consultation. Given the current restrictions on gatherings of more than 2 people and social distancing measures, school councils may be unable to meet.

If having considered the consultation report the proposer decides to proceed with the proposal, they must publish a statutory notice and provide a 28 day period in which anyone can object. Paragraph 4.1 of the Code states that the statutory notice must be published on a school day and that the objection period must include 15 school days (in addition to the day on which it is published).

4. Purpose and intended effect of the legislation

On 3 June, the Minister for Education announced that schools would increase operations from the 29 June, so all learners have the opportunity to 'check in, catch up and prepare for summer and September'.

The changing of school session times

Many schools are likely to be implementing staggered start times and end times and lunch breaks to ensure social distancing.

The disapplication of the procedure in regulations 3 and 4 of the 2009 Regulations will allow schools to respond quickly so as to structure their day to best meet the needs of their pupils and assist with social distancing. The removal of the requirement for changes to take place at the start of a school term or a school year will enable schools and local authorities to act swiftly to put these temporary changes in place in time for the new phase for schools on 29 June.

The regulations also include transitional provisions relating to the changing of school session times. These ensure that any change to the session times implemented whilst a notice has effect will end once the notice ceases to have effect. The transitional provisions also require the governing body to revert to the times that were required to be implemented before the notice has effect. This is to ensure that any changes to session times made without complying with the procedure in regulations 3 and 4 of the 2009 Regulations are not permanent.

² Section 579 of the Education Act 1996

The School Organisation Code

The regulations add additional enactments to the modification table in Schedule 17 so that a notice issued can temporarily amend paragraphs 3.4 of the Code (consultation document) and 4.1 (objection period) as if the references to “school day” include a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.

The regulations also provide for a modification such that a notice can temporarily amend paragraph 3.5 (consultation with children and young people). Any duty imposed on a person by paragraph 3.5 is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.

The remaining requirements in the Code continue to apply. For example those bringing forward proposals will still be required to publish a consultation document in hard copy and electronically on their website and make hard copies available on request. They would still be required to advise the ‘statutory consultees’ by letter or email of the availability of the consultation document and that recipients can, if they wish, obtain a hard copy of the consultation document on request.

The notice is for a maximum of a month, although it can be renewed, however the consultation period and objection period are open for longer than a month and therefore the Regulations make transitional provision to deal with a situation where a notice might end during a consultation or objection period.

5. Consultation

No formal consultation has taken place in relation to these Regulations, in light of the unprecedented situation created by the Coronavirus pandemic and the challenging timescales within which they need to be made.

However, regular engagement has taken place with key representative bodies such as ADEW and local authority representatives, to help inform the policy proposals around legislative requirements that are going to be modified or disapplied. These discussions have helped to inform the provisions that are included within these regulations.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment completed in relation to these Regulations as there are no associated costs or benefits. These regulations only add areas to the list of enactments in paragraph 7(5) and paragraph 7(6) in respect of which the Welsh Ministers can make notices to disapply or modify statutory requirements.

In respect of any notices that are made, the impact of these will be detailed in an integrated impact assessment. However there will be no costs or benefits to private or voluntary sectors or charity sectors. In respect of schools there is likely to be no net costs or benefits.