

SL(5)601 – The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Background and Purpose

These Regulations amend paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

Paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 lists enactments that can be modified, and the manner in which they can be modified, by the Welsh Ministers for a specified period by notice. Regulation 2 of these Regulations adds the following provisions to this list:

- Section 69 of the School Standards and Framework Act 1998 which provides for a duty to secure due provision of religious education;
- Section 43 of the Education Act 1997 which imposes a duty to provide careers education in schools in Wales;
- Section 101 of the Education Act 2002 which makes provision for a basic curriculum for maintained schools in Wales;
- Sections 109 and 110 of the Education Act 2002 which imposes duties to implement the National Curriculum for Wales in schools and nursery schools; and
- Sections 116A to 116K of the Education Act 2002 which deals with formation and provision of local curricula for pupils in Key Stage 4.

The effect of Regulation 2 is that the Welsh Ministers are permitted to modify any of the duties above by notice, but only so that they can be discharged if reasonable endeavours have been used to discharge them.

The related notice, [Modification of Curriculum Requirements in Wales Notice 2020](#), was issued on 27 August 2020 and published on the Welsh Government's website on 28 August 2020. The notice also modifies section 108 of the Education Act 2002, which was already listed in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

Procedure

Made affirmative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Regulations cease to have effect at the end of the period of 40 days (excluding recess of more than 4 days) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.



Technical Scrutiny

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

1. Standing Order 21.2(v) – that for some reason its form or meaning needs further explanation

Regulation 2 adds provisions of certain enactments to the list of enactments in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020. The list in paragraph 7(6) runs in chronological order. However, Regulation 2 adds section 43 of the Education Act 1997 to the list after the School Standards and Framework Act 1998. This may cause confusion for anyone searching paragraph 7(6) for a specific statutory reference. An explanation would be welcomed as to why the Regulations depart from the chronological order utilised in the list in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

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

In the Welsh version of the Regulations, the footnote reference in regulation 2(2) is incorrect. It appears to refer to the Coronavirus Act 2020 instead of the Education Act 1996. This may cause confusion for some readers of the Regulations. This error is not replicated in the English version of the Regulations.

Merits Scrutiny

The following point is 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 that no formal consultation has taken place in relation to these Regulations. The Explanatory Memorandum states that this is in light of the unprecedented situation created by the Coronavirus pandemic and the challenging timescales within which they need to be made.

It is noted that regular engagement has taken place with key representative bodies such as ADEW (Association of Directors of Education in Wales) and local authority representatives, to help inform the policy proposals around legislative requirements that are going to be modified or disappplied. These discussions have helped to inform the provisions that are included within these Regulations.

The Explanatory Memorandum also notes that 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(6) in respect of which the Welsh Ministers can make notices to modify statutory requirements.



The Explanatory Memorandum goes on to state that in respect of any notices that are made, the impact of these will be detailed in an integrated impact assessment.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

Technical scrutiny point 1:

The Welsh Government agrees that the entry for section 43 of the Education Act 1997 in the table in paragraph 7(6) does not appear in chronological order. This is inconsistent with the format of the table. However, whilst the entry is not in chronological order, this does not mean that the entry is ineffective, and this does not affect the validity of any notice issued in reliance on the entry.

Technical scrutiny point 2:

The reporting point states that the footnote provides the incorrect citation. The Welsh Government do not agree. The citation refers to the reference to the Coronavirus Act 2020 in the Preamble. There is a further footnoted reference in regulation 2(2) to the Education Act 1996. A temporary formatting error appears to have occurred during the registration process in the temporary version the Committee considered, as it is also numbered footnote (1). The footnote citation appears on the next page. This has now been corrected by the Queen's Printer during the publication process, and is correct in the official version published in dual column format and also available on legislation.gov.uk.

Legal Advisers

Legislation, Justice and Constitution Committee

3 September 2020

