

Explanatory Memorandum to the Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Language Division 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 Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education,
4 November 2020

PART 1

Description

These Regulations amend the Welsh in Education Strategic Plans (Wales) Regulations 2019 (SI. 2019/1489) (“the 2019 Regulations”) which make provision in relation to the:

- Form and content of the Welsh in Education Strategic Plan (“Plan”)
- Duration of the Plan
- Submission of the Plan to Welsh Ministers
- Approval of the Plan
- Review report of the Plan
- Arrangements for Revision of the Plan
- Consultation of a draft Plan
- Timing and manner of publication of the Plan
- Revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013.

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

There is no specific information which the Minister wishes to bring to the attention of the Committee.

Legislative background

These amendment regulations are made under sections 87 and 97 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”).

Section 84 of the 2013 Act requires a local authority to prepare a Welsh in Education Strategic Plan (“the Plan”) and outlines that a Plan should contain:

- a. a local authority's proposals on how it will carry out its education functions to:
 - i. improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area;
 - ii. improve the standards of Welsh medium education and of the teaching of Welsh in its area;
- b. the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
- c. report on the progress made to meet the targets contained in the previous plan or previous revised plan.

Section 84 also sets out with whom a local authority is required to consult in preparing or revising its Plan and provides the Welsh Ministers with a power to prescribe other persons with which the local authority must consult.

Under section 85 of the 2013 Act each local authority is required to submit its Plan to the Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a Plan (imposing its own plan in its place). Subsection (7) places a duty on a local authority to take all reasonable steps to implement its approved Plan.

Section 87 gives Welsh Ministers powers to make regulations which make further provisions on matters such as the form and content of a Plan, its timing and duration, keeping the Plan under review, consultation and submission of the Plan for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

Section 87 also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions.

The Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”) were made under these various powers. The Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 amend the requirements set out in the 2019 Regulations.

The Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 will be made under the Negative procedure.

Purpose and intended effect of the legislation

These amendment regulations make three changes to the timescales in the 2019 Regulations.

1. The duration of a ten year Plan – the duration of the plan will be 1 September 2022 to 31 August 2032 instead of 1 September 2021 to 31 August 2031. (regulation 4)
2. The date in which the first ten year plan is to be submitted for Welsh Ministers consideration – this will be 31 January 2022 instead of 31 January 2021 (regulation 5)
3. The date in which the first annual review report must be submitted to the Welsh Ministers- moving from 31 July 2021 to 31 July 2022 (regulation 7)

These changes are made in response to the COVID-19 pandemic to enable local education authorities to prioritise their support for schools - and wider COVID-19 response strategies for the remainder of 2020/21. This includes, but is not restricted to, school organisation; school health and safety, risk assessments, PPE, FSM arrangements home-to-school transport, blended learning programmes.

Plans approved under the 2013 Regulations will continue to have effect until the local authority's first 10 year Plan, under the proposed 2020 amendment Regulations, has effect.

Risks if Regulations are not made

There is a risk that an opportunity to make a significant and important contribution in the way Welsh-medium education provision is planned for by local authorities is missed if these regulations are not made.

New arrangements in the 2019 Regulations set out a higher expectation on local authorities to plan their Welsh-medium education provision over a longer term (10 years) and on the basis of an overarching target, individually calculated by Welsh Government so that they align with the national targets set out in Cymraeg 2050. The preparation and planning around the new Plan would have required some local authorities to adopt a different approach.

For example, we would have expected these preparations to have begun in April 2020 and to have included stakeholder engagement through the local Welsh in Education Planning Forums as well as analysis and consideration of PLASC data trends and forecasts; school workforce survey trends and forecasts; 21 Century School capital programme progress and future needs and impacts. Local authorities would also have been expected to present their draft Plan to their cabinet in the autumn term in order to proceed to statutory consultation to enable submission of their final Plans for the Welsh Ministers' consideration by January 2021 (in accordance with the requirements of the 2019 Regulations).

The COVID-19 pandemic interrupted this intended timetable of events. If the Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 are not made, there is a risk that local authorities will not be able to submit their first ten year plan to the Welsh Ministers by 31 January 2021 as set out in the 2019 regulations. The main aim in introducing the 2019 regulations was to encourage local authorities to plan their Welsh-medium education provision with greater ambition and purpose, bringing it in line with the expectations set out in our national Welsh language strategy, Cymraeg 2050: a million Welsh speakers. The other changes are made as a result of changing the date for submission from 31 January 2021 to 31 January 2022.

Consultation

These amendments are made in response to the COVID-19 pandemic. The 2019 Regulations 2019 had only come into force four months before the pandemic hit. The 2019 Regulations underwent a 15 week consultation between 30 May and 13 September 2019 and included four regional engagement events attended by approximately 100 stakeholders as well as a youth forum discussion hosted by the Urdd.

Due to the nature of the amendment being proposed, which only affects the timetable for submitting and commencing the next cycle of WESPs and no other provision in the regulations, no additional consultation nor integrated impact assessment has been undertaken. However, the views of local authority Directors of Education, gathered through the Association of Directors of Education Wales (ADEW), were considered as part of the decision making process. Key pressure points for local authorities identified include the time allocation for preparing a draft Plan in consultation with local stakeholders and consulting on a draft Plan at a time when all available education resources were being redirected to work on local COVID-19 responses.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

Two options have been considered:

- Option 1: Do nothing – retain the Welsh in Education Strategic Plans (Wales) Regulations 2019, as currently in force.
- Option 2: Introduce the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020.

Risks and Benefits

OPTION 1: Do nothing – retain the Welsh in Education Strategic Plans (Wales) Regulations 2019, as currently in force.

The 2017 Rapid Review of WESPs, followed by the establishment of an independent Advisory Board led to the making of the Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”). They replace the 2013 regulations made under section 84 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Regulations”).

The main aim in introducing the 2019 regulations was to encourage local authorities to plan their Welsh-medium education provision with greater ambition and purpose, bringing it in line with the expectations set out in our national Welsh language strategy, Cymraeg 2050: a million Welsh speakers.

The two most significant changes introduced by the 2019 regulations include – (1) changing the previous 3-year cycle of a WESP to 10 years and (2) replacing the previous requirement to undertake parental demand assessments with a requirement to plan according to targets. These targets have been calculated by Welsh Government to reflect the milestone targets in Cymraeg 2050. Under both options, these statutory arrangements would continue.

However, the 2019 regulations set out a timetable for the preparation of a draft Plan and for submitting a Plan for consideration by Welsh Ministers. The Covid-19 pandemic has had a significant impact on local authorities’ ability to comply with their statutory duty in this regard. Namely,

- The 2019 regulations emphasise the need for local authorities to prepare their Plans in partnership with their local Welsh in education planning forums which include representation from head teachers, Welsh language community stakeholders, regional consortia, further education and universities. Given the urgency on local authorities, School representatives as well as other educational bodies and third sector partners indicated above to respond to Covid-19 pandemic, this vital element of WESP planning has not been possible in the majority of cases, or certainly not to the extent which would satisfy our expectation.

- The 2019 regulations require local draft Plans to be consulted on, prior to submission to Welsh Ministers. Challenges, such as reduced capacity (including time and staffing resource) to resources, conflicting priorities, and uncertainties around the ability to commit to long term proposals in the lead up to local elections could affect the overall standard of Plans submitted for approval.
- Other pressures affecting local authorities' ability to plan with confidence and ambition include slippage in progressing school building/improvement developments as a result of contractor Covid - 19 obligations, which could also affect other school organisation proposals.

OPTION 2: Introduce the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020

Amending the 2019 Regulations in the way described in Part 1, ensures we continue to meet the policy objective of WESPs. This option takes into account the context in which this amendment is introduced. For the reasons outlined in Option 1 above, we believe that in order to implement the 2019 regulations as intended, delaying the introduction of the next cycle of WESPs is necessary. It is our view that this will ultimately lead to better Plans being submitted at a time when resource pressure should have subsided. In addition, submitting and commencing new Plans after the local elections and with a new Government in place will enable local authorities to plan with greater confidence and ambition.

Costs

OPTION 1

This is the no change option and as such there are no additional costs to the costs already estimated in the Regulatory Impact Assessment¹ for the 2019 Regulations.

OPTION 2

As this option proposes to only move the timetable for commencing the new cycle of WESPs by one year, and no other provision in the 2019 regulations, there are no additional costs associated with this option either.

However, the wider impacts of the Covid-19 pandemic on local authorities and schools must be recognised. The Welsh Government has provided more than £260 million for local authorities in Wales in recognition of the additional pressure resulting from the pandemic, and in terms of support for schools, an additional £29 million has been committed to recruit more teachers and teaching assistants from September.

While under this option the submission of the first plan will be delayed by one year, the impact of this has to be balanced against the benefits of providing local authorities with greater flexibility to use their resources to address other

¹ <https://gov.wales/sites/default/files/consultations/2019-05/draft-regulatory-impact-assessment.pdf>

challenges and also the likelihood that the additional time will result in better quality plans.

Conclusion

As noted above, the Welsh Government believes that in order to ensure local authority WESPs demonstrate the ambition and purpose envisaged to respond to the Cymraeg 2050 strategy, as intended in the 2019 regulations, the option of introducing the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020 must be taken.

Competition Assessment

The proposed legislation has no effect on business, charities or the voluntary sector and is therefore not expected to have any impact on the level of competition in Wales.

Post implementation review

This amendment does not affect the measures in place to keep the implementation of these regulations under review. The process for developing Plans outlined in the legislation still enables a proportionate level of monitoring. A 10 year plan will be produced and annual review report submitted to the Welsh Government. This will enable local authorities and Welsh Government to quickly identify any difficulties with the legislation, as well as enable the Welsh Government to ascertain the support needed by local authorities.