

SL(6)489 – The Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024

Background and Purpose

These Regulations place a duty on local authorities to formulate a qualifying scheme for the co-ordination of admission arrangements for schools they maintain and, to secure the adoption of the scheme by themselves and each governing body who is the admission authority for a maintained school in their area.

The first qualifying scheme must be formulated and adopted by 1 January 2025 and by 1 January for all subsequent years. The first qualifying scheme will apply to admission arrangements in the academic year 2027 to 2028.

The Welsh Government's Explanatory Memorandum provides that the purpose of these Regulations is to:

"enable local authorities and other admission authorities to operate more efficiently by helping to reduce the cost and time that comes with the holding up of school places by families who have received more than one school offer. If [these] Regulations were not made some parents will continue to hold multiple offers of places where other parents may have none."

Additionally, these Regulations amend:

- the School Information (Wales) Regulations 2011 to require the local authority to include in its composite prospectus a summary of the local authority's co-ordinated scheme as determined each year, alongside a clear explanation of the stages in the process of applying for a school place.
- the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 so as to correct drafting mistakes in regulation 3 and regulation 5 of those Regulations.

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 12 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In the preamble, in the English text, the title of the enabling Act is incorrect. It is cited as “the **Schools** Standards and Framework Act 1998”. However, it should be cited by its correct title as done elsewhere in these Regulations, which is “the **School** Standards and Framework Act 1998”.

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

In regulation 2(1) in the definition of “Welsh Minister scheme”, the reference “**subsection** 89B(2) of the 1998 Act” is incorrectly described and it should be referred to as “**section** 89B(2) of the 1998 Act” (see WLW 6.16 about composite references). The same issue arises in regulation 9, in the definition of “the scheme for co-ordinating admission arrangements of the local authority” in new paragraph 5A(2)(b).

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

In regulation 2(1), in the definition of “Welsh Minister scheme” in the English text, should the definition use a plural possessive noun and be “Welsh Ministers’ scheme”? An explanation is required in respect of the definition used.

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

The term “working day” as defined in regulation 2(1) is only used in regulation 6 of these Regulations. Therefore, the term should only be defined in an interpretation provision that appears in that regulation, see WLW 4.13(1). An explanation is therefore required as to why the term has been defined in regulation 2 and not regulation 6.

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

In regulation 2(1), in the definition of “working day” it states that “a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971” is not a working day. However, the Banking and Financial Dealings Act 1971 specifies days as bank holidays in England and Wales, Scotland, and Northern Ireland. Therefore, the definition of “working day” in regulation 2(1) of these Regulations as currently drafted excludes bank holidays in Scotland and Northern Ireland from the meaning of “working day” as well as bank holidays in England and Wales. Clarification is requested as to whether or not this is the policy intention.



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

The term “working day” is given a meaning which is implied in Welsh SIs such as these Regulations by Schedule 1 to the Legislation (Wales) Act 2019. The definition found in Schedule 1 to that Act only excludes Bank holidays in England and Wales from the meaning of “working day”. Therefore, it was not necessary to define “working day” in any interpretation provisions found in these Regulations if the term was intended to bear the same meaning as given by Schedule 1 to that Act.

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

In regulation 6, the structure of paragraph (1) is incorrect as there is a sub-paragraph (a) without a subsequent sub-paragraph (b). This is confusing for the reader as it creates doubt as to whether an additional provision is missing from the text. In addition, in the English text, the words “and” and “for” have been combined as a single word, and in the Welsh text, the words “a” and “ar gyfer” have also been combined as a single word. In this regard, it does appear as though the intention was to create an additional sub-paragraph (b) which would begin with the words “for secondary schools” after the conjunction “and” in the English text, with a corresponding provision in the Welsh text.

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

In regulation 7(3)(a), there is an incorrect reference to “section 578(1) of the 1996 Act”. However, there is no subsection (1) found in section 578 of the 1996 Act. Therefore, the reference should be to “section 578 of the 1996 Act”. The additional subsection (1) is incorrectly noted on the collated version of section 578 in the 1996 Act on Lexis, but the provision is shown correctly on legislation.gov.uk and Westlaw.

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

In regulation 7(3), in the English text, in both sub-paragraphs (a) and (b), the corresponding language definitions are shown in italics and brackets after the definitions. But the Welsh Government’s drafting guidance states that this should not be done when each definition is given in a separate numbered provision as in these sub-paragraphs (see WLW 4.15(7)).

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

In regulation 9, a new paragraph 5A is inserted in Schedule 2 to the School Information (Wales) Regulations 2011. In the new paragraph 5A(1), in paragraphs (a) and (e), the terms “application” and “common application form” respectively are used which have been defined in regulation 2(1) for the purposes of the Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024. However, these



terms have not been included with the definitions listed in sub-paragraph (2) of the new paragraph 5A. Therefore, they have not been given the same meaning in paragraph 5A of Schedule 2 to the School Information (Wales) Regulations 2011. Clarification is requested as to whether that is the intention for both of those terms.

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

In regulation 9, in the new paragraph 5A(2) inserted in Schedule 2 to the School Information (Wales) Regulations 2011, there is a difference between the English and Welsh text. In the Welsh text, the corresponding English definitions have been noted in italics and brackets after each definition. In the English text, the corresponding Welsh definitions have not been noted after each definition. In this regard, the Welsh text is correct because it is following the Welsh Government's drafting guidance that the corresponding language definitions should be included if the definitions appear in an unnumbered list (see WLW 4.15(6)).

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

In regulation 9, in the definition of "the scheme for co-ordinating admission arrangements of the local authority", in paragraph 5A(2)(a), there is a reference to a scheme adopted by a local authority "pursuant to regulation **2(1)** of the 2024 Regulations". However, clarification is required as to whether it should refer "to regulation **3(1)** of the 2024 Regulations" which places an obligation on local authorities to formulate qualifying schemes?

Merits Scrutiny

No points 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 with the reporting point. We do not consider that the minor error in a non-operative part of the Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024 ("the 2024 Regulations") will mislead anyone. However, we will liaise with the SI Registrar as to how best to correct the error reported.

Technical Scrutiny point 2: The Welsh Government agrees with the reporting point. Whilst we do not consider that the minor error will mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 3: The Welsh Government does not agree with the reporting point. The term "Welsh Minister scheme" is used consistently throughout the instrument. Whilst the alternative "Welsh Ministers' scheme" could have been used we consider both approaches give the same legal effect to the policy.



Technical Scrutiny point 4: The Welsh Government agrees with the point made about the correct location for the definition given its single occurrence in the instrument and the approach used with other such “single use” definitions in the instrument. However, it is not considered the location of the definition will mislead anyone and we do not propose to amend the 2024 Regulations in this regard.

Technical Scrutiny point 5: It is accepted that the effect of the definition of “working day” in regulation 2(1) is to exclude all bank holidays as defined in section 1 of the Banking and Financial Dealings Act 1971 and that would also exclude bank holidays in Northern Ireland and Scotland from the definition of working day in the instrument. The intention was to exclude bank holidays for England and Wales only.

Technical Scrutiny point 6: The Welsh Government agrees that a better approach would be to rely on the definition of “working day” in the Legislation (Wales) Act 2019. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 7: The Welsh Government does not agree with the reporting point. The signature version of the 2024 Regulations does not contain the error identified. It would appear that the error occurred during the publication of the 2024 Regulations, and we will liaise with the SI Registrar to correct the published version so that it accurately reflects the signature version.

Technical Scrutiny point 8: The Welsh Government agrees with the reporting point which arose as a result of reliance on an error on the legal database, Lexis. Whilst we do not consider that the minor error will mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 9: The Welsh Government does not agree that the provision is defective or fails to fulfil statutory requirements. The provision is legally effective and its meaning clear.

Technical Scrutiny point 10: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 11: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.



Technical Scrutiny point 12: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Legal Advisers

Legislation, Justice and Constitution Committee

5 June 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee